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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

SERGIO BLAKELEY, a minor, by and through his stepmother, MICHELLE WITHERSPOON; FRANK CHIMENTI, JR., a minor, by and through his father, FRANK CHIMENTI, SR.; JORGE SAENZ, a minor, by and through his mother, MARIA SAENZ; and SALVADOR BUSTOS, a minor, by and through his mother, ANTONIA BUSTOS, on behalf of themselves and others similarly situated,

Plaintiffs,

vs.

TERESA BERGESON, Superintendent Of Public Instruction, in her official and individual capacities; JOSEPH LEHMAN, Secretary, Washington Department Of Corrections, in his official and individual capacities; GENE LAES, Superintendent of Cape Flattery School District, in his official and individual capacities; and their successors and assigns,

Defendants.

CLASS ACTION

No.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND COMPENSATORY EDUCATION

I. INTRODUCTION

1. This is a class action brought on behalf of youth under the age of 18 who currently are, or in the future will be, incarcerated under the jurisdiction of the Washington State Department

1 B. Defendants

2 9. Joseph Lehman is the Secretary of the Department of Corrections. He is responsible
3 for the administration of Washington State prisons. He is sued in his official and individual
4 capacities.

5 10. Teresa Bergeson is the Superintendent of Public Instruction. She supervises all
6 matters pertaining to the public schools of the state of Washington. She is sued in her official and
7 individual capacities.

8 11. Gene Laes is the Superintendent of Cape Flattery School District. He supervises the
9 activities of Cape Flattery School District (CFSD). He is sued in his official and individual
10 capacities.

11 IV. CLASS ACTION ALLEGATIONS

12 12. The named Plaintiffs bringing this lawsuit seek to have a class certified that is
13 composed of youth under the age of 18 who currently are, or in the future will be, incarcerated
14 under the jurisdiction of the Washington State Department of Corrections (DOC).

15 13. This is an appropriate class action because the class is so numerous and so fluid that
16 the joinder of all members is impracticable. For example, there were 68 youth under the age of 18
17 confined at the Clallam Bay Corrections Center (CBCC) in early May 2001. This population is
18 constantly in flux as youth turn 18 and others are newly committed.

19 14. There are questions of law or fact common to the class. Defendants continue to
20 deprive class members of adequate basic education or special education and related services,
21 thereby making injunctive and declaratory relief appropriate for the class as a whole.

22 15. The claims of the named Plaintiffs are typical of the claims of the class.
23

1 23. There are seven teachers at Eagle Crest High School, including one designated
2 special education instructor.

3 24. The Office of the Superintendent of Public Instruction (OSPI) and DOC have entered
4 into contracts with CFSD to create an educational program for youth confined at CBCC.

5 25. Performance under the education contracts between CFSD and OSPI, and between
6 CFSD and DOC, necessarily and directly benefits Plaintiffs and proposed class members
7 incarcerated at CBCC.

8 26. There is no meaningful school grading or crediting systems for youth incarcerated at
9 CBCC.

10 27. There is an inadequate record-keeping system for student attendance, special
11 education services, and other essential student data for youth incarcerated at CBCC.

12 28. There is no adequate process to ensure that education-related records from other
13 schools are obtained in a timely manner.

14 29. The educational progress and changes in placement of Plaintiffs and proposed class
15 members are not adequately reported to the students' parents, if at all.

16 30. There is no adequate process to identify, locate and evaluate Plaintiffs and proposed
17 class members for special education eligibility.

18 31. Parental consent for special education assessment, planning, or provision or denial of
19 special education services is not obtained or is obtained inconsistently.

20 32. IEPs are not developed or adequately implemented for every eligible Plaintiff or
21 proposed class member.

22 33. There is not an adequate number of qualified and certified special education teachers
23

1 and aides available to teach Plaintiffs and proposed class members who are eligible for special
2 education.

3 34. There is no adequate process in place to allow parents to participate in the special
4 education process. This includes a lack of adequate interpretive services.

5 35. Students are removed from Eagle Crest High School and confined in the restricted
6 movement pod in the YOP or the Intensive Management Unit (IMU) on administrative or
7 disciplinary segregation status without regard to any education disability and without adequate due
8 process, procedural safeguards, or an adequate alternative educational program.

9 36. DOC does not make adequate facilities and equipment available to Plaintiffs and
10 proposed class members in the restricted movement pod or IMU for basic education and special
11 education and related services.

12 37. Youth placed in the restricted movement pod or IMU are not provided adequate
13 basic education, or special education or related services, if eligible.

14 38. Youth confined in the restricted movement pod or IMU do not receive meaningful
15 teacher instruction.

16 39. Youth confined in the restricted movement pod or IMU are only given school
17 homework “packets” that contain reading materials and questions to answer. The packets are given
18 on an irregular basis and without adequate instruction. In some cases, no educational packets or
19 materials are provided at all.

20 40. There are inadequate transition services for Plaintiffs and proposed class members
21 who are nearing release.

22 41. Defendants receive federal funds.
23

1 B. Facts Relevant to Individual Plaintiffs

2 Sergio Blakeley

3 42. Sergio Blakeley has been at CBCC since April 2001.

4 43. Before Sergio came to CBCC, various correctional institutions evaluated him for
5 special education and developed IEPs for him. He did not do well in school and had a hard time
6 focusing.

7 44. Sergio attempted to get a GED in early 2001 but failed the test.

8 45. Sergio finds math, reading, and writing difficult.

9 46. Sergio is eligible for special education and related services.

10 47. Sergio wants to get a high school diploma and become a zoologist.

11 48. Sergio's stepmother is supportive of his education. She is worried that he needs a lot
12 of help with his education. She would like to participate in decisions regarding his education but in
13 the six months that Sergio has been at CBCC, Defendants have never contacted her or Sergio's
14 father about his education.

15 49. Defendants do not give Sergio special education or related services.

16 Frank Chimenti, Jr.

17 50. Frank entered CBCC in March 2001.

18 51. Frank has ADD, ADHD, speech and language problems, dyslexia, and serious
19 behavioral difficulties. He is on medication for his ADHD. He can be easily distracted, has
20 difficulty concentrating, and is hyperactive.

21 52. Frank has trouble with reading, writing, and math.

22 53. Frank is eligible for special education and related services.

1 54. In the first few weeks of his confinement at CBCC, Frank repeatedly told his
2 teachers, sergeants, and counselors that he needed special education help.

3 55. Frank recently spent a couple months in the restricted movement pod. During about
4 a two month period, Frank was given only two school packets to complete. Frank did not get any
5 help to do the packets.

6 56. In the seven months that Frank has been at CBCC, Frank's father was only contacted
7 once about Frank's education, which was about a week ago. His father wants to be involved in
8 decisions regarding Frank's education.

9 57. Defendants have not developed or implemented an IEP for Frank.

10 58. Defendants do not provide Frank with special education or related services.

11 59. Frank wrote in a grievance, "...I need speacial help 1 to 1 teacher student help and
12 there suppose to offer me many other service's witch they won't I've been asking for 6 month's I've
13 even told the C.U.S they just don't listen to me. And Im in the hole and they exspect me to do work
14 when I need teacher student help I can not do the work and they punish me for it non
15 programing...".

16 Jorge Saenz

17 60. Jorge has had learning problems since he was six or seven years old. He had trouble
18 passing first grade. He has taken Ritalin for his hyperactivity.

19 61. Jorge is eligible for special education and related services.

20 62. Jorge has been at CBCC since March 2001.

21 63. Jorge is currently in the adult IMU.

22 64. Defendants drop off school packets for Jorge to complete in his cell.
23

1 65. Defendants do not give Jorge any meaningful teacher instruction.

2 66. Jorge has several school packets in his room because he has trouble doing them.

3 67. Recently, Defendants started having a teacher come by once a week outside his cell
4 and ask if he has any questions about the school packets. When Jorge is unable to think of any
5 questions the teacher leaves.

6 68. Defendants do not provide Jorge with special education or related services.

7 69. Defendants do not involve Jorge's mother in decisions or meetings about Jorge's
8 educational program even though she would like to be involved.

9 Salvador Bustos

10 70. Salvador has been at CBCC since October 2000.

11 71. Salvador currently resides in the adult IMU.

12 72. Defendants do not give Salvador any meaningful teacher instruction.

13 73. Sometimes Salvador is given school packets to complete in his cell.

14 74. Salvador has trouble with reading and writing. He has a hard time completing the
15 packets.

16 75. Defendants provide little or no instruction on how to complete the packets.

17 76. Defendants do not tell Salvador how many credits he gets for completing his packets.

18 77. Defendants do not return Salvador his completed packets with grades or comments.

19 78. Sometimes a teacher stops by Salvador's cell to see if he has any questions. The
20 teacher who stops by stands outside his cell usually for no more than a total of about two minutes.
21

22 79. DOC punishes Salvador for not turning in his school packet.

1 members violates RCW 28A.305.160 as implemented by Chapter 180-40 WAC, the due process
2 clauses of both the state and federal constitutions, 20 U.S.C. §1400 et seq., and 42 U.S.C. §1983.

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VII. PRAYER FOR RELIEF

Plaintiffs ask the Court to:

A. Certify this case as a class action under CR 23(b)(2);

B. Issue a judgment declaring that Defendants have violated Plaintiffs' fundamental
right to a free and appropriate education guaranteed by Article 9, §1 of the Washington State
Constitution as implemented by RCW 28A.193 et seq. and RCW 72.09.460, and §504 of the
Rehabilitation Act of 1973, 29 U.S.C. §794, and its implementing regulations at 34 CFR Part 104;

C. Issue a judgment declaring that Defendants have violated RCW 28A.193 et seq.,
Chapter 392-172 WAC, 20 U.S.C. §1400 et seq., and 42 U.S.C. §1983 by failing to assure that
appropriate special education assessments and special education and related services are provided to
Plaintiffs who are or who may be disabled within the meaning of state and federal special education
laws;

D. Issue a judgment declaring that Defendants have violated RCW 28A.305.160 as
implemented by Chapter 180-40 WAC, the due process clauses of both the state and federal
constitutions, 20 U.S.C. §1400 et seq., and 42 U.S.C. §1983 by failing to provide procedural
safeguards to Plaintiffs;

E. Issue a judgment declaring that Defendants are in breach of their education contracts,
and requiring specific performance to provide appropriate basic education, and special education
and related services where applicable, to all youth at CBCC;

F. Issue an injunction requiring Defendants to provide Plaintiffs a free and

1 appropriate public education and ordering Defendants to provide special education and related
2 services to eligible youth;

3 G. Issue an injunction requiring Defendants to provide requisite due process to
4 Plaintiffs;

5 H. Issue an order requiring Defendants to provide compensatory basic and special
6 education services to all members of Plaintiff class who have been denied appropriate basic
7 education or special education or related services while incarcerated by DOC;

8 I. Award attorneys fees and costs pursuant to 20 U.S.C. §1415(i)(3)(B), WAC 392-
9 172-362, 29 U.S.C. §794a, and 42 U.S.C. §1988;

10 J. Award such other relief as the Court deems appropriate and just.

11 DATED this _____ day of October, 2001.

12
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