IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| MAXINE McCLENDON, et al. | : | CIVIL ACTION |
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| v. | : | NO. 04-1250 |
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| SCHOOL DISTRICT OF PHILADELPHIA | : | |

**MEMORANDUM AND ORDER**

**Juan R. Sánchez, J.** **March 7, 2005**

The parents of three children who allege the School District of Philadelphia failed to provide services promised under the students's Individualized Education Plans (IEP) ask this Court to certify a class of all others so situated under Fed.R.Civ.P. 23. For the reasons that follow, we deny class certification.

**FACTS**

Three parents charge the School District violated the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, a comprehensive scheme of federal legislation designed to meet the special educational needs of children with disabilities. *Dellmuth v. Muth*, 491 U.S. 223, 225, 109 S.Ct. 2397, 105 L.Ed.2d 181 (1989). Under the IDEA, assistance is available to states that meet a number of substantive and procedural criteria. 20 U.S.C. § 1412(a)(1)-(a)(22); *W.B. v. Matula*, 67 F.3d 484, 491 (3d Cir. 1995). The cornerstone of eligibility for federal funds under the IDEA is the substantive right of disabled children to a free appropriate public education (FAPE). 20 U.S.C. § 1412(a)(1); *Beth V. v. Carroll*, 87 F.3d 80, 82 (3d Cir.1996). States provide a FAPE through an individualized education program (IEP). 20 U.S.C. § 1414(d). The IEP must be

"reasonably calculated" to enable the child to receive "meaningful educational benefits" in light of the student's "intellectual potential." *Board of Educ. of Hendrick Hudson Central Sch. Dist., Westchester County, v. Rowley,* 458 U.S.176, 206-07 (1982)*; Polk v. Cent Susquehanna Interm. Unit 16,* 853 F.2d 171, 181 (3d Cir.1988). The IDEA requires states to guarantee certain procedural rights to qualify for funding. *M.A. ex rel. E.S. v. State-Operated School Dist. of City of Newark,* 344 F.3d 335, 338 (3d Cir. 2003). Under Section 615, dissatisfied parents may challenge a school district's determinations in a due process hearing before a state administrative law judge. 20 U.S.C. § 1415(e).

The parents in this case aver the School District induced them to relinquish their rights to a due process hearing in return for settlement agreements for IEPs the School District knew it could not fulfill. The parents ask this Court to certify a class of "all present and future special education students within the Defendant District, who have been or will be subjected to" the de facto practice and policy of intentionally entering into agreements it knows it will breach. Complaint, ¶¶ 62-67.

The parents claim the subgroups of the class include special education students who requested a due process hearing and then entered into settlement agreements which the District breached; special education students whose agreements the District breached; and, "any special education student who in the future enters into a settlement agreement due to the Defendant District's failure to provide compensatory education services and/or benefits." Complaint, ¶ 62(A)-(C). The parents ask for certification under Rule 23(b) which is only available if the "prerequisites of subdivision (a) are satisfied . . . ." Fed.R.Civ.P. 23(b). It is generally recognized that civil rights actions seeking relief on behalf of classes . . . normally meet the requirements of Rule 23(b)(2)." *Stewart v. Abraham,* 275 F.3d 220, 228 (3d Cir. 2001) (holding the District Attorney's re-arrest policy did not violate the Fourth Amendment but that plaintiff's challenge satisfied the requirements

for class certification) . The relief plaintiffs seek is both injunctive and declaratory, as envisioned by Rule 23(b)(2), and compensatory. Complaint, Prayer ¶ 2.

A class action is "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Califano v. Yamasaki*, 442 U.S. 682, 700-01, 99 S.Ct. 2545, 2557- 58 (1979). A court may certify a class when "the class is too numerous to permit joinder; there are questions of law or fact common to the class; plaintiff's claims are typical of the claims of the class; and plaintiffs will fairly and adequately protect the interests of the class." Fed.R.Civ.P. 23(a). A class is properly certified when a "discrete legal question . . . applies in the same manner to each member of the class." *J.B. v. Valdez*, 186 F.3d 1280, 1289 (10th Cir. 1999). Class relief is "peculiarly appropriate" when the "issues involved are common to the class as a whole" and when they "turn on questions of law applicable in the same manner to each member of the class." *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 155, 102 S.Ct. 2364, 2369 (1982) (holding it was error to presume that a plaintiff's claim was typical of other claims).

A decision on class certification may be made on the pleadings when a court can determine whether the interests of the absent parties are fairly encompassed within the named plaintiff's claim. *Falcon*, 457 U.S. at 160, 102 S.Ct. at 2372. A court may "consider the substantive elements of the plaintiffs' case to envision the form that a trial on those issues would take." *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 166 (3d Cir. 2001) (citations omitted); *Moore's Federal Practice, Manual For Complex Litigation (Third)* § 30.1 ("The decision on whether or not to certify a class . . . should be made only after consideration of all relevant evidence and arguments presented by the parties."). If proof of the essential elements of the cause of action requires individual treatment, then class certification is unsuitable. *Newton,*259 F.3d at 172. In *Newton,* the

Third Circuit affirmed the denial of class certification in a securities case in which individual issues regarding economic losses from the manner in which their trades were transacted predominated over issues common to the class.

This Court must first determine whether the proposed class satisfies the four prongs of Fed.R.Civ.P. 23. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997); *In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d 768, 794 (3d Cir.1995). The four prongs of Rule 23 are numerosity, commonality, typicality and protection of the rights of the class. [1]

The Third Circuit held that "[n]o minimum number of plaintiffs is required to maintain a suit as a class action, but generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met." *Stewart v. Abraham*, 275 F.3d 220,

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[1] **Fed.R.Civ.P. 23. Class Actions**

**(a) Prerequisites to a Class Action.** One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

**(b) Class Actions Maintainable.** An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

**(1)** the prosecution of separate actions by or against individual members of the class would create a risk of

**(A)** inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

**(B)** adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

**(2)** the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

**(3)** the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

226-27 (3d Cir. 2001). Plaintiffs have made no demonstration of the number of potential plaintiffs in this case.

The second prong, "[t]he commonality requirement[,] will be satisfied if the named [p]laintiffs share at least one question of fact or law with the grievances of the prospective class . . . ." *Baby Neal v. Casey,* 43 F.3d 48, 56 (3d Cir.1994). Moreover, "because they do not also involve an individualized inquiry for the determination of damage awards, injunctive actions by their very nature often present common questions satisfying Rule 23(a)(2)." *Baby Neal,* 43 F.3d at 57 (internal quotations and citations omitted). Classes have been certified in civil rights cases where commonality findings were based primarily on the fact that defendant's conduct is central to the claims of all class members irrespective of their individual circumstances and the disparate effects of the conduct. *Id.*

The third requirement is that the claims of the named plaintiffs must be "typical . . . of the claims of the class" and the plaintiffs "will fairly and adequately protect the interests of the class." Fed.R.Civ.P. 23(a)(3). This prong asks whether the "plaintiff's claim and the claims of the class are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *Falcon,* 457 U.S. at 158 n.17. Typicality ensures the "named plaintiffs have incentives that align with those of absent class members." *Georgione v. Amchem Prods., Inc.,* 83 F.3d 610, 631 (3d Cir. 1996). In addition, the possibility of unique defenses specific to each defendant "weighs against a finding of typicality." *Osgood v. Harrah's Entm't, Inc.,* 202 F.R.D. 115, 126 (D. N.J. 2001). "Typicality entails an inquiry [into] whether the named Plaintiff's individual circumstances are markedly different or . . . the legal theory upon which the claims are based differs from that upon which the claims of the other class members will perforce be based." *Baby Neal,* 43 F.3d at 57-58

(internal citations omitted). "[C]ases challenging the same unlawful conduct which affects both the named plaintiffs and the putative class usually satisfy the typicality requirement irrespective of the varying fact patterns underlying the individual claims . . . . Actions requesting declaratory and injunctive relief to remedy conduct directed at the class clearly fit this mold." *Id.* at 58.

A defendant's conduct can satisfy the typicality prong when the plaintiffs suffer differing injuries, if "the cause of those injuries is some common wrong." *Baby Neal,* 43 F.3d at 58 (citing *Falcon,* 457 U.S. at 157-59, 102 S.Ct. 2364) ("Where an action challenges a policy or practice, the named plaintiffs suffering one specific injury from the practice can represent a class suffering other injuries, so long as all the injuries are shown to result from the practice.") Since the class members each have to prove the existence of the harmful scheme, the plaintiffs interests are sufficiently aligned so that the class representatives can be expected to adequately pursue the interests of the absentee class members. *In re Prudential Ins. Co. of America Sales Practices Litigation,* 148 F.3d 283, 312 (3d Cir. 1998).

Rule 23(a)(4) requires that named plaintiffs fairly and adequately protect the interests of the class, have the ability and the incentive to represent the claims of the class vigorously, have obtained adequate counsel, and have no conflict with claims asserted on behalf of the class. *Hassine v. Jeffes,* 846 F.2d 169, 179 (3d Cir.1988) (holding conditions at Graterford State Correctional Institution did not violate the Eighth Amendment but that the district court erred in failing to certify the class).

The parents argue they are typical of a class of parents who have been induced to give up their due process rights in return for IEPs the School District knew it could not fulfill. The parents argue it is not the contents of the plans which are dispositive but the pattern of the District's behavior: forestalling due process rights by entering into agreements which are impossible to fulfill.

The parents also argue the only meaningful remedy is to force the District to fully fund its agreements. The parents' arguments fail because whether or not an agreement is fulfilled demands individual proof, not typical proof of one of the plaintiffs. The central tenet of the IDEA is that each child is entitled to an *individualized* educational plan.

The *gravamen* of the parents' complaint is that the District entered into agreements with each parent and then failed to provide the agreed special education for each child. As the parents aver in their complaint, the educational program must be tailored to the "unique needs of an individual student." Complaint, ¶ 20. The parents aver that the written settlement agreement each parent has with the district is part of each student's IEP. Complaint, ¶ 24. In R.M's case, the complaint avers he did not receive agreed to vocational education, Sylvan learning Center testing and tutoring or basketball camp. In L.D.'s case, the allegation is that the District did not provide tutoring, placement, a computer and software, therapeutic camps and transportation. The third student, K.A., was forced to leave Lindamood-Bell Center School Program even though an agreement was reached to continue tutoring at the Center.

Each of these students has unique needs and each agreement provided for unique remedies. In their prayer for relief, the parents ask for compensatory damages, which will have to be individually determined if the parents prevail. Therefore, the particulars of the complaint fail to meet the criteria of Rule 23(a).

This case is distinguishable from *Baby Neal* in that the plaintiffs in *Baby Neal* asked for a single remedy. As the Third Circuit said, "[i]t bears remembering that the plaintiffs here seek only injunctive and declaratory relief; there are no other claims that could compromise the named plaintiffs' pursuit of the class claims." *Baby Neal*, 43 F.3d at 63. In the case at hand, the plaintiffs

ask for compensatory relief as well as declaratory and injunctive relief. Certification of a class would compromise the individual plaintiff's freedom to resolve their individual cases.

The parents also cite *Gaskin v. Commonwealth of Pennsylvania*, 1995 WL 355346 (E.D. Pa. 1995). In *Gaskin* the plaintiffs claim the Pennsylvania Department of Education failed to supervise special education programs across the state; as a result, the students are not receiving placement in regular education classes with the required supplementary aids and services. A settlement agreement is pending. *Gaskin* is distinguishable from the case at hand because a single remedy – an agreement by the Department of Education to provide guidance and compliance monitoring to local school districts – would, if accepted, satisfy each member of the class. In this case, the remedy must be derived from each plaintiff's *individualized* education plan.

The parents also claim that their request for an injunction would be the mechanism by which a fund would be created from which this Court through a trustee would "apportion monies to provide for the services encompassed in the settlement agreements to prospective Plaintiffs." Complaint, p. 22. In essence, the parents ask this Court to micromanage the District's special education program, approving checks for computers or for basketball camp. This the Court declines to do. Accordingly, we enter the following:

**ORDER**

And now, this 7th day of March, 2005, it is hereby ORDERED that Defendant's Motion to Strike Class Action Allegations (Document 24) is GRANTED, paragraphs 62 to 67 of the Complaint are Struck. Further, Defendant's Motion to File a Motion and Memorandum of Law in Excess of Fifteen Pages (Document 25) is, reluctantly and with disapproval, GRANTED.

BY THE COURT:

\s\ Juan R.Sánchez
Juan R. Sánchez, J.