

STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

ELIZABETH BOYER, individually, and by and for her minor son, JEREMY BOWEN; ROZANNE THOMASIAN, individually, and by and for her minor daughter, CHENOA T.; BETHANY L., individually, and by and for her minor son, ALIN N.; DEBBIE B., individually, and by and for her minor granddaughter and ward, MARGARITA S.; ALICE F., individually, and by and for her minor son, MARCELL B.; MALCOLM S., individually, and by and for his minor sons, DENTON S. and MITCH S.; DAVID HALL, individually, and by and for his minor son, DYLAN HALL; DARA S., individually, and by and for her minor daughter, AMY H.; SHERRY ARIAS, individually, and by and for her minor daughter, HANNAH-LEA ARIAS; and on behalf of all others similarly situated,

Plaintiffs,

v.

JEREMIAH S. JEREMIAH, in his official capacity as Chief Judge of the Family Court of the State of Rhode Island; RONALD PAGLIARINI, in his official capacity as the Administrator of the Family Court of the State of Rhode Island; KEVIN RICHARD, in his official capacity as the Director of Juvenile Services of the Family Court of the State of Rhode Island; PATRICIA K. ASQUITH, COLLEEN M. HASTINGS, EDWARD H. NEWMAN, ANGELA M. PAULHUS, and THOMAS WRIGHT, in their official capacity as the Magistrate Judges of the Family Court of the State of Rhode Island; CITY OF PROVIDENCE, TOWN OF CUMBERLAND, TOWN OF NORTH PROVIDENCE, TOWN OF COVENTRY, CITY OF WOONSOCKET, TOWN OF WESTERLY; THOMAS M. BRADY, in his official capacity as Superintendent of the Providence Public Schools; DONNA A. MORELLE, in her official capacity as Superintendent of the Cumberland Public Schools; DONNA M. OTTAVIANO, in her official capacity as Superintendent of the North Providence Public Schools; KENNETH R. DI PIETRO, in his official capacity as Superintendent of the Coventry Public Schools; ROBERT GERARDI, in his official

CLASS  
REPRESENTATION

C.A. No.: 2010-1858

capacity as Superintendent of the Woonsocket Public Schools;  
SYLVIA BLANDA, in her official capacity as Superintendent  
of the Westerly Public Schools,

Defendants.

## **FIRST AMENDED CLASS ACTION COMPLAINT**

Elizabeth Boyer, individually, and by and for her minor son, Jeremy Bowen;  
Rozanne Thomasian, individually, and by and for her minor daughter, Chenoa T.;  
Bethany L., individually, and by and for her minor son, Alin N.; Debbie B., individually,  
and by and for her minor granddaughter and ward, Margarita S.; Alice F., individually,  
and by and for her minor son, Marcell B.; Malcolm S., individually, and by and for his  
minor sons, Denton S. and Mitch S.; David Hall, individually, and by and for his minor  
son, Dylan Hall; Dara S., individually, and by and for her minor daughter, Amy H.;  
Sherry Arias, individually, and by and for her minor daughter, Hannah-Lea Arias; on  
behalf of themselves and all others similarly situated, allege, upon personal knowledge as  
to themselves and information and belief as to other matters, as follows:

### **I. INTRODUCTION**

1. This class action lawsuit, brought pursuant to 42 U.S.C. § 1983, challenges the manner in which the Rhode Island Family Court administers and operates its Truancy Court program (“Truancy Court”) and the policies and practices pursuant to which public schools in the municipalities of Coventry, Cumberland, North Providence, Providence, Westerly, and Woonsocket prosecute students for truancy.

2. The Truancy Court was initially designed with the stated purpose of providing at-risk students with quick and efficient access to services and support they

needed to stay in school. Today, however, it is frequently used by the above six municipalities as a disciplinary device, not for children who have been “willfully” and “habitually” absent from school, but for children who may have difficulty attending school or are unable to do their schoolwork because of special educational or medical needs or caretaking obligations at home. Once the children are under the Court’s jurisdiction, the Truancy Court Magistrates do not provide them with services and support, including those to which they may otherwise be entitled under federal and state disability laws, but verbally abuse them and sometimes incarcerate them in the State Training School.

3. In violation of federal and state law, these children are deprived of, among other things, adequate notice of what conduct will result in commencement of truancy proceedings or in punishment for being “truant”; adequate and timely notice of the charges against them; a preliminary investigation of those charges by the Family Court’s intake office to determine legal sufficiency and propriety of the charges; the right to consult with an attorney and to have one appointed for them if they cannot afford one; an adequate explanation of their rights to remain silent, to confront school officials and to require school officials to prove the charges beyond a reasonable doubt; an opportunity to rebut the charges against them if they believe that they have been falsely accused; transcripts of Truancy Court proceedings so they that have a record of statements made to and by them; interpreters if they do not speak or have difficulty speaking English; and, if the children admit to the charges against them and agree to abide by the terms and conditions of the Truancy Court, the right to challenge school officials who claim that they have violated those terms and conditions. In addition, their parents and guardians

are subjected to punitive orders of the Truancy Court despite the fact that they are not parties to the proceedings against their children.

4. As a result, these children suffer, among other harms, anxiety, stress, humiliation, and deterioration of their grades and behavior. Some are forced to attend school against doctors' orders, others are wrongfully deprived of their liberty because they are incarcerated at the State Training School, and still others withdraw from public school or drop out of school entirely when they are old enough to do so. Parents and guardians are subjected to harsh and unnecessary financial burdens because they are ordered to take their children to the doctor to document every absence and to take time off work to make sure the children arrive at school and to accompany the children to the Truancy Court hearings. And the original justification for the formation of the Truancy Court—helping children stay in school by granting them quick and efficient access to necessary services—has failed, as demonstrated by the fact that Rhode Island high school graduation rates stayed practically the same from 2003 to 2007, while the dropout rates increased from 4.0% to 5.8%. *See National Center for Education Statistics, Table 3, Public school averaged freshman graduation rate, and Table 7, Public high school event dropout rate in grades 9-12, school years 2002-03 to 2006-2007.*

5. On behalf of themselves and others similarly situated, Plaintiffs seek declaratory and injunctive relief to remedy the wrongs alleged herein.

## II. PARTIES

### A. Plaintiffs

Elizabeth Boyer and Jeremy Bowen

6. Elizabeth Boyer is the mother of Jeremy Bowen, a 14-year-old student at Westerly High School. Elizabeth Boyer and Jeremy Bowen reside in the Town of Westerly. Elizabeth Boyer appears in this action individually and by and for Jeremy Bowen.

Rozanne Thomasian and Chenoa T.

7. Rozanne Thomasian is the mother of Chenoa T., a 16-year-old student at North Providence High School. Rozanne Thomasian and Chenoa T. reside in the Town of North Providence. Rozanne Thomasian appears in this action individually and by and for Chenoa T., who appears by pseudonym.

Bethany L. and Alin N.

8. Bethany L. is the mother of Alin N., a 13-year-old student at Nathanael Greene Middle School. Bethany L. and Alin N. reside in the City of Providence. Bethany L. appears in this action by pseudonym, individually and by and for Alin N., who also appears by pseudonym.

Debbie B. and Margarita S.

9. Debbie B. is the grandmother and legal guardian of Margarita S., a 14-year-old student at Coventry High School. Debbie B. and Margarita S. reside in the Town of Coventry. Debbie B. appears in this action by pseudonym, individually and by and for Margarita S., who also appears by pseudonym.

Alice F. and Marcell B.

10. Alice F. is the mother of Marcell B., a 16-year-old child. Alice F. and Marcell B. reside in the Town of Cumberland. Alice F. appears in this action by pseudonym, individually and by and for Marcell B., who also appears by pseudonym.

Malcolm S., Denton S. and Mitch S.

11. Malcolm S. is the father of Denton S. and Mitch S., who are 15 and 14 years old respectively. Malcolm S., Denton S., and Mitch S. reside in the Town of North Providence. Malcolm S. appears in this action by pseudonym, individually and by and for Denton S. and Mitch S., who also appear by pseudonym.

David Hall and Dylan Hall

12. David Hall is the father of Dylan Hall, a 16-year-old student at Cumberland High School. David Hall and Dylan Hall reside in the Town of Cumberland. David Hall appears in this action individually and by and for Dylan Hall.

Dara S. and Amy H.

13. Dara S. is the mother of Amy H., a 15-year-old student at Coventry High School. Dara S. and Amy H. reside in the Town of Coventry. Dara S. appears in this action by pseudonym, individually and by and for Amy H., who also appears by pseudonym.

Sherry Arias and Hannah-Lea Arias

14. Sherry Arias is the mother of Hannah-Lea Arias, a 14-year-old student at the Woonsocket Middle School. Sherry Arias and Hannah-Lea Arias reside in the City of Woonsocket. Sherry Arias appears in this action individually and by and for Hannah-Lea Arias.

**B. Defendants**

Defendant Chief Judge Jeremiah S. Jeremiah

15. Defendant Chief Judge Jeremiah S. Jeremiah is the Chief Judge of the Family Court of the State of Rhode Island. He is sued in his official capacity.

16. Pursuant to R.I. Gen. Laws § 8-10-3.1, Chief Judge Jeremiah is responsible for appointing the Defendant Magistrates and for setting forth their duties and powers in the orders appointing them.

17. Pursuant to R.I. Gen. Laws § 8-10-14, Chief Judge Jeremiah is the administrative judge of the Family Court and in that capacity is responsible for promulgating policies and procedures with respect to the Family and Truancy Courts and supervising all court personnel, including Defendants Pagliarini and Richard, and Defendant Magistrates.

Defendant Ronald Pagliarini

18. Defendant Ronald Pagliarini is the Administrator of the Family Court. He is sued in his official capacity.

19. Pursuant to R.I. Gen. Laws § 8-10-15, Defendant Pagliarini works under the supervision of Defendant Chief Judge Jeremiah and is responsible for formulating policies and procedures governing the administration of court services, including those pertaining to the Truancy Court; for providing supervision, training and consultation to the staff of the court, including those involved in the Truancy Court; and for fiscal management of the Family and Truancy Courts.

Defendant Kevin Richard

20. Defendant Kevin Richard is the Truancy Court Administrator and functions as statewide coordinator of the Truancy Courts. He is sued in his official capacity.

21. Defendant Richard is supervised by Defendant Chief Judge Jeremiah and, upon information and belief, is responsible for providing education, training, data collection and analysis, coordination, and assistance to the Truancy Courts.

22. Upon information and belief, Defendant Richard is also responsible for promulgating policies and procedures pertaining to the Truancy Courts.

23. The term, "Defendant Court Administrators," when used herein refers to Defendants Chief Judge Jeremiah, Pagliarini, and Richard, collectively.

Defendant Magistrates

24. Defendant Patricia K. Asquith is a Magistrate Judge of the Truancy Court arm of the Family Court. She is sued in her official capacity.

25. Defendant Colleen M. Hastings is a Magistrate Judge of the Truancy Court arm of the Family Court. She is sued in her official capacity.

26. Defendant Edward H. Newman is a Magistrate Judge of the Truancy Court arm of the Family Court. He is sued in his official capacity.

27. Defendant Angela M. Paulhus is a Magistrate Judge of the Truancy Court arm of the Family Court. She is sued in her official capacity.

28. Defendant Thomas Wright is a Magistrate Judge of the Truancy Court arm of the Family Court. He is sued in his official capacity.

29. The term, "Defendant Magistrates," when used herein refers to Defendants Asquith, Hastings, Newman, Paulhus, and Wright collectively.

30. The term, "Court Defendants," when used herein refers to Defendant Court Administrators and the Defendant Magistrates, collectively.

Defendant Municipalities and Superintendents



31. Defendant City of Providence is a Rhode Island municipality. The Providence School Board is a department or agency of the City of Providence entrusted with the entire care, custody, management, and control of the Providence public schools, R.I. Gen. Laws § 16-2-9(a), and, under Rhode Island law, cannot be sued in its own name.

32. Defendant Thomas M. Brady is the Superintendent of Schools in the City of Providence and is sued in his official capacity. Defendant Brady is the chief administrative agent of the Providence School Board and is charged with implementing policies established by the School Board pursuant to R.I. Gen. Laws § 16-2-11.

33. Defendant Town of Cumberland is a Rhode Island municipality. The Cumberland School Committee is a department or agency of the Town of Cumberland entrusted with the entire care, custody, management, and control of the Cumberland public schools, R.I. Gen. Laws § 16-2-9(a), and, under Rhode Island law, cannot be sued in its own name.

34. Defendant Donna A. Morelle is the Superintendent of Schools in the Town of Cumberland and is sued in her official capacity. Defendant Morelle is the chief administrative agent of the Cumberland School Committee and is charged with implementing policies established by the School Committee pursuant to R.I. Gen. Laws § 16-2-11.

35. Defendant Town of North Providence is a Rhode Island municipality. The North Providence School Committee is a department or agency of the Town of North Providence entrusted with the entire care, custody, management, and control of the North

Providence public schools, R.I. Gen. Laws § 16-2-9(a), and, under Rhode Island law, cannot be sued in its own name.

36. Defendant Donna M. Ottaviano is the Superintendent of Schools in the Town of North Providence and is sued in her official capacity. Defendant Ottaviano is the chief administrative agent of the North Providence School Committee and is charged with implementing policies established by the School Committee pursuant to R.I. Gen. Laws § 16-2-11.

37. Defendant Town of Coventry is a Rhode Island municipality. The Coventry School Committee is a department or agency of the Town of Coventry entrusted with the entire care, custody, management, and control of the Coventry public schools, R.I. Gen. Laws § 16-2-9(a), and, under Rhode Island law, cannot be sued in its own name.

38. Defendant Kenneth R. Di Pietro is the Superintendent of Schools in the Town of Coventry and is sued in his official capacity. Defendant Di Pietro is the chief administrative agent of the Coventry School Committee and is charged with implementing policies established by the School Committee pursuant to R.I. Gen. Laws § 16-2-11.

39. Defendant City of Woonsocket is a Rhode Island municipality. The Woonsocket School Committee is a department or agency of the City of Woonsocket entrusted with the entire care, custody, management, and control of the Woonsocket public schools, R.I. Gen. Laws § 16-2-9(a), and, under Rhode Island law, cannot be sued in its own name.

40. Defendant Robert Gerardi is the Superintendent of Schools in the City of Woonsocket and is sued in his official capacity. Defendant Gerardi is the chief administrative agent of the Woonsocket School Committee and is charged with implementing policies established by the School Committee pursuant to R.I. Gen. Laws § 16-2-11.

41. Defendant Town of Westerly is a Rhode Island municipality. The Westerly School Committee is a department or agency of the Town of Westerly entrusted with the entire care, custody, management, and control of the Westerly public schools, R.I. Gen. Laws § 16-2-9(a), and, under Rhode Island law, cannot be sued in its own name.

42. Defendant Sylvia Blanda is the Superintendent of Schools in the Town of Westerly and is sued in her official capacity. Defendant Blanda is the chief administrative agent of the Westerly School Committee and is charged with implementing policies established by the School Committee pursuant to R.I. Gen. Laws § 16-2-11.

43. The term, "School Defendants," when used herein, refers to all Defendant Municipalities and all Defendant Superintendents, collectively.

### **III. JURISDICTION AND VENUE**

44. This court has subject matter jurisdiction over this action for declaratory and injunctive relief pursuant to R.I. Gen. Laws §§ 8-2-13 and 9-30-1.

45. This court has personal jurisdiction over Defendants because they are municipalities or public officials sued in their official capacity located in the state of Rhode Island.

46. Venue is proper in the Superior Court in Providence County under R.I. Gen. Laws § 9-4-3 which allows an action to be brought in the Superior Court of the County in which one or more of the Plaintiffs or the Defendants reside or do business. Defendants City of Providence, the Superintendent of the Providence School District, and Court Defendants reside or do business in Providence County.

#### **IV. CLASS ACTION REPRESENTATION ALLEGATIONS**

47. Plaintiffs bring this Class Action pursuant to R.I. R. Civ. P. 23 on behalf of (1) themselves and all public school students who are enrolled, could be enrolled, or in the future will be enrolled, in public schools in the six Defendant Municipalities and who have been, or in the future will be, the subject of a truancy petition submitted to the Family Court, and (2) their parents or legal guardians.

48. All Plaintiffs are members of the class they seek to represent.

49. There are questions of law and fact common to the class, and these questions predominate over any questions affecting only individual members. Common questions include, among others: (1) whether the federal constitutional and state constitutional and statutory rights of the class members are being violated; (2) whether the rights of the class members are violated as a consequence of the policies promulgated by or practices and procedures employed or condoned by the Defendants; and (3) whether injunctive relief and other equitable remedies for the class are warranted.

50. The members of the class identified herein are so numerous that joinder of all members is impracticable. The exact number of members of the class is unknown, but at any given time, appears to exceed 1,400. According to statistics generated by the Family Court, during the 2007-08 school year, the Truancy Court had under its

jurisdiction 777 students referred to it by the six Defendant Municipalities. During the 2008-09 school year, it had under its jurisdiction 709 students referred to it by the Defendant Municipalities.

51. The representative Plaintiffs' claims are typical of the claims of the class. Each of the named Plaintiff children has been or is currently the subject of a truancy petition. Each named Plaintiff has been or is currently subject to the wrongful policies, practices, and procedures of the Truancy Court. Each named Plaintiff has suffered harm as a result.

52. The representative Plaintiffs will fairly and adequately represent and protect the interests of the members of the class. The Plaintiffs have retained counsel competent and experienced in complex class action and educational reform litigation.

53. Class certification is appropriate pursuant to Rhode Island Superior Court Rules of Civil Procedure Rule 23 because Defendants have acted or refused to act on grounds generally applicable to the members of the class, making final declaratory and equitable relief appropriate.

## **V. RELEVANT CONSTITUTIONAL, STATUTORY, AND POLICY PROVISIONS**

### **A. Federal and State Constitutional Provisions**

54. Because prosecutions for truancy threaten a child's interests in her liberty, privacy, and property right to education, a child who is the subject of such proceedings must be afforded the procedural due process protections guaranteed to her by the Fourteenth Amendment to the United States Constitution and Article 1, Section 2, of the Rhode Island Constitution.

55. The Fourteenth Amendment and Article 1, Section 2, prohibit state and local government officials from depriving a child of her protected rights without first giving her advance and adequate notice of the charges that could lead to a deprivation and a meaningful opportunity to challenge those charges.

56. The Fourteenth Amendment and Article 1, Section 2, also require that government officials clearly define conduct that can lead to a deprivation of a protected right and prohibit officials from interpreting the laws that define such conduct arbitrarily and capriciously.

**B. State Statutory Provisions**

57. Rhode Island has adopted a Code of Judicial Conduct, which reads in part: “A judge shall not initiate, permit, or consider ex parte communications or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding,” subject to certain exceptions not relevant here. R.I. Code § 3(B)(8).

58. In relevant part, Rhode Island General Laws and the Rules of Juvenile Procedure provide that:

a. Every child who has completed six years of life and has not completed eighteen years of life “shall regularly attend some public day school” while school is in session, R.I. Gen. Laws § 16-19-1;

b. A child who is required to attend school but “willfully and habitually absents himself or herself from attending school” may be deemed a “habitual truant” and “proceeded against and dealt with as a wayward child,” R.I. Gen. Laws § 16-19-6;

c. The Rhode Island Family Court has exclusive jurisdiction over proceedings involving “wayward” children, R.I. Gen. Laws § 14-1-5;

d. Any appropriate person, including but not limited to a school official or administrator, may submit a petition to the Family Court alleging that a child is wayward, R.I. Gen. Laws § 14-1-3 and R.I. R. Juv. P. 2;

e. Such petitions shall be submitted to the Court’s intake department for preliminary investigation to determine whether “the facts are legally sufficient to bring the child within the jurisdiction of the court and, if so, to determine whether the interests of the public or of the child require that further action be taken,” and the department must “report its findings together with a statement of the facts to the judge,” R.I. Gen. Laws § 14-1-10 and R.I. R. Juv. P. 3;

f. The intake department’s inquiry “may include a preliminary investigation of the home and environmental situation of the child, the child’s previous history and the circumstances which were the subject of the petition,” R.I. Gen. Laws § 14-1-10 and R.I. R. Juv. P. 3;

g. Only after the intake department has completed its investigation, and only if it then determines that the facts are legally sufficient to bring the child within the jurisdiction of the court and that the interests of the public or the child require that further action be taken, may the department authorize the filing of the petition, R.I. Gen. Laws §§ 14-1-10, 14-1-11, and R.I. R. Juv. P. 5;

h. Once the petition has been filed, the Family Court issues a summons setting forth the allegations against the child and requiring the child and a parent or guardian to appear before the court for a hearing on the petition. The summons must be served by reading it to and leaving a copy with the child against whom the petition was filed and the parent or guardian, or by leaving an attested copy at the child's home with someone of suitable age and discretion, R.I. Gen. Laws § 14-1-17 and R.I. R. Juv. P. 6;

i. When a child and his or her parent or guardian arrive at their initial hearing, they must be informed of their right to counsel, and the court must appoint counsel for the child when necessary, R.I. Gen. Laws § 14-1-31 and R.I. R. Juv. P. 9;

j. The court must then explain the nature of the charges against the child, the benefit of the presumption of innocence, their right to remain silent, their right to confront and cross-examine their accusers and the witnesses against them, their right to testify and to call their own witnesses, their right to have the school officials prove the charges beyond a reasonable doubt, the maximum sentence that may be imposed, and their right to appeal any findings against the child, R.I. R. Juv. P. 9; and

k. Because the Family Court is a court of record, it must maintain verbatim records of all of its proceedings, R.I. Gen. Laws § 8-10-3(b).

### **C. Truancy Court Policies**



59. The Truancy Courts were created in 1999 by Defendant Chief Judge Jeremiah with the stated purpose of permitting the adjudication of “wayward child” truancy petitions in the children’s schools so that those children might be able to access school and community services more quickly and efficiently than they would have been able had they been required to travel to the Family Court in Providence to have the petitions adjudicated.

60. The Truancy Courts now conduct proceedings in over 150 schools throughout the state. All Truancy Court proceedings are conducted before one of the five Defendant Magistrates. The Magistrates “ride circuit,” appearing at different schools on each day of the week according to a schedule posted on the Truancy Court’s website.

61. Upon information and belief, there is no valid Administrative Order creating the Truancy Court or setting forth the Truancy Court’s policies and procedures. Although Defendant Court Administrators at some point prepared an Administrative Order purporting to create the Truancy Court, the Order was never signed or published.

62. To the extent they exist, the policies and procedures of the Truancy Court are set forth on the Truancy Court’s website, <http://www.courts.ri.gov/truancycourt/Default.htm>, and in a training manual for Defendant Magistrates, a document which is not readily available to the public. *Rhode Island Family Court, Truancy Court Training Manual* (“Manual”).

63. According to the website, “[a]ll truant children are arraigned separately.” <http://www.courts.ri.gov/truancycourt/aboutus.htm>.

64. The Training Manual requires that at the arraignment the Magistrates:

a. “Formally read the front of the [truancy] petition to the child and parent,” and explain to them the relevant law, the factual basis for the truancy petition and that they may elect to have their case set down for trial in Family Court or to participate in the Truancy Court program, *Manual*, at 1;

b. Explain to the child and parent that if they elect to go to Family Court, the school’s attorney will be required to prove the charges against the child beyond a reasonable doubt; if the attorney cannot make that showing, the petition will be dismissed; and if the attorney does make that showing, the child may be sentenced to probation, receive a suspended sentence or, if he refuses to go to school after having been ordered to do so by a Family Court judge, sent to the Rhode Island Training School, *Manual*, at 1;

c. Explain to the child, in detail, the rights to which the child has a constitutional entitlement in a Family Court trial, *Manual*, at 1; and

d. Explain that if the child and parent elect to remain in Truancy Court, the child must admit to being truant; will receive a sentence of probation that will be stayed; will be ordered by the Truancy Court to attend school, be on time to class, participate in class, complete schoolwork, behave, and attend weekly hearings before the Magistrate at which his attendance, behavior and homework may be monitored; and may be subjected to more punitive sanctions if the child fails to comply with the court order. *Manual*, at 2.

65. The Manual requires that at the end of the first hearing, the Magistrate adjourn the arraignment for a week. Waiver forms are distributed to the parents to review. At the next hearing, the Magistrate is to ensure that the parents and child have

read the forms, understand their rights, voluntarily waive those rights, and sign the forms before imposing any sentence. *Manual*, at 3.

66. Although not specifically identified in the Manual, those forms include:

a. A Release of Confidential Information authorizing the release to the Family Court of all school, educational, medical, and mental health records of the child, the parents and any siblings, regardless of age;

b. A Waiver of Rights Form enumerating, but not explaining, the child's rights and the terms and conditions of the Truancy Court, such as an undefined requirement for the child to "behave," and to present a doctor's or nurse's note for each absence due to illness; and

c. A Request for an Admission of Sufficient Facts or Admission, the signing of which constitutes an admission by the child to truancy, an acknowledgement that the Truancy Court can retain jurisdiction over the child until the child is twenty-one, and that the admission may subject the child to the Sexual Offender Registration and Community Notification Act.

67. Although the forms are meant to be standardized, some Defendant Municipalities and/or Defendant Magistrates have deleted particular passages, such as reference to the Sexual Offender Registration and Community Notification Act, and some have not.

## **VI. FACTUAL ALLEGATIONS RELATING TO PROSECUTION OF TRUANCY**

68. Defendants regularly fail to adhere to the above constitutional mandates, statutes, and policies when submitting truancy petitions to the Family Court and administering or presiding over the Truancy Court.

**A. School Defendants Do Not Provide Plaintiffs with Sufficient Notice of the Conduct that will Result in the Submission of a Truancy Petition.**

69. Although Rhode Island law permits School Defendants to submit truancy petitions against children they consider “habitual truants,” none of the School Defendants define “habitual truant” with the specificity needed to give members of the Plaintiff class adequate notice of what conduct will result in commencement of truancy proceedings or in punishment for being “truant.”

70. According to policy promulgated by Defendant City of Providence, school officials may submit truancy petitions against students who have “absences of 6 or more cumulative days,” or “patterns of chronic unexcused absences.” The policy defines unexcused absences as those “due to family vacation, employment, poor planning or cutting class.” It does not define what constitutes “patterns of chronic unexcused absences.” *See District Wide Code of Conduct, Grades PK-12, Providence Schools*, at 5.

71. According to policies promulgated by Defendant Town of Cumberland, school officials may submit truancy petitions against students who have 15 unexcused absences, *9/13/05 Memorandum from Lynda Clarke, Truant Officer, to Donna Morelle, Superintendent*, at 1, 20 unexcused absences, *Cumberland Middle School Handbook, Absence/Truancy K-12*, at 19, or simply “[a]s appropriate,” *Cumberland High School Handbook*, at 18.

72. According to Defendant Magistrate Paulhus, Defendants Town of Coventry and its Superintendent can take into account all of a student’s absences from kindergarten forward when deciding whether to submit a truancy petition.

73. In Defendant Town of North Providence, when children are suspended from school by school officials, those absences are treated as “willful,” and can lead to a truancy charge. *North Providence Attendance Regulations*, at 18.

74. Defendants City of Woonsocket, Town of Westerly and their Superintendents do not specify any number of absences that might result in the submission of a truancy petition. See *Woonsocket School Committee Policy Handbook*, at 6; *Westerly High School Student Handbook*, at 6.

75. Defendant Town of Westerly does provide that when a student is absent or tardy for ten days, a meeting will be scheduled with the school to define the problem. See *Westerly High School Student Handbook*, at 6. Upon information and belief, Defendant frequently does not, in fact, conduct such meetings.

76. As a result of these inadequate definitions, school officials in the Defendant Municipalities routinely enforce truancy laws in an arbitrary and capricious manner and submit truancy petitions against children who have not been “willfully” or “habitually” absent from school. School officials have submitted petitions against some children to make sure that they do their class and homework, against others to ensure that they “behave,” and against still others because the officials want to punish or discipline them.

77. City of Providence is the only Defendant to maintain any publicly available data on the number of absences for which students are charged with truancy. That data reveals that Providence school officials have submitted petitions against students who had no unexcused absences or as few as one unexcused absence.

78. During the first quarter of the 2009-10 school year, for example, school officials from Providence's Nathanael Greene Middle School submitted truancy petitions against 28 students, four of whom had no unexcused absences, four of whom had one unexcused absence, two of whom had two unexcused absences and one of whom had three unexcused absences. *See Memo from Roxanne Archibald, Director of Student Affairs, Providence Public School District, to Robin Dahlberg, Senior Staff Attorney, American Civil Liberties Union, dated Dec. 15, 2009.*

79. Children with special educational or medical needs, including those whom the school officials have yet to officially recognize as having such needs, bear the brunt of the arbitrary application of these policies. The percentage of children with special education needs in the Truancy Court vastly exceeds the percentage of Rhode Island public school children with special education needs. According to the 2009 Rhode Island Kids Count Factbook, 18% of all students in Rhode Island public schools received special education services in the 2007-08 school year. *2009 Rhode Island Kids Count Factbook*, at 128. Yet, according to Family Court statistics, 32% of those under the jurisdiction of the Truancy Court during the 2007-08 school year had Individualized Education Plans ("IEPs") under the federal Individuals with Disabilities Education Act. *See R.I. Family Court, Truancy Court Statistics, 2007-2008 School Year.* During the 2008-09 school year, 29% of students under the jurisdiction of the Truancy Court had IEPs. *See R.I. Family Court, Truancy Court Statistics, 2008-2009 School Year.*

80. The same disparities exist when comparing the number of students with disabilities under the jurisdiction of the Truancy Court as a result of a referral by one of

the six Defendant Municipalities with the number of students attending public schools in each of those Municipalities who receive special educational services:

	% of students receiving spec. ed. services	% of students with disabilities under Truancy Court jurisdiction as a result of a referral by Municipality (est. based on Family Court data)	
		2007-08 School Year	2008-09 School Year
Coventry	17%	32%	52%
Cumberland	19%	39%	50%
North Providence	18%	33%	38%
Providence	19%	19%	25%
Westerly	17%	45%	40%
Woonsocket	24%	35%	35%

81. On information and belief, the disparities are actually greater than those set forth in the above chart because the Family Court does not track the number of referred students who have learning or educational disabilities that the Defendant Municipalities have failed or refused to identify as such.

**B. Court Administrators Deprive Plaintiff Children of the Right to Have the Family Court's Intake Department Conduct a Preliminary Investigation Prior to the Filing of the Truancy Petition.**

82. State law requires that the Family Court's intake department conduct a preliminary investigation into the charges against children who are the subjects of petitions submitted to the Family Court to determine whether the allegations in those petitions are legally sufficient and, if so, whether the interests of the public or of the children require that further action be taken. State law further provides that the investigation may include an inquiry into the children's home situation, their previous history with the Court, and the circumstances that gave rise to the submission of the petition.

83. Only after the intake department has completed its investigation, and only if it determines that the facts are legally sufficient to bring the child within the

jurisdiction of the court and that the interests of the public or the child require that further action be taken, may the department authorize the filing of the petition.

84. Pursuant to policies promulgated or condoned by Defendant Court Administrators, the Court's intake department regularly fails to conduct such investigations upon receipt of truancy petitions from school officials in the Defendant Municipalities, thereby depriving Plaintiff children of the right to be shielded from arbitrary bureaucratic action and to be insulated from Family Court jurisdiction where such would ill serve the interests of the juvenile and the public. Upon information and belief, none of the court files or school files of the named Plaintiff children contains any evidence of such investigations. None of the named Plaintiffs believes they were the subject of such an investigation.

**C. School Defendants Fail to Serve Plaintiffs with Summonses and Copies of Truancy Petitions in the Manner Required by State and Federal Law.**

85. Federal and state constitutional due process principles require that class members are notified of the charges against them and the date on which they are to appear in court to answer those charges by personal service of a summons and a truancy petition. Alternatively, the summons and the petition may be left with a person of suitable age and discretion at Plaintiffs' home. Under both circumstances, however, service must be made sufficiently in advance of the date of the Plaintiffs' court appearance so that they may adequately prepare to respond to the charges.

86. Pursuant to long-standing pattern and practice, School Defendants are tasked with serving students charged as "habitual truants" with summonses and copies of their truancy petitions. All School Defendants delegate that responsibility to their Truant Officers, with the exception of Defendant City of Providence, which contracts with a



Constable service. *See Memo from Roxanne Archibald, Director of Student Affairs, Providence Public School District, to Robin Dahlberg, Senior Staff Attorney, American Civil Liberties Union, dated Dec. 15, 2009.*

87. In violation of federal and state law, School Defendants do not ensure that the summonses and petitions are served properly or in a timely manner. Sometimes, Truant Officers serve the summons and petition the day before or the day of the hearing. Other times, they serve the summons without the petition or the petition without the summons. Still other times, they serve the summons and petition by mail. And, still other times, they do not serve them at all. Instead, they inform Plaintiffs of their court dates by telephone.

**D. Court Defendants Fail to Arraign Plaintiff Children in the Manner Required by State Law.**

88. Once Plaintiff children appear in the Truancy Court to be arraigned, Defendant Magistrates frequently do not arraign them in the manner required by state law and Truancy Court policy.

89. Although the Truancy Court policy as specified on the Court's website requires that Defendant Magistrates arraign Plaintiffs separately, Plaintiffs are typically arraigned in large groups. On information and belief, each group arraignment usually lasts about five minutes.

90. Although state law and the Training Manual require that Defendant Magistrates inform Plaintiff children of the nature of the charges against them, Defendant Magistrates seldom do so in a manner that Plaintiffs can understand and almost never tell them what they may do if they believe that they have been wrongfully charged.

91. Although state law and the Training Manual require that Defendant Magistrates inform Plaintiffs of the benefit of the presumption of innocence, their right to remain silent, their right to an attorney, their right to confront and cross-examine their accusers and the witnesses against them, their right to testify and to call their own witnesses, their right to have the state prove the charges beyond a reasonable doubt, and the maximum sentence that may be imposed, Defendant Magistrates regularly fail to do so.

92. Although a significant number of Plaintiff children are entitled to special educational services under the federal Individuals with Disabilities Education Act, Defendant Magistrates neglect to explain to them how Truancy Court proceedings may affect their rights under that federal statute.

93. Although Defendant Magistrates sometimes tell Plaintiffs that they can elect to have their truancy petition adjudicated by the Family Court, they do not adequately and fairly explain the difference between the Family and Truancy Court proceedings. One parent, for example, was told that Family Court was for “highly problematic” children. Another was told that it was only for children who committed serious felonies.

94. Instead, Defendant Magistrates and school officials typically ask Plaintiffs to sign the standardized waiver and admission forms referred to in ¶ 66 above without explaining the significance and consequence of signing the documents. When one parent questioned the forms, she was simply told that she “had” to sign them and that “everyone” did.

**E. Court Defendants Wrongfully Permit Plaintiff Children to Waive Their Constitutional and Statutory Rights.**

95. In lieu of providing Plaintiffs with the information they need to make informed and voluntary decisions about the charges against Plaintiff children, Court Defendants engage in a pattern and practice of intimidation designed to bully Plaintiffs into waiving Plaintiff children's opportunity to be heard on those charges.

96. Defendant Magistrates regularly tell Plaintiff children that if they do not waive their rights, and instead elect to go to trial in Family Court, they may be incarcerated and sent to the state training school. Defendant Court Administrators print this warning on the standardized Waiver of Rights form referenced in ¶ 66. Upon information and belief, Defendant Magistrates also regularly tell Plaintiff children that their parents or guardians may be jailed. Not wishing to lose custody of their children, the parents counsel the children to admit to the facts against them. They do so despite the fact that Plaintiffs do not understand the meaning of "wayward" or "habitual truant," or the fact that Defendant Magistrates can and do incarcerate youth involved in the Truancy Court whom they consider to be in "direct criminal contempt" for failing to answer the Magistrates' questions or otherwise objecting to the proceedings.

**F. Court Defendants Wrongfully Deprive Plaintiff Children of Their Right to Counsel.**

97. Pursuant to established policy and practice, Court Defendants wrongfully deprive Plaintiffs of their right to consult with counsel. Many child members of the Plaintiff class are between the ages of 11 and 14 and have special learning, behavior, or medical needs. These youth do not have the physiological capacity to understand the consequences of a waiver and need the guiding hand of an advocate educated in the practices and procedures of the juvenile justice system.

98. Although the summonses served on Plaintiffs charged with truancy inform the Plaintiffs that they have the right to be represented by a lawyer, and that if they cannot afford one, they may qualify for the services of the Public Defender, and although the Admission signed by the child states that the child has discussed the contents of the Admission with his or her attorney, the Truancy Court Manual provides that children are not to be appointed an attorney to represent them in the Truancy Court. As a result of deliberate policy and decisionmaking by Defendant Court Administrators, Public Defender services are unavailable in the Truancy Court.

99. Though Defendant Magistrates sign certificates purporting to establish that each waiver by a child is made voluntarily, knowingly, and intelligently, that portion of the certificate which provides that the child has appeared in the presence of an attorney has been crossed out manually.

**G. Court Defendants Issue Orders Against Children and Their Parents in the Absence of Jurisdiction.**

100. Although federal and state constitutional and statutory provisions prohibit the issuance of orders against individuals in the absence of personal jurisdiction, Defendant Magistrates regularly ignore this prohibition.

101. Although Defendant Magistrates know or should know that some Plaintiffs have not been provided with timely and adequate notice of the charges against them, Defendant Magistrates routinely enter orders against Plaintiff children in the absence of such notice and in the absence of capable waiver of service.

102. The truancy petitions filed against the Plaintiff children do not charge the parents or guardians with wrongdoing or name the parents or guardians as parties. The Family Court uses standardized "waywardness" petitions that do not name the parents as

parties to the proceedings. As a result, parents and guardians are not properly subject to the jurisdiction of the Truancy Court. Although Defendant Magistrates know or should know that parents or guardians are not properly parties to the proceeding, Defendant Magistrates routinely enter orders against parents and guardians.

103. Parents and guardians are routinely ordered to attend Truancy Court hearings with their children. Upon information and belief, parents and guardians are ordered to obtain doctor's notes for each of the child's absences, even when in the parent/guardian's and/or doctor's judgment, a doctor's visit would be medically contraindicated. At least one parent was ordered to attend school with his child, and another was ordered to leave her job early to make sure her daughter did not miss the first few minutes of the school day.

104. Children and their parents are not informed of their right to contest these orders on the basis of jurisdiction and are frequently threatened with incarceration for noncompliance.

#### **H. Court Defendants Do Not Transcribe or Record Truancy Court Proceedings.**

105. As an arm of the Family Court, the Truancy Court is a court of record, required by state law to record or transcribe its proceedings. Yet, it does not do so.

106. Court Defendants do not make or maintain stenographic or verbatim records of any Truancy Court proceedings whatsoever, including but not limited to, arraignments, readings of rights, waivers of rights, dispositions, interrogations of children and their parents, inquiries by children and their parents, efforts by parents to explain their children's absences, ex parte conversations with school officials as to whether class members are complying with the terms of the Truancy Court, hearings at which Plaintiffs

are determined to have violated those terms, and threats made by Magistrates to incarcerate parents and children.

107. Nor do Court Defendants maintain any stenographic or other verbatim records of proceedings at which the Magistrates may order a child into DCYF placement; change a child's placement from one parent to the other; order a child to be placed on curfew or home confinement; order a child to undergo drug testing; curtail a child's liberty of movement in other ways; sentence a child to the Training School for alleged contempt of court; order a hospitalized parent via telephone call to appear at the next court hearing under threat of arrest; order a parent to leave her work shift early every day in order to make sure her child does not miss the first few minutes of the school day; order the parents of a chronically ill or medically fragile child to bring that child to a physician and produce a doctor's note on each occasion that the child is too sick to attend school; or order a parent to attend school with his child for full school days.

108. In addition, Court Defendants do not regularly write down the court orders themselves. Upon information and belief, the Truancy Court files of the children members of the Plaintiff class frequently do not contain copies of formal or informal court orders adjudicating children wayward, placing the children on probation, staying a sentence of probation, or ordering the children to abide by the terms and conditions of the Truancy Court.

109. Upon information and belief, although the Truancy Court files contain some notes of the proceedings, including notations of verbally issued orders, written down by a Magistrate or other court personnel, these handwritten notes are often

illegible, and, even when legible, often consist of abbreviated comments that cannot be understood by someone reviewing the file.

110. Because no records are made, Defendant Magistrates do not inform children and their parents or guardians of their constitutional and statutory entitlement to a verbatim record of proceedings.

**I. Court Defendants Deprive Plaintiffs of a Meaningful Opportunity to be Heard by Improperly Delegating their Responsibility to Provide Interpreters to School Defendants.**

111. Although R.I. Gen. Laws § 8-19-3 provides that when a non-English speaking person is a party to a juvenile matter before the Family Court, the presiding judge is responsible for appointing a state certified or a qualified interpreter to assist that individual, Court Defendants have improperly delegated this responsibility to the prosecuting authorities – the School Defendants.

112. Not all School Defendants, however, provide interpreters when needed. Defendants Town of North Providence and Town of Coventry, for example, do not provide interpreters in any Truancy Court proceedings.

113. As a result, children members of the Plaintiff class who are English Language Learner students who choose to participate in Truancy Court proceedings and non-English speaking parent or guardian members of the Plaintiff class are required to waive their right to be heard without understanding what they are waiving.

**J. Court Defendants Deprive Plaintiffs of a Meaningful Opportunity to be Heard By Regularly Engaging in Ex Parte Communications with School Officials.**

114. Despite the fact that Rhode Island's Code of Judicial Conduct prohibits Defendant Magistrates from engaging in ex parte communications outside the presence of

the parties concerning a pending proceeding, the Defendant Magistrates regularly do engage in such ex parte communication with school officials and with others about the children over whose truancy cases they are presiding, and about the parents of those children. In so doing, Defendant Magistrates deprive Plaintiffs of a meaningful opportunity to be heard on the charges against them.

115. After a Plaintiff child admits to truancy, he or she is adjudicated wayward; sentenced to probation; the sentence of probation is then stayed and the court enters an order requiring the child, among other things, to appear before a Defendant Magistrate on a weekly or other regular basis so that the Magistrate may determine whether he is adhering to the terms and conditions of the Truancy Court.

116. Before calling parents/guardians or children into the Truancy Court hearings, Defendant Magistrates partake in private meetings with school officials and others during which they engage in discussions about the child's performance, behavior, attitude and attendance, and about whether the parents/guardians are acting appropriately with respect to the truancy charges and orders of the Magistrates. The parents, guardians and children are not privy to these conversations, and are often not even informed of what was said during these ex parte discussions. They are given no opportunity to respond to the school officials' statements or to contest their accuracy.

117. Instead, the Defendant Magistrates take those statements as fact and use them to justify: referrals to the State Training School, orders requiring a Plaintiff child to live with his mother instead of his father, orders requiring a Plaintiff child's parents or guardians to attend school with the child for full days, and similar punitive measures.



118. Upon information and belief, the Defendant Magistrates also engage in ex parte communications with Family Court Judges about the facts and merits of a child's truancy case when a child whose case was previously pending in the Truancy Court is referred to, or requested to be transferred for a hearing in, Family Court. Upon information and belief, these conversations are not limited to the objective facts, but include the Magistrates' interpretation of the facts and their opinions about the child and the parents/guardians. When the parents/guardians and children appear before the Family Court Judge, the Judge will often inform the family that the Judge knows many details about the case because the Magistrate has told him/her about it.

**K. Harm to Plaintiffs**

119. As a result of the wrongs alleged above, Plaintiffs have suffered irreparable harm for which there is no adequate legal remedy.

120. Among other things, Plaintiff children are charged with truancy despite the fact that they have not been "willfully" and "habitually" absent.

121. Plaintiff children are wrongfully deprived of adequate and timely notice of the charges against them and forfeit the right to contest those charges without a full understanding of the consequences of waiver.

122. Truancy petitions are filed and Plaintiff children become court-involved without the benefit of a determination by the Family Court's Intake Department whether the petition was legally sufficient and whether the interest of the public or of the child require that further action be taken.

123. Plaintiff children are deprived of educational opportunities to the extent that they are compelled to miss class to attend Truancy Court proceedings, forced into withdrawing from public schools, or coerced into dropping out of school entirely.

124. Plaintiff parents and guardians are subject to unnecessary financial and time-intensive burdens as a result of being required to obtain a doctor's note for every absence due to illness, even when a doctor's visit is medically contraindicated; having to comply with court orders to leave work daily prior to the end of the work shift in order to make sure a child does not miss the first few minutes of the school day, thereby losing a portion of the parents' weekly wages that are needed to support the family and also risking losing the parents' job; and being required to miss work opportunities in order to attend Truancy Court hearings or to go to school with the child for full school days, several days at a time.

125. Plaintiff children and their parents/guardians unknowingly compromise their rights under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., to special educational services.

126. Plaintiff children and their parents/guardians are subject to emotional harm, stress, physical manifestations of emotional harm, humiliation, and stigma.

127. Plaintiff children and their parents/guardians are subjected to unwarranted invasions of their privacy and unnecessary investigations by the Department of Children, Youth and Families.

128. Children members of the Plaintiff class are wrongfully incarcerated in the Rhode Island Training School, where they are continuously put at great risk of harm to their physical and mental health and safety.

**L. The Challenged Actions and Inactions Constitute School Defendants' Official Policies.**

129. Any actions or inactions of School Defendants or school officials described herein constitute official policy of Defendant Municipalities because they are longstanding and widespread customs about which School Defendants knew or should have known, but failed to remedy, and the customs were the cause of and the moving force behind the deprivation of constitutional rights.

130. Alternatively, these practices constitute official policy of Defendant Municipalities because they were promulgated by the Defendant Superintendents to whom such authority has been delegated by Defendant Municipalities.

131. Alternatively, these practices constitute official policy of the Defendant Municipalities because they were undertaken by individuals other than Defendant Superintendents with final decisionmaking authority in the municipalities on the matters set forth in this Complaint.

132. Alternatively, Defendant Municipalities and Superintendents are liable for these practices because they fail to adequately train or supervise school officials with respect to truancy-related matters, which manifests "deliberate indifference" to the rights of children, and which foreseeably results in the harms described herein. On information and belief, Defendant Municipalities and Defendant Superintendents never provided relevant school officials with adequate training or supervision regarding truancy-related matters.

**M. The Challenged Actions and Inactions Constitute Court Administrators' Official Policy.**

133. Any actions or inactions of court officials described herein constitute official policy of the Family Court and Defendant Court Administrators because they are longstanding and widespread customs about which Defendant Chief Judge Jeremiah and Court Administrators knew or should have known, but failed to remedy, and the customs were the cause of and the moving force behind the deprivation of constitutional rights.

134. Alternatively, these practices constitute official policy of the Family Court and Defendant Court Administrators because they were promulgated by the Defendant Chief Judge Jeremiah and Court Administrators to whom such authority has been statutorily delegated.

135. Alternatively, these practices constitute official policy of the Family Court and Defendant Court Administrators because they were promulgated by the Defendant Chief Judge Jeremiah and Court Administrators who have final decisionmaking authority in the relevant subject matter set forth in this Complaint.

136. Alternatively, Defendant Court Administrators are liable for these practices because they fail to adequately train or supervise Defendant Magistrates with respect to truancy-related matters, which manifests “deliberate indifference” to the rights of children, and which foreseeably results in the harms described herein.

## **VI. FACTUAL ALLEGATIONS RELATING TO THE NAMED PLAINTIFFS**

### Elizabeth Boyer and Jeremy Bowen

137. Jeremy Bowen receives special education services. He has an Individualized Education Plan pursuant to the federal Individuals with Disabilities Education Act.

138. Prior to the 2009-10 academic year, he had been in classrooms specifically designated for children with disabilities. Beginning in September 2009, however, Jeremy Bowen was integrated into mainstream classrooms for all subjects. He had some difficulty with the transition, felt overwhelmed by the quantity of schoolwork required of him, and often did not do that work.

139. Throughout the fall of 2009, his mother, Elizabeth Boyer, asked Westerly school officials to take specific steps to assist him with his schoolwork, but the school officials failed to take timely action.

140. Instead, they stated that he was already receiving the services that he needed and recommended that he be transferred to a particular vocational program. Because Elizabeth Boyer believed that this program is not suited to his needs, she refused to agree to a change in his placement.

141. In November 2009, pursuant to policies promulgated or condoned by Defendants Town of Westerly and its Superintendent, Westerly school officials submitted to the Family Court a truancy petition asking that Jeremy Bowen be adjudicated "wayward." That petition did not charge his mother, Elizabeth Boyer, with any wrongdoing and did not name her as a party.

142. The petition was legally insufficient on its face. Jeremy Bowen did not have unexcused absences rising to the level of "habitual," as the petition only alleged that Jeremy Bowen was absent twice and tardy five times between September and November 2009. Westerly's Truant Officer later told Elizabeth Boyer that a petition had been filed not because of Jeremy Bowen's absences and tardies but because of his difficulties with class and homework.

143. The Family Court, acting pursuant to policies promulgated or condoned by Defendant Administrators, filed the petition without first conducting a preliminary investigation into the charges against Jeremy Bowen, as required by state law.

144. On December 3, 2009, Elizabeth Boyer and Jeremy Bowen appeared in Truancy Court so that Jeremy Bowen could be arraigned before Defendant Magistrate Wright together with several other students. Defendant Magistrate Wright did not adequately explain to Jeremy Bowen or Elizabeth Boyer the charges against Jeremy Bowen, the procedures of the Truancy Court, the differences between proceeding in Family Court versus Truancy Court, the rights to which Jeremy Bowen was entitled in Family and Truancy Courts, the consequences of Jeremy Bowen's admitting to the facts against him, and the types of sentences to which Jeremy Bowen could be subject.

145. No verbatim recording or transcription was made of the arraignment or of any other Truancy Court hearing attended by Jeremy Bowen.

146. At the end of the hearing, Magistrate Wright and Westerly school officials gave Jeremy Bowen and Elizabeth Boyer the standardized waiver and request for admission forms to sign.

147. On January 7, 2010, Jeremy Bowen and Elizabeth Boyer returned to Truancy Court as they had been directed at the December hearing and declined to sign the forms. Elizabeth Boyer asked that the petition against Jeremy Bowen be transferred to Family Court and was subsequently told to appear in Family Court on January 26, 2010.

148. On January 12, 2010, a cooperating attorney with the American Civil Liberties Union of Rhode Island sent a letter to the Superintendent of the Westerly

School Department requesting all of Jeremy Bowen's educational records, including all attendance and tardiness records and all records concerning Jeremy Bowen that were submitted to any Truancy Court personnel by any school personnel.

149. At around the same time, Elizabeth Boyer requested a meeting with school officials to determine whether Jeremy Bowen's difficulties with school and homework were caused by his learning disabilities. On January 25, 2010, school officials concluded that Jeremy Bowen's difficulties were a direct result of his learning disabilities and agreed to provide Jeremy Bowen with additional services and support. Also on January 25, 2010, Elizabeth Boyer was told that the truancy charges against Jeremy Bowen would be dropped.

150. Because the Westerly School Defendants enforce the truancy laws in an arbitrary and capricious manner, Elizabeth Boyer and Jeremy Bowen believe Jeremy Bowen may in the future be subject to another truancy petition.

151. As a result of their involvement in Truancy Court, Jeremy Bowen and Elizabeth Boyer experienced, among other things, stress, anxiety, and humiliation.

Rozanne Thomasian and Chenoa T.

152. Chenoa T. has special educational and medical needs and an Individualized Education Plan under the federal Individuals with Disabilities Education Act.

153. In May of 2007, South Kingstown school officials submitted to the Family Court a truancy petition against Chenoa T., alleging that Chenoa T. had numerous absences and asking that she be adjudicated "wayward."

154. The petition was legally insufficient because most of Chenoa T.'s absences were due to her special needs and side effects from the medication she is required to take and should not have subjected Chenoa T. to prosecution.

155. Upon information and belief, the Family Court, pursuant to policies promulgated or condoned by Defendant Court Administrators, filed the petition without conducting a preliminary investigation of the charges against Chenoa T., as required by state law.

156. Rozanne Thomasian and Chenoa T. appeared in the Truancy Court where, together with several other children, Chenoa T. was arraigned before Defendant Magistrate Newman.

157. During the arraignment, Magistrate Newman did not adequately explain to Rozanne Thomasian and Chenoa T. the charges against Chenoa T., the procedures of the Truancy Court, the differences between proceeding in Family Court versus Truancy Court, the rights to which Chenoa T. was entitled in Family and Truancy Courts, the consequences of Chenoa T.'s admitting to the facts against her, or the type of sentences that could be imposed and the circumstances under which they could be imposed.

158. Despite the fact that Chenoa T. lacked the information and the capacity to knowingly and voluntarily waive her right to be heard on the charges against her, Magistrate Newman permitted her to waive that right. Chenoa T. and Rozanne Thomasian signed the Truancy Court's standardized waiver form and standardized request for admission form.

159. Upon information and belief, Chenoa T. was adjudicated truant, sentenced to probation, that sentence was stayed and Magistrate Newman entered an order requiring



Chenoa T. to attend class, behave, do her schoolwork, attend regular Truancy Court hearings, and provide a doctor's note for all her absences. Upon information and belief, Chenoa T.'s Family Court file contains no formal order adjudicating Chenoa T. wayward, placing her on probation, staying the sentence of probation or ordering her to obey the terms and conditions of the Truancy Court.

160. No verbatim recording or transcription whatsoever was made of the arraignment or any subsequent Truancy Court hearing attended by Chenoa T.

161. Chenoa T. attended regular Truancy Court hearings for the remainder of the 2006-07 school year and throughout the 2007-08 year. In January 2008, Chenoa transferred from Curtis Corner Middle School to Dr. E. A. Ricci Middle School in the Town of North Providence. North Providence school officials continued to require her to attend Truancy Court hearings, and she did so for the remainder of the 2007-08 year, the 2008-09 school year, and throughout most of the 2009-10 school year.

162. Prior to each Truancy Court hearing, the Magistrate presiding over that hearing met with North Providence school officials to inquire into Chenoa T.'s compliance with the terms and conditions of the Truancy Court. Neither Chenoa T. nor Rozanne Thomasian were permitted to participate in those meetings. Neither Chenoa T. nor Rozanne Thomasian were permitted to respond to, object to, or rebut statements made by the school officials.

163. Neither Chenoa T. nor her mother has ever been informed of what actions on Chenoa T.'s part would lead to the cessation of the Truancy Court's jurisdiction over Chenoa T., and neither Chenoa T. nor her mother had any idea of how Chenoa T. can get out from under the Truancy Court's jurisdiction.

164. Upon information and belief, Chenoa T. was never offered or provided with services or support as a result of her involvement with the Truancy Court.

165. Chenoa T. remained under the jurisdiction of the Truancy Court until March 5, 2010, when she was told that she “graduated” Truancy Court. This hearing took place soon after Magistrate Newman questioned Rozanne Thomasian as to whether she retained counsel, and she responded that she had been in contact with the American Civil Liberties Union.

166. Because the North Providence School Defendants enforce the truancy laws in an arbitrary and capricious manner, Rozanne Thomasian and Chenoa T. believe that Chenoa T. may in the future be subject to another truancy petition.

167. As a result of their involvement with the Truancy Court, Rozanne Thomasian and Chenoa T. experienced increased anxiety, humiliation, and stress.

Bethany L. and Alin N.

168. The Providence School District submitted a truancy petition against Alin N. to the Family Court in November 2009, alleging that Alin N. is a habitual truant and asking that he be adjudicated “wayward.”

169. At the age of three months, Alin N. was diagnosed with sickle-cell anemia. He currently suffers from moderately-severe sickle cell anemia and from a G6PD deficiency. Symptoms Alin N. suffers from these ailments include severe pain and swelling, which can break out unexpectedly on different points on his body and require chronic narcotic administration. Alin N. has been hospitalized on numerous occasions because of his conditions, and on at least one occasion, lost consciousness while at school due to the severity of the pain. Alin N.’s school has a plan under Section 504 of the

federal Rehabilitation Act for accommodating Alin N.'s condition, which specifies that Alin N. would not be punished for not attending school.

170. The petition was legally insufficient. Because Alin N.'s chronic medical conditions impact his ability to attend school, none of Alin N.'s absences or tardies was willful.

171. The Family Court filed the petition on November 18, 2009, without conducting a preliminary investigation of the charges against Alin N. as required by state law.

172. A summons and a truancy petition were put in Bethany L.'s mailbox sometime thereafter, requiring an appearance at a Truancy Court hearing on December 16, 2009. Because Alin N. was at home sick, Bethany L. appeared alone. Although she was not formally arraigned by Defendant Magistrate Newman nor given Truancy Court forms to sign, Bethany L. was ordered to come back for repeated hearings together with Alin N. The court file does not contain a written order adjudicating Alin N. wayward, placing him on probation, or staying an order of probation.

173. Bethany L. was hospitalized with a kidney infection several days prior to her next scheduled Truancy Court hearing, January 6, 2010. Though she gave advance notice of her hospitalization to the Providence guidance counselor, Magistrate Newman called Bethany L. on her cell phone at the hospital and, without listening to her explanation, ordered Bethany L. and Alin N. to appear for the next court date under threat of incarceration. He also ordered Bethany L. to get Alin N. to school every day until the next court hearing without regard to his medical condition.

174. Though Alin N.'s chronic condition continued to impact his ability to attend school on a regular basis, and though Bethany L. had made repeated requests for accommodations for her child that do not involve the Truancy Court, Defendant Magistrate Newman transferred the case to the Family Court, specifically, to Defendant Chief Judge Jeremiah.

175. At a hearing on February 24, 2010, Defendant Chief Judge Jeremiah refused to consider Bethany L.'s evidence regarding her son's chronic illness—including his Section 504 plan which specified that Alin N. would not be punished for not attending school—or her explanation that she had not brought him to court because he was at home very ill that day. Defendant Chief Judge Jeremiah instead issued an arrest warrant for the 13-year child, and then ordered the mother to get him into school by noon that day, telling her that he would vacate the arrest warrant if she did so. Defendant Chief Judge Jeremiah also ordered Bethany L. to make sure that the child attended every school day for the next 30 days without regard for his medical condition or she would be jailed.

176. Bethany L., fearing the jailing of her child and herself, rushed from the courtroom to her home, and brought Alin N. to school, notifying school personnel that he was very sick. Alin N. was at school for less than two hours when he began to suffer such severe chest pains that school personnel telephoned an ambulance and rescue squad to bring him to the hospital. Alin N., sick and in extreme physical pain, was rushed by ambulance from school to the hospital within a few hours of Defendant Chief Judge Jeremiah ordering his mother to bring him to school.

177. Alin N. and Bethany L. returned to court again on March 24, 2010. At that hearing, a public defender who entered her appearance on Alin N.'s behalf a few

days earlier, presented evidence of Alin N.'s medical condition and the same Section 504 plan, specifying that Alin N. would not be punished for not attending school. Defendant Chief Judge Jeremiah dismissed the case.

178. Because the Providence School Defendants enforce the truancy laws in an arbitrary and capricious manner, Alin N. and Bethany L. believe that Alin N. may in the future be subject to another truancy petition.

179. As a result of his involvement in the Truancy Court and the consequent court-ordered school attendance, Alin N. has been subject to extreme physical pain and emotional harm. Bethany L. has also experienced severe anxiety, stress, and fear as a result of Alin N.'s involvement in the Truancy Court.

Debbie B. and Margarita S.

180. Margarita S. receives special education services and has an Individualized Education Plan under the federal Individuals with Disabilities Education Act.

181. In December 2008, pursuant to policies promulgated or condoned by Defendants Town of Coventry and its Superintendent, Coventry school officials submitted a truancy petition against Margarita S. to the Rhode Island Family Court, alleging that Margarita S. had 14 absences between September and December 2008 and 12 absences during the 2007-08 school year, and asking that she be adjudicated "wayward." The petition did not charge Debbie B. with any wrongdoing or name her as a party to the proceeding.

182. The petition was legally insufficient. Margarita S.'s absences were due to illness and thus should not have subjected Margarita S. to prosecution.

183. The Family Court, pursuant to policies promulgated or condoned by Defendant Court Administrators, filed the petition without conducting a preliminary investigation of the charges against Margarita S. as required by state law.

184. Defendants Town of Coventry and its Superintendent failed to take the steps necessary to ensure that Debbie B. and Margarita S. received timely and adequate notice of the charges against Margarita S. On January 30, 2009, the Coventry School District's Truant Officer notified Debbie B. by voicemail message that a truancy petition had been filed against Margarita S. and that she and Margarita S. had to appear in Truancy Court on February 2, 2009. The Truant Officer did not provide them with a summons or a copy of the truancy petition enumerating the charges against Margarita S. until the two arrived at court.

185. On February 2, Debbie B. and Margarita S. appeared before Defendant Magistrate Paulhus. Despite the fact that Magistrate Paulhus knew or should have known that Debbie B. and Margarita S. had no prior written notice in the form of a service of summons and petition of the charges against Margarita S., Magistrate Paulhus proceeded to arraign Margarita S., together with approximately ten other children.

186. During the arraignment, Magistrate Paulhus did not adequately explain to Margarita S. or Debbie B. the charges against Margarita S., the procedures of the Truancy Court, the differences between proceeding in Family Court versus Truancy Court, the rights to which Margarita S. was entitled in Family and Truancy Courts, the consequences of Margarita S.'s admitting to the facts against her, and the types of sentences to which Margarita S. could be subject. Debbie B. was asked to sign forms waiving Margarita S.'s right to contest the charges against her, despite the fact that

Margarita S. lacked the knowledge or capacity to knowingly and voluntarily waive her right to be heard on the charges against her.

187. When Debbie B. asked Magistrate Paulhus why Margarita S. was being charged with truancy in 2009 for absences that had occurred during the 2007-08 school year, the Magistrate told her that Defendants Town of Coventry and its Superintendent could have included in Margarita S.'s truancy petition absences as far back as kindergarten.

188. Debbie B. and Margarita S. declined to waive their rights and instead asked that the petition against Margarita S. be transferred to the Family Court for adjudication.

189. No verbatim recording or transcription was made of the arraignment attended by Margarita S.

190. Debbie B. and Margarita S. have yet to hear whether the case has been transferred.

191. Moreover, because the Coventry School Defendants enforce the truancy laws in an arbitrary and capricious manner, Debbie B. and Margarita S. believe that Margarita S. may in the future be subject to another truancy petition.

192. Their involvement with the Truancy Court has caused Debbie B. and Margarita S. to experience, among other things, humiliation, embarrassment, and stress.

Alice F. and Marcell B.

193. Marcell B. has learning disabilities and, while in school, he had an Individualized Education Plan under the federal Individuals with Disabilities Education Act.

194. In May 2009, pursuant to policies promulgated or condoned by Defendants Town of Cumberland and its Superintendent, Cumberland school officials submitted to the Family Court a truancy petition alleging that Marcell B. had numerous absences and asking that he be adjudicated “wayward.” That petition did not charge his mother, Alice F., with any wrongdoing and did not name her as a party.

195. To the extent Marcell B.’s absences were a manifestation of his learning disabilities or the result of illness, they were not willful and the petition was legally insufficient.

196. The Family Court, acting pursuant to policies promulgated or condoned by Defendant Administrators, filed the petition without conducting a preliminary investigation of the charges against Marcell B. as required by state law.

197. On June 22, 2009, the Family Court issued a summons ordering Marcell B. to appear in Truancy Court on September 14, 2009, shortly after the commencement of the next academic year.

198. On September 14, 2009, Marcell B. was arraigned at the same time as several other children before Defendant Magistrate Hastings. Magistrate Hastings did not adequately explain to Marcell B. or Alice F. the charges against Marcell B., the procedures of the Truancy Court, the differences between proceeding in Family Court versus Truancy Court, the rights to which Marcell B. was entitled in Family and Truancy Courts, the consequences of Marcell B.’s admitting to the facts against him, and the types of sentences to which Marcell B. could be subject.

199. On September 21, 2009, Marcell B. and Alice F. returned to Truancy Court. Despite the fact that Marcell B. lacked the information and the capacity to



knowingly and voluntarily waive his right to be heard on the charges against him, the Magistrate permitted him to waive that right. Marcell B. and Alice F. signed the Truancy Court's standardized waiver form and standardized request for admission form.

200. Marcell B. was never afforded the opportunity to consult with an attorney prior to signing the forms.

201. On information and belief, Marcell B. was adjudicated wayward, sentenced to probation, that sentence was stayed and Magistrate Hastings entered an order requiring Marcell B. to attend class, behave, do his schoolwork, to attend weekly Truancy Court hearings, and to provide a doctor's note for each of his absences. On information and belief, Marcell B.'s Family Court file contains no formal order adjudicating Marcell B. wayward, placing him on probation, staying the sentence of probation or ordering him to obey the terms and conditions of the Truancy Court.

202. In addition, no verbatim recording or transcription was made of the arraignment or any subsequent Truancy Court hearing attended by Marcell B.

203. Before Marcell B. left the September 21 hearing, a Truancy Court clerk removed a urine cup from the Magistrate's bag and ordered Marcell B. to submit to a drug test. Marcell B. had never been told that by agreeing to the terms and conditions of the Truancy Court he had also agreed to periodic and random drug tests. Marcell B. had never been charged with or even suspected of using illegal drugs.

204. Concerned that Cumberland school officials were attempting to use whatever means possible to push him into the juvenile justice system, Marcell B. refused to submit to the drug test and, after consulting with Alice F., decided to withdraw from

school. However, Marcell B. would reenroll in public school should the practices of the Truancy Court change.

205. Cumberland school officials subsequently withdrew the truancy petition.

206. As a result of their involvement with the Truancy Court, Marcell B. and Alice F. experienced, among other things, stress, anxiety and humiliation. Marcell B. also lost educational opportunities.

Malcolm S., Denton S., and Mitch S.

207. In or about February 2008, pursuant to policies promulgated or condoned by Defendants Town of North Providence and its Superintendent, North Providence school officials submitted truancy petitions against Denton S. and Mitch S., alleging that each had numerous absences and asking that they be adjudicated "wayward." The petitions did not make charges against either of their parents or name their parents as parties.

208. The Family Court, pursuant to policies promulgated or condoned by Defendant Administrators, filed each petition without conducting a preliminary investigation of the charges against Denton S. or Mitch S., as required by state law.

209. Defendants Town of North Providence and its Superintendent failed to take the steps necessary to ensure that Denton S., Mitch S. and their parents received adequate and timely notice of the charges against Denton S. and Mitch S. In April 2008, Malcolm S. received in the mail a summons informing him that truancy petitions had been filed against Denton S. and Mitch S. and ordering the children and their parents to appear in Truancy Court. Malcolm S. did not receive a copy of the petitions enumerating the charges against his sons.

210. When Malcolm S., Denton S., and Mitch S. arrived at the Truancy Court, Defendant Magistrate Newman proceeded to arraign Denton S. and Mitch S. despite the fact that he knew or should have known that Malcolm S., Denton S., and Mitch S. had not been properly served.

211. Several other children were arraigned at the same time as Denton S. and Mitch S.

212. Defendant Magistrate Newman did not adequately explain to Malcolm S., Denton S., and Mitch S. the charges against Denton S. and Mitch S., the procedures of the Truancy Court, the differences between proceeding in Family Court versus Truancy Court, the rights to which Denton S. and Mitch S. were entitled in Family and Truancy Courts, the consequences of Denton S. and Mitch S.'s admitting to the facts against them, and the type of sentences that could be imposed and the circumstances under which they could be imposed. He did not explain to Malcolm S., Denton S., and Mitch S. that they could request to have their cases transferred to the Rhode Island Family Court where they would be provided with an attorney and an opportunity to go to trial.

213. Upon information and belief, without obtaining any formal waiver of the boys' right to be heard, or their written admission to the facts against them, Defendant Magistrate Newman adjudicated Denton S. and Mitch S. wayward, sentenced them to probation, stayed that sentence, and ordered Denton S. and Mitch S. to attend class, behave, do their schoolwork, and provide a doctor's note for all absences. Upon information and belief, the Family Court files of Denton S. and Mitch S. contain no formal order adjudicating Denton S. and Mitch S. wayward, placing them on probation,

staying the sentence of probation or ordering them to obey the terms and conditions of the Truancy Court.

214. No recording or transcription was made of the arraignment and any subsequent Truancy Court hearing attended by Denton S. and Mitch S.

215. For the remainder of the 2007-08 school year and throughout the 2008-09 school year, Denton S. and Mitch S. were required to miss class and attend periodic Truancy Court hearings.

216. Prior to each hearing, the Magistrate presiding over that hearing met with North Providence school officials to inquire into Denton S. and Mitch S.'s compliance with the terms and conditions of the Truancy Court. The two boys and their parents were not permitted to participate in those meetings, or to respond to, object to, or rebut statements made by the school officials.

217. Although Denton S. and Mitch S. each had fewer than five absences between April and June 2008, Malcolm S. received another Truancy Court summons in the mail in August 2008. The summons stated that truancy petitions had been filed against Denton S. and Mitch S. and ordered that Denton S., Mitch S. and one of their parents appear in Truancy Court on September 2008. These petitions were legally insufficient on their face. Again, the family did not receive copies of the truancy petitions enumerating the charges against Denton S. and Mitch S.

218. When Malcolm S., Denton S., and Mitch S. appeared in court as ordered, Defendant Magistrate Newman and school officials, acting under the direction of Defendants Town of North Providence and its Superintendent, explained that the family

had been served with summons, not because the boys were being charged with truancy, but because their grades and behavior warranted their continued court involvement.

219. Again, Defendant Magistrate Newman failed to adequately explain to the family that they could refuse to participate in the hearings and have their case transferred to the Rhode Island Family Court.

220. Upon information and belief, Denton S. and Mitch S. were never offered or provided with services or support as a result of their involvement with the Truancy Court.

221. Throughout the family's involvement with the Truancy Court, Defendant Magistrate Newman yelled at, bullied and threatened the boys and their parents. Having to appear at the bi-weekly Truancy Court hearings before a hostile Magistrate caused the boys and their parents stress, humiliation and embarrassment. The boys' grades dropped and their behavior both at home and in school deteriorated.

222. At the beginning of the 2009-10 school year, Malcolm S. did not re-enroll the two boys in the North Providence public school system, but instead enrolled them in an online home school. However, Denton S. and Mitch S. would reenroll in public schools should the practices of the Truancy Court change.

David Hall and Dylan Hall

223. Dylan Hall has special educational needs and an Individualized Education Plan under the federal Individuals with Disabilities Education Act.

224. In early 2008, when Dylan Hall was in the 8<sup>th</sup> grade at Joseph L. McCourt Middle School, Cumberland school officials submitted to the Family Court a truancy petition alleging that Dylan Hall had numerous absences and asking that he be

adjudicated “wayward.” The petition did not charge his father, David Hall, with any wrongdoing and did not name him as a party.

225. The petition was submitted pursuant to policies promulgated or condoned by Defendants Town of Cumberland and its Superintendent.

226. To the extent Dylan Hall’s absences were a manifestation of his learning disabilities or a result of a suspension by Cumberland school officials, they were not “willful” and the petition was legally insufficient.

227. The Family Court, pursuant to policies promulgated or condoned by Defendant Court Administrators, filed the petition without first conducting a preliminary investigation into the charges against Dylan Hall, as required by state law.

228. Defendants Town of Cumberland and its Superintendent caused a summons and a copy of the truancy petition to be served upon David Hall and Dylan Hall.

229. As required by the summons, David Hall and Dylan Hall appeared in the Truancy Court and, together with several other families, were arraigned at a hearing presided over by Defendant Magistrate Hastings. Magistrate Hastings did not adequately explain to David Hall and Dylan Hall the charges against Dylan Hall, the procedures of the Truancy Court, the differences between proceeding in Family Court versus Truancy Court, the rights to which Dylan Hall was entitled in Family and Truancy Courts, the consequences of Dylan Hall’s admitting to the facts against him, and the types of sentences to which Dylan Hall could be subject.

230. Despite the fact that Dylan Hall lacked the information and the capacity to knowingly and voluntarily waive his right to be heard on the charges against him, the

Magistrate permitted him to waive that right. Dylan Hall and David Hall signed the Truancy Court's standardized waiver form and standardized request for admission form.

231. Dylan Hall was never afforded the opportunity to consult with an attorney prior to signing the forms.

232. Upon information and belief, Dylan Hall was adjudicated wayward, sentenced to probation, that sentence was stayed and Magistrate Hastings ordered Dylan Hall to attend class, behave, do his schoolwork, attend regular Truancy Court hearings, and to provide a doctor's note for each of his absences. Upon information and belief, Dylan Hall's Family Court file contains no formal order adjudicating Dylan Hall wayward, placing him on probation, staying the sentence of probation or ordering him to obey the terms and conditions of the Truancy Court.

233. Prior to each subsequent Truancy Court hearing, Magistrate Hastings met with Cumberland school officials to inquire into Dylan Hall's compliance with the terms and conditions of the Truancy Court. Neither Dylan Hall nor David Hall was permitted to participate in those meetings. Neither Dylan Hall nor David Hall was permitted to respond to, object to, or rebut statements made by the school officials.

234. In the fall of 2008, Dylan Hall moved from the Joseph L. McCourt Middle School to Cumberland High School, but continued to attend regular Truancy Court hearings.

235. No verbatim recording or transcription was made of the arraignment or any subsequent Truancy Court hearing attended by Dylan Hall.

236. In November 2008, despite the fact that David Hall was not a party to the truancy proceeding, Magistrate Hastings ordered that David Hall follow Dylan Hall to each of his classes for an entire week to make sure that he attended.

237. Upon information and belief, Dylan Hall was never offered or provided with services or support as a result of his involvement with the Truancy Court.

238. As a result of their involvement with the Truancy Court, Dylan Hall and David Hall have experienced, among other things, emotional difficulties, stress, anxiety and humiliation.

239. Dylan Hall remains under the jurisdiction of the Truancy Court.

Dara S. and Amy. H.

240. Amy H. has special educational needs and an Individualized Education Plan pursuant to the federal Individuals with Disabilities Education Act.

241. In February 2009, when Amy H. was in the 8<sup>th</sup> grade at the Alan Shawn Feinstein Middle School, Coventry school officials submitted a truancy petition against Amy H. to the Family Court, alleging that Amy H. had a number of unexcused absences and asking that she be adjudicated "wayward."

242. The petition was submitted pursuant to policies promulgated or condoned by Defendants Town of Coventry and its Superintendent.

243. The petition was legally insufficient because Amy H.'s absences were neither "willful" nor "habitual." They were due to illness, caretaking obligations at home, and the fact that Amy H. was being harassed by a fellow student and fearful of attending school.



244. The Family Court, pursuant to policies promulgated or condoned by Defendant Administrators, filed the petition without conducting a preliminary investigation of the charges against Amy H. as required by state law.

245. Defendants Town of Coventry and its Superintendent failed to take the steps necessary to ensure that Dara S. and Amy H. were served with a summons and a copy of the truancy petition in a timely manner. Coventry's Truant Officer delivered both documents to them four days before they were to appear in Truancy Court.

246. Dara S. and Amy H. appeared in Court as required. Although the presiding Magistrate, Defendant Magistrate Paulhus, knew or should have known that Dara S. and Amy H. had not received timely notice of the charges against Amy H., she proceeded to arraign Amy H., together with several other students.

247. During the arraignment, Magistrate Paulhus did not adequately explain to Dara S. and Amy H. the charges against Amy H., the procedures of the Truancy Court, the differences between proceeding in Family Court versus Truancy Court, the rights to which Amy H. was entitled in Family and Truancy Courts, the consequences of Amy H.'s admitting to the facts against her, and the types of sentences to which Amy H. could be subject.

248. Despite the fact that Amy H. lacked the information and capacity to knowingly and voluntarily waive her right to be heard on the charges against her, Magistrate Paulhus permitted her to waive that right. Amy H. and Dara S. signed the Truancy Court's standardized waiver form and standardized request for admission form.

249. Amy H. was never afforded the opportunity to consult with an attorney prior to signing the forms.

250. Upon information and belief, Amy H. was adjudicated wayward, sentenced to probation, that sentence was stayed, and Magistrate Paulhus ordered Amy H. to attend class, behave, do her schoolwork, attend regular Truancy Court hearings, and to provide a doctor's note for each of her absences. Upon information and belief, Amy H.'s Family Court file contains no formal order adjudicating Amy H. wayward, placing her on probation, staying the sentence of probation or ordering her to obey the terms and conditions of the Truancy Court.

251. For the remainder of the 2008-09 school year, Amy H. was required to attend periodic Truancy Court hearings:

252. Prior to each of these hearings, Magistrate Paulhus met with Coventry school officials to inquire into Amy H.'s compliance with the terms and conditions of the Truancy Court. Neither Amy H. nor Dara S. was permitted to participate in those meetings. Neither Amy H. nor Dara S. was permitted to respond to, object to, or rebut statements made by the school officials.

253. No verbatim recording or transcription was made of the arraignment or any subsequent Truancy Court hearing attended by Amy H.

254. In the fall of 2009, as Amy H. was beginning her freshman year at Coventry High School, Coventry's Truant Officer informed Dara S. that Amy H. would be required to continue attending Truancy Court hearings. Shortly thereafter, Dara S. received letters from Coventry High School stating that Amy H. was being disciplined for excessive tardiness.

255. These tardies resulted from conflicts between Amy H.'s school schedule and her mother's work schedule. Dara S. is a single mother and the sole caregiver of

Amy H. and a four-year-old-son. Until recently, she worked nights from 11 pm to 7 am. Amy H. had to remain at home with her 4-year-old brother until Dara S. returned home from work at approximately 7:10 am.

256. Upon learning of this conflict and despite the fact that Dara S. was not a party to the truancy proceeding, Magistrate Paulhus issued an order requiring Dara S. to leave work 10 minutes early every day to ensure that Amy H. was on time to school. As a result of that order Dara S. lost 40 minutes of pay every week. In February, she lost her job.

257. Upon information and belief, Amy H. was never offered or provided with services or support as a result of her involvement with the Truancy Court.

258. As a result of their involvement in the Truancy Court, Amy H. and Dara S. have suffered, among other things, stress, anxiety, and humiliation and their family's livelihood has been jeopardized. In addition, every time Amy H. is required to attend Truancy Court, her mother must pick her up from the high school 40 minutes before the end of the school day in order to drive her to the Middle School, where Truancy Court is held, in time for the beginning of the Truancy Court proceedings. As a result, Amy H. must miss 40 minutes of academic instruction every time she is required to attend Truancy Court. She is therefore deprived of educational opportunities every time she must attend Truancy Court.

259. Amy H. continues to be under the jurisdiction of the Truancy Court.

Sherry Arias and Hannah-Lea Arias

260. Hannah-Lea Arias has learning difficulties. Because Hannah-Lea Arias is overwhelmed with class and homework, she frequently misses school.

261. Although Sherry Arias has repeatedly asked school officials employed by Defendant City of Woonsocket to have Hannah-Lea Arias evaluated for special educational services, they have never done so.

262. Instead, pursuant to policies promulgated or condoned by Defendants City of Woonsocket and its Superintendent, they submitted to the Family Court three petitions alleging that Hannah-Lea Arias is a habitual truant and asking that she be adjudicated “wayward.” To the extent Hannah-Lea Arias’ absences were a manifestation of her learning disabilities or the result of illness, they were not willful and the petitions were legally insufficient. None of the petitions charged Sherry Arias with any wrongdoing or named her as a party.

263. The Family Court, acting pursuant to policies promulgated or condoned by Defendant Administrators, filed each petition without conducting a preliminary investigation of the charges against Hannah-Lea Arias, as required by state law.

264. The first petition was filed on November 5, 2007, but dismissed on January 10, 2008, on the ground that Sherry Arias had filed a petition to home-school Hannah-Lea Arias

265. The second petition was filed on May 2, 2008. Hannah-Lea Arias was arraigned on May 22, 2008, at the same time as several other children, before a Magistrate whose name neither Hannah-Lea Arias nor Sherry Arias remember.

266. That Magistrate did not adequately explain to Hannah-Lea Arias or Sherry Arias the charges against Hannah-Lea Arias, the procedures of the Truancy Court, the differences between proceeding in Family Court versus Truancy Court, the rights to which Hannah-Lea Arias was entitled in Family and Truancy Courts, the consequences of

Hannah-Lea Arias's admitting to the facts against her, and the types of sentences to which Hannah-Lea Arias could be subject.

267. When Sherry Arias asked the Woonsocket Truant Officer whether Hannah-Lea Arias needed an attorney, the Truant Officer said no.

268. On May 29, 2008, Hannah-Lea Arias and Sherry Arias returned to the Truancy Court. Despite the fact that Hannah-Lea Arias lacked the information and capacity to knowingly and voluntarily waive her right to be heard on the charges against her, the Magistrate permitted her to waive that right. She and her mother signed the Truancy Court's standardized waiver form and standardized request for admission form.

269. Hannah-Lea Arias was never afforded the opportunity to consult with an attorney prior to signing the forms.

270. Hannah-Lea Arias was adjudicated wayward, sentenced to probation, that sentence was stayed and the Magistrate ordered Hannah-Lea Arias to attend class, behave, do her schoolwork, to attend weekly hearings, and to provide a doctor's note for each of her absences.

271. For the remainder of the 2007-08 school year and throughout the 2008-09 school year, Hannah-Lea Arias was required to miss class and attend periodic Truancy Court hearings.

272. Prior to each hearing, the Magistrate presiding over that hearing met with Woonsocket school officials to inquire into Hannah-Lea Arias's compliance with the terms and conditions of the Truancy Court. Neither Hannah-Lea Arias nor Sherry Arias was permitted to participate in those meetings. Neither Hannah-Lea Arias nor Sherry

Arias was permitted to respond to, object to, or rebut statements made by the school officials.

273. At many of these hearings, the Magistrate yelled at Hannah-Lea Arias, threatened her with placement in foster care and stated that she would incarcerate Sherry Arias if Hannah-Lea Arias did not attend school.

274. No verbatim recording or transcription was made of any Truancy Court hearing attended by Hannah-Lea Arias, including the initial arraignment.

275. On May 21, 2009, Hannah-Lea Arias's second case was closed and the sentence of probation was vacated.

276. According to Hannah-Lea Arias's school educational files and Family Court files, Hannah-Lea Arias was never offered or provided with services or support as a result of her involvement with the Truancy Court.

277. The third petition was filed on December 4, 2009.

278. Defendants City of Woonsocket and its Superintendent failed to take the steps necessary to ensure that Hannah-Lea Arias was provided with timely and adequate notice of the charges filed against her. On January 7, 2010, Woonsocket's Truant Officer stuck a handwritten note on the door of Hannah-Lea Arias's home, informing her that she needed to appear in Family Court in Providence the following day. Later that same day, he gave her a copy of the petition.

279. On January 8, 2010, Hannah-Lea Arias appeared in Family Court and was assigned an attorney. Although Hannah-Lea Arias's attorney asked that her case remain in Family Court, the Family Court, on information and belief, can transfer it back to the Truancy Court at any time. Hannah-Lea Arias's case is still pending in Family Court.

280. As a result of their involvement in the Truancy Court, Hannah-Lea Arias and Sherry Arias have suffered, among other things, debilitating stress, depression, and anxiety manifesting itself in physical illness. Moreover, every time Hannah-Lea Arias is removed from class to attend a Truancy Court hearing she is deprived of educational opportunities.

#### **VIII. CLAIMS FOR RELIEF AGAINST COURT DEFENDANTS**

##### **COUNT ONE: FOURTEENTH AMENDMENT AND ARTICLE 1 SECTION 2 OF THE RHODE ISLAND CONSTITUTION (PROCEDURAL DUE PROCESS CLAIM)**

281. Plaintiffs incorporate paragraphs 1 through 280 as alleged above.

282. This claim is brought on behalf of all Plaintiffs and the members of the class.

283. By arraigning and issuing orders against persons over whom the court has no jurisdiction, Defendant Court Administrators and Magistrates have violated and continue to violate rights guaranteed to Plaintiffs by 42 U.S.C. § 1983, the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and Article 1 Section 2 of the Rhode Island Constitution, which prohibit the issuance of a judgment or order against a person in the absence of personal jurisdiction.

284. By failing to provide adequate information regarding individual rights at the arraignment, Defendant Court Administrators and Magistrates have violated and continue to violate rights guaranteed to Plaintiffs by 42 U.S.C. § 1983, the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and Article 1 Section 2 of the Rhode Island Constitution, which require that waivers of individual rights be knowing and voluntary.

285. By permitting children members of the Plaintiff class to waive their right to counsel without first consulting with counsel, Defendant Court Administrators and Magistrates have violated and continue to violate rights guaranteed to Plaintiffs by 42 U.S.C. § 1983, the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and Article 1 Section 2 of the Rhode Island Constitution, which require that children have the advice of counsel before they are deemed to have the capacity to understand and waive their rights.

286. By engaging in ex parte determinations regarding whether Plaintiff children have violated the terms and conditions of Truancy Court, Defendant Court Administrators and Magistrates have violated and continue to violate rights guaranteed to Plaintiffs by 42 U.S.C. § 1983, the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and Article 1 Section 2 of the Rhode Island Constitution, which require that an individual must have the opportunity to confront the evidence against himself and to be present at sentencing.

287. By failing to keep and provide to the Plaintiffs a verbatim record of all proceedings before the Truancy Court, Defendant Court Administrators and Magistrates have violated and continue to violate rights guaranteed to Plaintiffs by 42 U.S.C. § 1983, the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and Article 1 Section 2 of the Rhode Island Constitution, which require a record of proceedings in order to ensure meaningful appellate review.

288. By failing to ensure that interpreters are available as necessary to individuals appearing before the Truancy Court, Defendant Court Administrators have violated and continue to violate rights guaranteed to Plaintiffs by 42 U.S.C. § 1983, the



Due Process Clause of the Fourteenth Amendment to the United States Constitution, and Article 1 Section 2 of the Rhode Island Constitution, which require a meaningful opportunity to be heard.

**COUNT TWO: RHODE ISLAND GENERAL LAWS, JUDICIAL CODE OF CONDUCT, AND RULES OF JUVENILE PROCEDURE**

289. Plaintiffs incorporate paragraphs 1 through 288 as alleged above.

290. This claim is brought on behalf of all Plaintiffs and the members of the class.

291. By failing to conduct a preliminary investigation to determine whether submitted petitions are legally sufficient on their face and whether further action is in the best interest of the public and the child, Defendant Court Administrators have violated and continue to violate rights guaranteed to Plaintiffs by R.I. Gen. Laws §§ 14-1-10, 14-1-11 and R.I. R. Juv. P. 3 and 5, which require that the Family Court's Intake Department conduct a preliminary investigation before a truancy petition can be filed by the Family Court.

292. By permitting children members of the Plaintiff class to waive their right to counsel without first consulting with counsel, Defendant Court Administrators and Magistrates have violated and continue to violate rights guaranteed to Plaintiffs by R.I. Gen. Laws § 14-1-31 and R.I. R. Juv. P. 9, which require that at arraignment, the court must explain to the child the right to counsel and shall appoint counsel when necessary.

293. By failing to provide information necessary at arraignment, Defendant Court Administrators and Magistrates have violated and continue to violate rights guaranteed to Plaintiffs by R.I. R. Juv. P. 9, which requires that when a child and his or her parent or guardian arrive at their initial hearing, they must be informed of the nature

of the charges against the child, the benefit of the presumption of innocence, their right to remain silent, their right to confront and cross-examine their accusers and the witnesses against them, their right to testify and to call their own witnesses, their right to have the state prove the child's guilt beyond a reasonable doubt, the maximum sentence that may be imposed, and their right to appeal any findings against the child.

294. By engaging in ex parte determinations of whether the children have violated the Truancy Court terms and conditions, Defendant Court Administrators and Magistrates have violated and continue to violate rights guaranteed to Plaintiffs by the Rhode Island Code of Judicial Conduct, R.I. Code § 3(B)(8), which provides that “[a] judge shall not initiate, permit, or consider ex parte communications or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding,” subject to certain exceptions not relevant here.

295. By failing to keep and provide to the Plaintiffs a verbatim record of all proceedings before the Truancy Court, Defendant Court Administrators and Magistrates have violated and continue to violate rights guaranteed to Plaintiffs by R.I. Gen. Laws § 8-10-3(b), which requires a verbatim record of all proceedings in Family Court.

296. By failing to provide interpreters as necessary to individuals appearing before the Truancy Court, Defendant Court Administrators have violated and continue to violate rights guaranteed to Plaintiffs by R.I. Gen. Laws § 8-19-3, which requires that when a non-English speaking person is a party to a juvenile matter before the Family Court, the presiding judge is responsible for appointing a state certified or qualified interpreter to assist that individual.

## **IX. CLAIMS FOR RELIEF AGAINST SCHOOL DEFENDANTS**

**COUNT THREE: FOURTEENTH AMENDMENT AND ARTICLE 1 SECTION 2  
OF THE RHODE ISLAND CONSTITUTION (PROCEDURAL DUE PROCESS  
CLAIM)**

297. Plaintiffs incorporate paragraphs 1 through 296 as alleged above.

298. This claim is brought on behalf of all Plaintiffs and the members of the class.

299. By failing to provide Plaintiffs with sufficient notice of conduct that will result in the submission of a truancy petition and by failing to prevent arbitrary enforcement of referral policies, School Defendants have violated and continue to violate rights guaranteed to Plaintiffs by 42 U.S.C. § 1983, the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and Article 1 Section 2 of the Rhode Island Constitution, which require adequate notice as to what kind of conduct is punishable.

**COUNT FOUR: RHODE ISLAND GENERAL LAWS AND RULES OF  
JUVENILE PROCEDURE**

300. Plaintiffs incorporate paragraphs 1 through 299 as alleged above.

301. This claim is brought on behalf of all Plaintiffs and the members of the class.

302. By failing to provide adequate service of summons on Plaintiffs, School Defendants have violated and continue to violate rights guaranteed to Plaintiffs by R.I. Gen. Laws § 14-1-17 and R.I. R. Juv. P. 6, which require that the summons shall be served by reading it to and leaving a copy with the child against whom the petition was filed and the parent or guardian, or by leaving an attested copy at the child's home with someone of suitable age and discretion.

303. Plaintiffs request relief as hereinafter provided.

## IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the members of the class pray for relief as follows:

304. Certification of this case as a class action on behalf of the proposed class;

305. Designation of Named Plaintiffs as representatives of the class;

306. A declaratory judgment against Defendant Court Administrators that the filing of a Truancy Court petition before the Intake Department has determined that the petition is legally sufficient on its face and that further action is in the best interest of the public and the child is a violation of the Plaintiffs' rights under R.I. Gen. Laws §§ 14-1-10, 14-1-11, and R.I. R. Juv. P. 3 and 5; and a preliminary and permanent injunction and order prohibiting Defendant Court Administrators from filing truancy petitions submitted by school officials from the municipalities of Coventry, Cumberland, North Providence, Providence, Westerly and Woonsocket without first investigating those petitions to determine their legal sufficiency and determining that further action is in the best interest of the child and the public;

307. A declaratory judgment against Defendant Magistrates that the arraignment and the issuance of orders against members of the Plaintiff class over whom personal jurisdiction is not established is a violation of Plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment and Art. 1, Sec. 2 of the Rhode Island Constitution; and a preliminary and permanent injunction and order prohibiting Defendant Magistrates from issuing orders against such class members;

308. A declaratory judgment against Defendant Court Administrators that failing to make and provide a stenographic or other verbatim record of all proceedings before the Truancy Court is a violation of the Plaintiffs' rights under the Due Process

Clause of the Fourteenth Amendment and Art. 1, Sec. 2 of the Rhode Island Constitution and R.I. Gen. Laws § 8-10-3(b); and a preliminary and permanent injunction prohibiting Defendant Court Administrators from allowing Truancy Court proceedings that are not transcribed and/or recorded;

309. A declaratory judgment against Defendant Magistrates that failing to provide the information necessary at arraignment is a violation of the Plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment, Art. 1, Sec. 2 of the Rhode Island Constitution, and R.I. R. Juv. P. 9;

310. A declaratory judgment against Defendant Magistrates that failing to obtain knowing and voluntary waivers of procedural due process protections by parents and students appearing before the Truancy Court is a violation of the Plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment and Art. 1, Sec. 2 of the Rhode Island Constitution;

311. A declaratory judgment against Defendant Magistrates that permitting children members of the Plaintiff class to waive their right to counsel without first consulting with counsel is a violation of the Plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment, Art. 1, Sec. 2 of the Rhode Island Constitution, R.I. Gen. Laws § 14-1-31, and R.I. Juv. P. 9;

312. A declaratory judgment against Defendant Magistrates that engaging in ex parte communications with school officials to ascertain whether children members of the Plaintiff class are violating the terms and conditions of the Truancy Court is a violation of the Rhode Island Code of Judicial Conduct and the Due Process Clause of the Fourteenth Amendment and Art. 1, Sec. 2 of the Rhode Island Constitution;

313. A declaratory judgment against Defendant Court Administrators that the failure to provide interpreters to individuals appearing before the Truancy Court is a violation of the Plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment, Art. 1, Sec. 2 of the Rhode Island Constitution and R.I. Gen. Laws § 8-19-3; and a permanent injunction requiring Defendant Court Administrators to provide certified interpreters to those parties that require it before hearing;

314. A declaratory judgment against School Defendants that failing to provide Plaintiffs with sufficient notice of conduct that will result in the submission of a truancy petition is a violation of the Plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment and Art. 1, Sec. 2 of the Rhode Island Constitution; and a permanent injunction prohibiting School Defendants from the arbitrary and capricious enforcement of truancy laws.

315. A declaratory judgment against School Defendants that failing to provide adequate service of process or summonses is a violation of the Plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment and Art. 1, Sec. 2 of the Rhode Island Constitution, R.I. Gen. Laws § 14-1-17 and R.I. R. Juv. P. 6; and a permanent injunction requiring School Defendants to comply with the applicable constitutional provisions and statutory law that require adequate service of process;

316. Award the Plaintiffs reasonable attorneys' fees and costs under 42 U.S.C. § 1988; and

317. Such other and further equitable relief as this Court deems necessary, just and proper.

Dated this 12th day of May, 2010.

Respectfully submitted,

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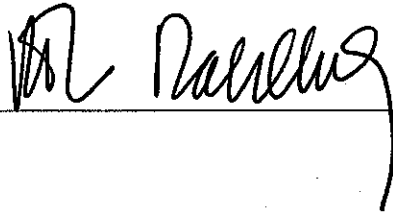
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I hereby certify that on this 12th day of May, 2010, a copy of the within was sent to the  
above counsel by first class mail, postage prepaid.

  
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