

FINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ASPIRA OF NEW YORK, INC.,

ASPIRA OF AMERICA, INC.,

LUZ MARIA OLIVO, individually and on
behalf of her minor children, EDWIN
OLIVO and IVETTE OLIVO,

CRUCITA HERRERA, individually and on
behalf of her minor children ASTRID
HERRERA, JOSE HERRERA, YVONNE HERRERA,
ARIEL HERRERA, and KEELY HERRERA,

MARIANA MERCADO, individually and
on behalf of her children JUAN
MERCADO, EFRAIN MERCADO, and AIDA
MERCADO,

ELENA GARCIA, individually and on
behalf of her minor child HECTOR
GARCIA,

CARMEN RUIZ, individually and on
behalf of her minor children ROBERTO
RUIZ and ANTONIO RUIZ,

LUZ MARIA RAMOS, individually and
on behalf of her minor child ANDREA
SERRANO,

CLARAMINA OLIVERAS, individually
and on behalf of her child ADELI
PEREZ,

Plaintiffs,

-against-

COMPLAINT - CLASS
ACTION

THE BOARD OF EDUCATION OF THE CITY
OF NEW YORK,

JOSEPH MONSERRAT, individually and
in his official capacity as President
of the Board of Education of the City
of New York,

MURRY BERGTRAUM, individually and in
his official capacity as a member of
the Board of Education of the City of
New York,

ISAIAH ROBINSON, JR., individually and
in his official capacity as a member
of the Board of Education of the City
of New York,

SEYMOUR P. LACHMAN, individually and
in his official capacity as a member
of the Board of Education of the City
of New York,

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JAMES F. REGAN, individually and in
his official capacity as a member of
the Board of Education of the City
of New York,

HARVEY SCRIBNER, individually and
in his official capacity as the
Chancellor of the City School Dis-
trict of the City of New York,

COMMUNITY SCHOOL BOARD DISTRICT NO. 9
OF THE CITY OF NEW YORK,

EUNICE MATTIS, individually and in
her official capacity as President
of Community School Board District
No. 9 of the City of New York,

COMMUNITY SCHOOL BOARD DISTRICT NO. 10
OF THE CITY OF NEW YORK,

Rev. MARIO ZICARELLI, individually
and in his official capacity as
Chairman of Community School Board
District No. 10 of the City of
New York,

COMMUNITY SCHOOL BOARD DISTRICT NO. 12
OF THE CITY OF NEW YORK,

ELOISE KRAUS, individually and in
her official capacity as Chairwoman
of Community School Board District
No. 12 of the City of New York,

COMMUNITY SCHOOL BOARD DISTRICT NO. 14
OF THE CITY OF NEW YORK,

Brother ROBERT F. LALLY, individually
and in his official capacity as
President of Community School Board
District No. 14 of the City of New
York,

COMMUNITY SCHOOL BOARD DISTRICT NO. 16
OF THE CITY OF NEW YORK,

LAVERNE COX, individually and in
her official capacity as Chairman
of Community School Board District
No. 16 of the City of New York,

Defendants.

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PRELIMINARY STATEMENT

1. This is an action authorized by 42 U.S.C. §1983 to
prevent the deprivation under color of law of rights protected

by the First, Fifth, Ninth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §2000d. This action seeks a declaratory judgment, and preliminary and permanent injunctions enjoining defendants from denying plaintiffs and the classes they represent an equal education opportunity in the public schools of the City of New York.

2. Plaintiffs and the members of the classes they represent are Puerto Rican and other Spanish-speaking persons who speak English poorly or not at all. They are linguistically, culturally and historically different from the dominant culture in New York City. Yet, the defendants have failed to recognize these differences in designing and implementing educational services and courses of study for plaintiffs. Specifically, they have failed to take into account the plaintiffs' inability to speak and understand English, and learn in classes conducted in the English language. Moreover, the defendants have not effectively taught the plaintiffs and their classes the English language. The failures of the defendant public officials has been catastrophic. The rates of illiteracy, semi-literacy, drop-outs and truancy in public schools for plaintiffs and their classes are shocking. Furthermore, in part because of the educational deprivation suffered by plaintiffs and their classes, the unemployment rate for Puerto Ricans in New York City soars above that for other groups. The defendants' failures have crippled and paralyzed the potential and ability of the Spanish-speaking people of this City.

JURISDICTION

3. Jurisdiction is conferred on this Court by 28 U.S.C. §1343(3), (4) as an action to redress the deprivation under color

of state law or rights, privileges and immunities guaranteed by the United States Constitution and federal statute. Declaratory relief is authorized by 28 U.S.C. §2201-2202.

CLASS ACTION ALLEGATIONS

4. Plaintiffs bring this action on their own behalf and on behalf of the two classes they represent pursuant to Rule 23(b) (1) (A), or 23(b) (2), or 23(b) (3) of the Federal Rules of Civil Procedure. Defendants have acted on grounds generally applicable to the two classes respectively thereby making appropriate final injunctive relief with respect to the classes.

5. The first class consists of over 170,000 students who (a) attend the public schools of the City of New York, (b) speak, read, write and comprehend the English language with substantial difficulty or not at all, (c) primarily speak the Spanish language, and (d) are not receiving any educational services which takes into account their linguistic needs.

6. The second class consists of about 12,000 students who (a) attend the public schools of the City of New York, (b) speak, read, write and comprehend the English language with substantial difficulty or not at all, and (c) primarily speak the Spanish language and (d) are receiving some educational services intended to take into account their linguistic needs but which services are inadequate.

7. Plaintiffs can fairly and adequately protect the interests of the classes. They are represented by attorneys employed by Community Action for Legal Services, Inc. an agency funded by the United States Office of Economic Opportunity and the Puerto Rican Legal Defense & Education Fund, Inc. These

organizations have resources and experience in the area of constitutional litigation adequate to protect all members of the classes. Plaintiffs know of no conflicts of interest among the members of the classes.

8. Plaintiffs' claims are typical of the claims of the classes. There are questions of law and fact common to the classes: whether defendants have failed to provide plaintiffs and their classes with equal educational opportunities in violation of their rights under the United States Constitution, and federal statutes and regulations.

9. The prosecution of separate actions would create a risk of inconsistent adjudications establishing incompatible standards of conduct for defendants. The common questions of law and fact predominate over any questions affecting only individual members. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Plaintiffs know of no interest of members of the classes to proceed individually with this action.

PLAINTIFFS

10. ASPIRA of New York, Inc. is a non-profit corporation duly organized under the laws of the State of New York. The primary purpose of ASPIRA of New York, Inc. is to develop the intellectual and creative capacity of Puerto Ricans living in the State of New York by motivating said Puerto Ricans to continue their education in the professions, arts and technical fields so that such persons may offer their skills for the betterment of the community.

11. Aspira of America, Inc. is a non-profit corporation duly organized under the laws of the State of New York. It is the national office for Aspira and its affiliates throughout the United States including ASPIRA of New York, Inc. Aspira of America, Inc.'s primary purpose is to develop the intellectual and creative capacity of Puerto Ricans living in those States where affiliates have been established by motivating said Puerto Ricans to continue their education in the professions, arts and technical fields so that such persons may offer their skills for the betterment of the community.

12. The individual plaintiffs are Puerto Rican school children and their parents who are their representatives. Each child was born in Puerto Rico and comes from a family in which Spanish is the predominant, if not the only, spoken language. Each attends a public school in New York City. The individual plaintiffs are all citizens of the United States and of the State of New York, and residents of the City of New York.

13. Plaintiffs LUZ MARIA RAMOS, and her daughter ANDREA SERRANO, age 14, reside in Kings County, New York. ANDREA reads, writes, speaks and understands Spanish and before coming to New York in July, 1970 was receiving her education in Puerto Rico and was making normal progress. Since arriving in New York City ANDREA has attended Junior High School 111. ANDREA received instruction in English as a Second Language during the 1970-71 and 1971-72 academic years. After two years of this special instruction ANDREA cannot speak, read or write English and cannot understand even the simplest questions directed at her. Although

she received a grade of 80 in her English as a Second Language course, she has a definite language barrier and cannot participate in class discussion. In her other subjects ANDREA has grades ranging from 70 to 55. ANDREA, who is to enter the eighth grade, has a reading level in English of 2.8 (second year, eighth month).

14. Plaintiffs LUZ MARIA OLIVO and her children, EDWIN OLIVO and IVETTE OLIVO reside in Kings County. EDWIN, age 9, and IVETTE, age 10, attended elementary school in Puerto Rico where they were taught in Spanish. They speak, read, write and comprehend Spanish and were making normal progress in their school in Puerto Rico. They have attended P.S. 120 since their arrival in New York City in December, 1971, and were placed in the same grade, third and fourth respectively, they would have been in had they remained in Puerto Rico. Plaintiffs EDWIN and IVETTE OLIVO speak, read, write and comprehend English with substantial difficulty. Neither child received adequate instruction in English nor achieved any progress in their regular subjects, and, as a result both were left back.

15. Plaintiffs CRUCITA HERRERA and her children ASTRID, and JOSE, twins age 10, YVONNE, age 9, ARIEL, age 8 and KEELY, age 6 1/2 reside in Bronx County. ASTRID, JOSE and KEELY have been in New York City for the last two years and before that ASTRID and JOSE attended elementary school in Puerto Rico where they were taught in Spanish. ASTRID and JOSE speak, read and write Spanish and were making normal progress in their school in Puerto Rico. KEELY who speaks Spanish attended kindergarten in

Puerto Rico and was placed in kindergarten when she entered the New York City school system. YVONNE and ARIEL have been in New York City for one year and before that they attended elementary school in Puerto Rico where they were taught in Spanish. YVONNE and ARIEL speak, read and write Spanish. YVONNE and ARIEL were making normal progress in their school in Puerto Rico.

16. The HERRERA children all speak, read, write and comprehend English with substantial difficulty. Until March, 1972, all of the HERRERA children attended P.S. 134 in Community School Board District No. 12 where they received instruction in English as a Second Language for approximately one-half hour daily. In March, at the request of the Department of Social Services of the City of New York, the plaintiffs moved out of Community School Board District No. 12 and the children were required to attend school at P.S. 63 in Community School Board District No. 9. The HERRERA children receive no instruction in English as a Second Language in P.S. 63. As a result of their inability to read, speak, write and comprehend English, the HERRERA children are working well below their grade level.

17. Plaintiffs MARIANA MERCADO and her children, JUAN, age 14, EFRAIN, age 8, and AIDA, age 7, reside in Kings County, and have resided in New York City since May, 1969. JUAN attended elementary school in Puerto Rico where he was taught in Spanish. He reads, writes, speaks and comprehends Spanish and was making normal progress in his school in Puerto Rico. JUAN attended regular classes at Junior High School 111 during the academic year 1971-72 and was in the seventh grade. He reads, writes,

speaks and understands English with substantial difficulty and last year received instruction in English as a Second Language. Because this special instruction was inadequate, JUAN failed to make normal progress in his regular subjects.

18. Plaintiffs EFRAIN and AIDA MERCADO started school in New York City. Both attend P.S. 120 and will enter the third and second grade respectively in September, 1972. They speak and understand Spanish, but have substantial difficulty speaking understanding, reading and writing English. Neither EFRAIN nor AIDA receive any special instruction to overcome their English language difficulties.

19. Plaintiffs ELENA GARCIA and her son, HECTOR, age 14, reside in Kings County, New York. HECTOR reads, writes, speaks and understands Spanish and before coming to New York City in 1969 he was attending school in Puerto Rico where he was making normal progress. HECTOR attends regular classes at Junior High School 111 and is presently in the eighth grade. During the 1971-72 school year he was offered a class in English as a Second Language for one hour, three times a week. Because this special instruction was inadequate he continues to speak, read, write and understand English with substantial difficulty and as a result he has failed to make normal progress.

20. CARMEN RUIZ, and her children, ROBERTO, age 16, and ANTONIO, age 14, reside in Bronx County, and came to New York City in May, 1971. ROBERTO went to elementary and junior high school in Puerto Rico where he was taught in Spanish and was making normal progress. ANTONIO went to elementary school in Puerto Rico until the sixth grade where he was taught in Spanish and was making normal progress. Both ROBERTO and ANTONIO speak

read, write and understand English with substantial difficulty. As a result of their English difficulty both ROBERTO and ANTONIO were placed in English as a Second Language classes for the 1971-72 academic year. ANTONIO'S instruction in English as a Second Language terminated after three months when the teacher left the school and was not replaced. ROBERTO is being given course work which is of primary school level whereas he would have been doing work on a secondary school level had he stayed in Puerto Rico. ANTONIO is also working well below his grade level.

21. Plaintiffs, CLARAMINA OLIVERAS and her son ADELI PEREZ, age 15, reside in Kings County. Before coming to New York City in July, 1970, ADELI attended school in Puerto Rico where he was taught in Spanish. He speaks, reads, writes and understands Spanish and was making normal progress in school in Puerto Rico. Since arriving in New York City ADELI has attended Junior High School 111 where he is now in the eighth grade. He received instruction in English as a Second Language and although he received a passing grade in that subject he continues to speak, read, write and understand English with substantial difficulty.

DEFENDANTS

22. The Board of Education of the City School District of the City of New York has sole responsibility for the operation and administration of the public high schools and shares responsibility for the operation and administration of the public elementary and junior high schools.

23. JOSEPH MONSERRAT is President and MURRY BERGTRAUM, SEYMOUR P. LACHMAN, ISAIAH E. ROBINSON, JR., and JAMES F. REGAN are members of the Board of Education of the City School District of the City of New York.

24. HARVEY SCRIBNER is the Chancellor of the City School District of the City of New York. As such, he has administrative responsibility of the operation of the public high schools and shares administrative responsibility for the operation of the public elementary and junior high schools of the City of New York.

25. Community School Board District No. 9 is one of the thirty-one (31) Community School Boards in New York City. It shares responsibility with the Board of Education of the School District of the City of New York for the operation and administration of the elementary and junior high schools within its jurisdiction.

26. EUNICE MATTIS is President of Community School Board District No. 9.

27. Community School Board District No. 10 is one of the thirty-one (31) Community School Boards in New York City. It shares responsibility with the Board of Education of the School District of the City of New York for the operation and administration of the elementary and junior high schools within its jurisdiction.

28. REV. MARIO ZICARELLI is Chairman of Community School Board District No. 10.

29. Community School Board District No. 12 is one of the thirty-one (31) Community School Boards in New York City. It

shares responsibility with the Board of Education of the School District of the City of New York for the operation and administration of the elementary and junior high schools within its jurisdiction.

30. ELOISE KRAUS is Chairwoman of Community School Board District No. 12.

31. Community School Board District No. 14 is one of the thirty-one (31) Community School Boards in New York City. It shares responsibility with the Board of Education of the School District of the City of New York for the operation and administration of the elementary and junior high schools within its jurisdiction.

32. BROTHER ROBERT F. LALLY is President of Community School Board District No. 14.

33. Community School Board District No. 16 is one of the thirty-one (31) Community School Boards in New York City. It shares responsibility with the Board of Education of the School District of the City of New York for the operation and administration of the elementary and junior high schools within its jurisdiction.

34. LAVERNE COX is Chairman of Community School Board District No. 16.

STATEMENT OF CLAIM

(a) Plaintiffs Have Been Denied
Equal Educational Opportunity

35. Plaintiffs and their classes (hereinafter referred to as "plaintiffs") attend the public schools of the City of New York. They represent and have represented for over twenty

years a significant portion of the public school student population. In the 1970-71 school year, there were 1.1 million students in the New York City public schools. Of those, 260,040 were Puerto Rican and 39,240 were other Spanish surnamed Americans. Together these two groups composed 26.3% of the total student population. More than half of these 300,000 students are members of plaintiffs' classes.

36. The primary language of plaintiffs is Spanish; they read, write, speak and comprehend English with substantial difficulty or not at all.

37. The educational services and programs provided plaintiffs in the public schools takes place predominantly and in most cases exclusively in English. The teachers who teach the classes attended by plaintiffs speak to them only in English. The text books used by plaintiffs are written only in English.

38. None of plaintiffs are taught the English language so that they can read, write, speak and understand it without substantial difficulty. Some plaintiffs are not receiving any special instruction in the English language which takes into account their linguistic needs. Other plaintiffs are receiving special instruction in the English language but such instruction is totally inadequate. Moreover, they are not being taught the Spanish language and as a result many of the plaintiffs are illiterate in both Spanish and English.

39. As a result of the defendants failure to teach the plaintiffs the English language and their practice of providing course instruction only in English, the plaintiffs are unable to learn the subject matter taught in the public school system.

40. Plaintiffs differ from the dominant culture in more than language. The basic cultural and historical heritage of plaintiffs is materially and significantly different from that of the dominant groups in New York City. These differences are also material to the educational services and courses of study that should be provided plaintiffs.

41. Defendants' failure to recognize these linguistic and cultural differences and to implement educational services which reflect these differences has had destructive educational, psychological and sociological consequences for plaintiffs.

42. In those few cases where defendants have made changes in the curriculum to account for these linguistic and cultural differences, the changes are woefully inadequate.

43. The number of Spanish-speaking non-English-speaking students is larger than that recognized by defendants. The defendants do not use an objective, reliable, standardized test in evaluating and classifying plaintiffs with respect to their ability and achievement in the English language. As a result the defendants regularly and frequently misclassify the English language ability and achievement of the plaintiffs thereby minimizing the number of students who are classified as having substantial difficulty in the English language.

44. As a result of the foregoing, the plaintiffs are being provided with an education substantially inferior to that offered to other students in the New York City public school system. They are being deprived of their right to equal access to an education and its concomitant benefits. Consequently, they are being denied their right to an equal educational opportunity.

45. This denial of an equal educational opportunity is reflected in the following ways:

A. English Reading Levels: Defendants annually adminis-

ter the Metropolitan Reading Achievement Test throughout the public schools of the City of New York. The results of that test disclose that (1) the reading level of plaintiffs is below the reading level of black children which in turn is below the reading level of white children, (2) the differences between the reading levels of plaintiffs and all other children increases with each year of education, and (3) by the eighth grade of education plaintiffs' reading level is nearly two years below that of white children. Moreover, defendants do not give the test to over 28,000 children including plaintiffs because they speak, read, write and comprehend English with such severe difficulty, if at all, as to make the results meaningless.

- B. Truancy and drop-out rates: plaintiffs have a materially higher truancy and drop-out rate than white students and higher truancy and drop-out rate than black students. Approximately 70%-80% of all plaintiffs drop out of school before completion.
- C. Academic and Vocational High Schools: plaintiffs are under-represented in the academic high schools and over-represented in the vocational high schools. Of the 234,842 students in academic high schools for the 1970-71 school year, only 44,772 or 18% were Puerto Rican or other Spanish-speaking students. Of the 37,878 students in vocational high schools,

13,478 or 34% were Puerto Ricans or other Spanish-speaking students.

- D. High School Graduation: plaintiffs are materially under-represented in high school graduation classes. For the 1970 school year, roughly 10% of the graduation classes were Puerto Rican or other Spanish surname students.
- E. Admission into City University of New York: plaintiffs are materially under-represented in the freshman classes of the branches of the City University of New York. For the school year 1970-71, only 7.7% of the 35,000 freshman students were Puerto Rican or other Spanish surnamed students.

(b) Defendants Have Discriminated
Against Plaintiffs On The Basis
Of National Origin, Ethnicity
and Race

46. The failure of defendants to provide plaintiffs with an equal educational opportunity has been recognized and admitted by defendants themselves.

47. Defendant Scribner in testimony given at the Puerto Rican People's Hearings on May 15, 1972 stated:

Approximately 95,000 of the Puerto Rican students and approximately 22,600 of the other Spanish-speaking students have difficulty with the English language. In a system of education when English is the language of instruction and the medium of communication, the student who is not fluent in English obviously is at a severe disadvantage when it comes to learning. (emphasis added)

48. Defendant Scribner in testimony before a Joint Hearing held by the Senate Finance Committee and the Assembly Ways and Means Committee on the Governor's Executive Budget on February 9, 1972 stated:

The state of urban public education is perilous. This is true not only in New York City, not only in the other major cities of New York State, but in the urban centers throughout the nation.

The children and youth who, by law, attend the public schools in the cities of this State have a multitude of needs which are not yet being fully met in a satisfactory way....

New York City needs funds to provide new educational services for students who do not speak English. New York City enrolls approximately 160,000 non-English speaking students who need -- and deserve -- special programs and services. (emphasis added)

49. A recent study prepared for the defendant Central Board of Education urged a major expansion of bilingual education programs in order "to change the present conditions, which are contributing to the failure of Puerto Rican children in the classroom." (Mary Jenkins, Bilingual Education in New York City (May 1971), prepared for the program of Recruitment and Training of Spanish-speaking Teachers: Board of Education, Office of Personnel.)

50. The conditions about which plaintiffs complain have existed to a substantial degree for over two decades and continue to worsen. Defendants have not been ignorant of these conditions. They have known of them almost from the beginning. They have studied them, issued reports about them, and issued resolutions

and policy statements about them. But they have done little or nothing to develop and implement educational programs to adequately remedy these conditions and thus have denied plaintiffs an equal educational opportunity.

51. In that connection, defendants have barely committed any financial support to develop and implement such programs. For example, during the 1970-71 school year, less than \$2.6 million was allocated for these programs. This is less than 1.5% of an approximate annual budget of \$2 billion. Thus, less than 16,000 students were served by these programs; this is less than 10% of the classes represented by plaintiffs.

52. In addition, most of the programs developed and implemented by the defendants are woefully inadequate and fail to provide the students assigned to them an equal educational opportunity.

53. In denying plaintiffs an equal educational opportunity defendants have knowingly and willfully discriminated against them on the basis of national origin, ethnicity and race.

(c) The Defendants Are Causing
Plaintiffs Irreparable Injury

54. The defendants failure to provide plaintiffs with an equal educational opportunity deprives plaintiffs of an adequate education and is causing them irreparable injury.

55. As a result of defendants' failure plaintiffs are handicapped economically. They are relegated to the lowest rung on the economic ladder with little or no prospect of improving their economic status, and many will be forced into the further humiliation of reliance upon public assistance. The

United States Department of Labor's report entitled The New York Puerto Rican Patterns of Work Experience issued May, 1971, made the following findings:

Puerto Rican workers were the most deprived of all workers residing in the city's major poverty neighborhoods. They were far more likely than others to be unemployed or to hold lower paying jobs. Typically, they held blue-collar or service jobs requiring relatively little skill. They were greatly handicapped in the competition for employment by poor educational background: on average, Puerto Ricans 25 and over, had not gone beyond the eighth grade, while the majority of the area's residents 25 and over had completed high school or gone beyond. (emphasis added)

56. Defendants' failure to teach plaintiffs either English or Spanish causes many plaintiffs to become illiterates and semi-illiterates in both English and Spanish.

57. Plaintiffs' English language handicap resulting from defendants' policies and practices severely limits plaintiffs ability to exercise their duties and rights as citizens of the United States, including the rights to serve as jurors, to petition for redress of grievances, and to fully participate in the political process.

58. Finally, defendants' failure to provide plaintiffs with equal educational opportunities has a destructive and permanent impact on the psychological condition of the plaintiffs. Because of the enormous and serious differences that exist between plaintiffs and the dominant culture and the failure of the defendants to develop educational programs and a course of study

that bridge the gap, plaintiffs experience a deep sense of alienation and inferiority which significantly hinder the likelihood of success both in the school system and in society generally.

(d) Violations Of Law

59. The public school system of the City of New York received over \$125 million in financial assistance from the United States Government during the 1971-72 school year and will receive a similar sum next year. Title VI of the Civil Rights Act of 1964 and regulations promulgated thereunder, 45 C.F.R. 80, prohibit the denial of equal educational opportunities to the plaintiffs on the grounds of their race, color or national origin by the recipients of Federal financial assistance. Moreover, federal regulations, 33 F.R. 4955 and 35 F.R. 11595, provide that "each school system has an affirmative duty to take prompt and effective action to eliminate...discrimination ...based on...national origin, and to correct the effects of past discrimination." (emphasis added). Defendants' failure to provide plaintiffs with an equal educational opportunity based on their race, color or national origin is a violation of their rights under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, the regulations issued thereunder, and the equal protection clause of the Fourteenth Amendment to the United States Constitution.

60. Defendants' failure to provide plaintiffs with an educational opportunity equal to that offered to other students violates their rights under the equal protection clause of the Fourteenth Amendment of the United States Constitution.

61. Defendants failure to provide plaintiffs with an education violates their right to an education under the First, Fifth, Ninth and Fourteenth Amendments to the United States Constitution.

62. Defendants' failure to evaluate and classify the plaintiffs English language ability and achievement through objective, reliable, and standardized testing procedures, violates their rights under the due process clause of the Fourteenth Amendment to the United States Constitution.

63. Defendants' policies and practices toward plaintiffs have the direct effect of preventing or discouraging plaintiffs from fully exercising their duties and rights as citizens of the United States including their rights to petition the Government for redress of grievances and to participate in the political process, all in violation of the First and Fourteenth Amendments to the United States Constitution.

64. Defendants' policies and practices toward the plaintiffs have the direct effect of frustrating the basic goals as ASPIRA of New York, Inc. and Aspira of America, Inc.

65. Plaintiffs and the classes they represent, have no plain adequate speedy remedy at law to redress their injuries and therefore bring this suit for declaratory and injunctive relief as their only means of securing such relief.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray, on behalf of themselves and all others similarly situated, that this Court:

(a) Enter an order that this action is to be maintained as a class action.

(b) Enter a declaratory judgment declaring that the policies and practices of the defendants toward the plaintiffs and their classes deny them an equal educational opportunity and that such a denial violates plaintiffs' rights under the First, Fifth, Ninth and Fourteenth Amendments to the United States Constitution, Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d), and regulations promulgated thereunder.

(c) Enter a declaratory judgment declaring that an equal educational opportunity for plaintiffs and their classes requires bilingual and bi-cultural educational services and courses of study.

(d) Enter preliminary and permanent injunctions enjoining defendants from continuing to deprive plaintiffs and their classes of an equal educational opportunity.

(e) Enter preliminary and permanent injunctions requiring the defendants:

(1) to establish and implement an affirmative plan satisfactory to this Court which:

(A) provides plaintiffs and their classes with bilingual educational services and courses of study which take into account the linguistic needs and cultural differences of the plaintiffs and assure plaintiffs an equal educational opportunity;

(B) provide special programs to compensate, to the maximum extent feasible, for defendants' past failure to provide plaintiffs and their classes with an equal educational opportunity;

(C) establish adequate procedures for evaluating and classifying the English language ability and achievement of plaintiffs and their classes.

(2) to submit the above plan to the Court for approval within forty-five (45) days of the entering of the order.

(f) Establish a panel of recognized experts in the field of education of Spanish-speaking non-English-speaking students, to evaluate the plan submitted by the defendants to the Court, and to recommend to the Court approval or disapproval of the plan, or specific changes in the plan; and, under circumstances deemed appropriate by this Court, including the inadequacy of the plan proposed by defendants, such panel to proceed to develop and to submit an alternative plan, the expenses for which to be borne by the defendants.

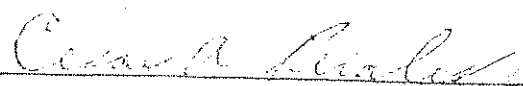
(g) Award plaintiffs their costs and disbursements incurred herein.

(h) Award plaintiffs reasonable attorneys' fees.

(i) Grant such other and further relief as this Court may deem just and proper.

Dated: New York, New York
September 20th, 1972

Respectfully submitted,



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PLAINTIFFS

DYRCIA S., individually and on behalf of her minor child JORGE LUIS S.; ALEJANDRINA R., individually and on behalf of her minor child, RAFAEL D.; on behalf of themselves and all other persons similarly situated; ASPIRA OF AMERICA, INC.; and ASPIRA OF NEW YORK, INC.

DEFENDANTS

BOARD OF EDUCATION OF THE CITY OF NEW YORK; FRANK J. MACCHIAROLA, Chancellor of the Board of Education of the City of New York; GERALD GROSS, Executive Director of the Division of Special Education of the Board of Education of the City of New York; NEW YORK STATE EDUCATION DEPARTMENT; and GORDON M. AMBACH, Commissioner of Education of the State of New York

NICKERSON, J.

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(PLACE AN X IN ONE BOX ONLY)

BASIS OF JURISDICTION

- 1 U.S. PLAINTIFF 2 U.S. DEFENDANT 3 FEDERAL QUESTION (U.S. NOT A PARTY) 4 DIVERSITY

IF DIVERSITY, INDICATE RESIDENCE BELOW.

CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

Plaintiffs, Puerto Rican and other Hispanic school children who are handicapped and who also have limited English proficiency, bring this class action against New York State and City education agencies and school officials for violations of their right to an appropriate bilingual-bicultural special education program, guaranteed by the Education for All Handicapped Children Act, 20 U.S.C. §1401 et seq.; The Rehabilitation Act of 1973, 29 U.S.C. §794; Title VI of the

CAUSE OF ACTION (cont.)

1964 Civil Rights Act, 42 U.S.C. §2000d; The Equal Educational Opportunities Act of 1974, 20 U.S.C. §1703(f), the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. §1242, the New York State Education Law §§ 3202 and 4401 et seq. and the Consent Decree entered in Aspira of New York, Inc. v. Board of Education, 72 Civ. 4002 (S.D.N.Y.).

Grid of cause of action categories including: FEDERAL EMPLOYERS' LIABILITY, MARINE LIABILITY, MOTOR VEHICLE, REAL PROPERTY, FEDERAL WELFARE, PRISONER PETITIONS, VACATE SENTENCE, PAROLE BRD. REVIEW, HABEAS CORPUS, MANDAMUS & OTHER, CIVIL RIGHTS, R.R. & TRUCK, AIR LINE REGS., OCCUPATIONAL SAFETY/HEALTH, OTHER, LABOR, FAIR LABOR STANDARDS, LABOR/MGMT. RELATIONS, LABOR/MGMT. REPORTING & DISCLOSURE ACT, RAILWAY LABOR ACT, OTHER LABOR LITIGATION, ANTI-TRUST, ECONOMIC STABILIZATION ACT, BANKRUPTCY TRUSTEE, ENVIRONMENTAL MATTERS, ENERGY ALLOCATION ACT, BANKS AND BANKING, COMMERCE ICC RATES, ETC., DEPORTATION, SELECTIVE SERVICE, SECURITIES COMMODITIES EXCHANGE, SOCIAL SECURITY, BLACK LUNG, TAX SUITS, NARA, TITLE III, OTHER STATUTORY ACTIONS.

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ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- 1 ORIGINAL PROCEEDING 2 REMOVED FROM STATE COURT 3 REMANDED FROM APPELLATE COURT 4 REINSTATED OR REOPENED 5 TRANSFERRED FROM (SPECIFY DIST.) 6 MULTIDISTRICT LITIGATION

RESIDENCE OF PRINCIPAL PARTIES (IF DIVERSITY)

RESIDENT OF YOUR STATE

PTF DEF

1 1

NON-RESIDENT CORPORATION DOING BUSINESS IN STATE

2 2

NON-RESIDENT CORPORATION NOT DOING BUSINESS IN STATE

3 3

OTHER NON-RESIDENT OF OUR STATE

4 4

JURY DEMAND:

YES NO

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

Injunctive and Declaratory Relief

RELATED CASE(S) IF ANY

JUDGE Eugene H. Nickerson

DOCKET NUMBER 79 C. 270

CIVIL CASES ARE DEEMED RELATED IF PENDING CASE INVOLVES:

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT
- 2. SAME ISSUE OF FACT OR GROWS OUT OF THE SAME TRANSACTION
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK

DATE

SIGNATURE/OF ATTORNEY OF RECORD

October 2, 1979

Peter Bienstock

UNITED STATES DISTRICT COURT