

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CITY OF NEW YORK; BOARD OF EDUCATION  
OF THE CITY SCHOOL DISTRICT OF THE CITY  
OF NEW YORK/NEW YORK CITY DEPARTMENT  
OF EDUCATION; JOEL KLEIN, in his official capacity  
as Chancellor of the city school district of the city of  
New York; and ALAN SIEGEL, in his official capacity  
as Principal of Lafayette High School,

Defendants.

**CV 04 2248**  
**AMON, J.**

**POHOPELSKY, M.** **COMPLAINT**

U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
JUN 8 1 2004  
BROOKLYN OFFICE

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COMPLAINT

The United States of America, Plaintiff, alleges:

1. This complaint is filed by the United States of America, pursuant to Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c-6, and the Fourteenth Amendment to the Constitution of the United States to remedy and enjoin named Defendants' unlawful discrimination against Asian students at Lafayette High School in New York City through the Defendants' deliberate indifference to the widespread harassment of these students on the basis of their race and national origin. The United States also brings this action pursuant to the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1701 et seq., to remedy and enjoin Defendants' failure to take appropriate action to help English Language Learner students at Lafayette High School overcome language barriers that impede their equal participation in the school's instructional programs.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction under 20 U.S.C. § 1708 and 28 U.S.C. §§ 1331, 1345 and 1391.

3. The United States is authorized to initiate this action pursuant to 20 U.S.C. § 1706 and 42 U.S.C. § 2000c-6.

4. The Assistant Attorney General for the Civil Rights Division of the United States Department of Justice, on delegation from the Attorney General, has certified that all pre-filing requirements specified in 20 U.S.C. § 1710(b) and 42 U.S.C. § 2000c-6(a)(2) have been met. The Certificate of the Assistant Attorney General is appended to this Complaint and is incorporated herein.

5. Venue in the Eastern District of New York is proper pursuant to 28 U.S.C. § 1391(b).

**DEFENDANTS**

6. Defendant City of New York, through its mayor, employs and ultimately controls the Chancellor of the city school district of the City of New York, who serves at the pleasure of the mayor of the City. N.Y. Educ. Law § 2590-h (McKinney 2004). Defendant City of New York also employs and, through its mayor, controls the New York City Police Department, which deploys personnel in New York City schools.

7. Defendant Board of Education of the City School District of the City of New York has the power and duty to, inter alia, approve standards, policies, objectives, and regulations proposed by the Chancellor of the New York City school system that are directly related to educational achievement and student performance. The Board also has the power and duty to

consider and approve any other standards, policies, objectives, and regulations as specifically authorized or required by state or federal law or regulation. N.Y. Educ. Law § 2590-g (McKinney 2004). The New York City Department of Education is the newly named entity that develops and implements policies with respect to the administration and operation of the New York City public schools.

8. Defendant Joel Klein is the Chancellor of the city school district of the City of New York. Chancellor Klein is the superintendent of schools and the chief executive officer of the New York City Department of Education. N.Y. Educ. Law § 2590-h (McKinney 2004). His duties include promoting an equal educational opportunity for all students in the city school district. Id. He is sued in his official capacity.

9. Defendant Alan Siegel is the principal of Lafayette High School, a school in the New York City school system. Mr. Siegel is the administrative and instructional leader of the school and is responsible for its day to day operation. N.Y. Educ. Law § 2590-i (McKinney 2004). His duties include promoting an equal educational opportunity for students in the school. Id. He is sued in his official capacity.

10. Defendants are legally responsible, in whole or in part, for the operation of Lafayette High School, and for the conditions therein.

#### **FACTUAL ALLEGATIONS**

11. There has been severe and pervasive peer-on-peer harassment of Asian students at Lafayette High School that is based on the Asian students' race and national origin. This harassment has included both verbal abuse and physical assaults, and has occurred in different areas in and around the school, including the cafeteria, hallways, and classrooms. The persistent

harassment has created an objectively hostile environment.

12. Defendants have had notice of the harassment alleged in paragraph 11, but have refused to acknowledge that a discriminatory hostile environment exists for Asian students at Lafayette High School. Defendants have been deliberately indifferent to the harassment of Asian students.

13. Defendants have denied English Language Learner (ELL) students at Lafayette High School equal educational opportunities on account of their race and national origin by failing to take appropriate action to help these students overcome the language barriers that impede their equal participation in the school's instructional programs. Defendants' ELL program at Lafayette High School is deficient in a number of areas, including class placement, academic counseling, monitoring of exited students, and communication with ELL parents and students.

#### **CONDITIONS PRECEDENT TO SUIT**

14. The Assistant Attorney General for the Civil Rights Division of the United States Department of Justice, on delegation from the Attorney General, has certified that he has received a signed written complaint from a Lafayette High School parent alleging in effect that his minor child, as a member of a class of persons similarly situated, is being deprived of the equal protection of the laws. The Assistant Attorney General believes the complaint is meritorious, that the signer of the complaint is unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief, and that the institution of this action will materially further the orderly achievement of desegregation in public education. Defendants have been notified of the complaint and have had a reasonable length of time to adjust the conditions alleged in the complaint. The certificate of the Assistant Attorney General is attached to this

complaint.

15. The Assistant Attorney General has certified that he has given notice to the Defendants of the conditions which, in his judgment, constitute a violation of the Equal Educational Opportunities Act of 1974, and that Defendants have not, within a reasonable time after such notice, undertaken appropriate remedial action. See 20 U.S.C. § § 1706, 1710. The certificate of the Assistant Attorney General is attached to this complaint.

#### VIOLATIONS ALLEGED

16. The Defendants' acts and omissions alleged in paragraphs 11 and 12 deny Asian students at Lafayette High School equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

17. The Defendants' acts and omissions alleged in paragraph 13 violate the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1703(f).

18. Unless the relief requested herein is required by this Court, the Defendants will continue to deny Asian students at Lafayette High School equal protection of the laws and will continue to violate the Equal Educational Opportunities Act of 1974.

#### PRAYER FOR RELIEF

WHEREFORE, the United States prays that this Court:

1. Declare that the Defendants have unlawfully discriminated against Asian students at Lafayette High School in violation of the Constitution and the laws of the United States by being deliberately indifferent to the widespread discriminatory harassment of these students;
2. Declare that the Defendants have violated the EEOA by failing to take appropriate action to overcome the language barriers of ELL students;
3. Permanently enjoin Defendants, their officers, agents, employees, successors,

assigns, and all persons in active concert or participation with them from all unlawful discrimination on the basis of race or national origin in Defendants' operation of Lafayette High School;

4. Order Defendants to formulate, adopt, and timely implement a plan to remedy fully their discriminatory policies and practices and to comply with the requirements of federal law and the Fourteenth Amendment to the Constitution of the United States;

5. Order such additional relief as it deems just and proper.

Respectfully submitted,



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United States Attorney  
Eastern District of New York



R. ALEXANDER ACOSTA  
Assistant Attorney General  
Civil Rights Division



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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiffs,

v.

BOARD OF EDUCATION OF THE CITY SCHOOL  
DISTRICT OF THE CITY OF NEW YORK, et al.,

Defendants.

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CERTIFICATE

I, R. Alexander Acosta, Assistant Attorney General for the United States, on delegation from the Attorney General, certify that in the above captioned case, in which relief is sought from the denials of equal educational opportunities and equal protection on account of race and national origin, the United States has given the Defendants notice of the conditions that constitute violations of Section 204 of the Equal Educational Opportunities Act, 20 U.S.C. § 1703, and I am satisfied that Defendants have not, within a reasonable time after such notice, undertaken appropriate remedial action.

I also certify that the United States has received a complaint signed by a parent or guardian to the effect that his minor child, as a member of a class of persons similarly situated, is being deprived by a school board of the equal protection of the laws; that the defendants have had a reasonable time to adjust the conditions alleged in the complaint; that the signer of that complaint is unable in my judgment to initiate and maintain appropriate legal proceedings for relief; and that the institution of an action will materially further the orderly achievement of desegregation in public education.

These certifications are made pursuant to Section 211 of the Equal Educational Opportunities Act, 20 U.S.C. § 1710, and Section 407 of the Civil Rights Act of 1964, 42 U.S.C. § 2000c-6.

Signed this 2 day of February, 2004.

  
R. ALEXANDER ACOSTA  
Assistant Attorney General