
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CIVIL NO. 01-3389

M.A., et al.,

Plaintiffs,

-vs-

NEWARK PUBLIC SCHOOLS, et al.,

Defendants

DECISION

Newark, New Jersey
February 6, 2002 11:30 a.m.

B E F O R E:

THE HONORABLE KATHARINE S. HAYDEN, U.S.D.J.
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Pursuant to Section 753 Title 28 United States Code,
the following transcript is certified to be an accurate
record as taken stenographically in the above-entitled
proceedings.

Ralph F. Florio
Official Court Reporter

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1 THE COURT: Good morning. We are on the record in
2 the matter of M.A., et al versus Newark Public Schools, et
3 al.

4 Yesterday the attorneys were here representing the
5 parties, and I heard oral argument. It was spirited and it
6 was very helpful to the Court. The briefing was excellent on
7 both sides, and I am prepared to render my decision on the
8 record with respect to the motions filed by the State
9 defendants and by the Newark defendant.

10 Therefore before the Court are the motions brought
11 by the State of New Jersey, Department of Education, which
12 was filed to dismiss plaintiffs' complaint for failure to
13 state a claim upon which relief may be granted on grounds of
14 sovereign immunity, untimeliness and failure to exhaust
15 administrative remedies.

16 The other motion was brought by the Newark Public
17 Schools, otherwise called the State-Operated School District
18 of the City of Newark. I'll probably be referring to it as
19 Newark throughout.

20 On the following basis: To dismiss for failure to
21 state a claim because plaintiffs have not exhausted
22 administrative remedies, to dismiss for failure to state a
23 claim under section 1983 and lack of subject matter of
24 jurisdiction under section 1983, for failure to state a claim
25 based on New Jersey Constitution, and on grounds that the

1 Entire Controversy Doctrine in New Jersey bars the claim.

2 The complaint we are talking about was filed in
3 July 2001. The plaintiffs represent children in Newark
4 Public School Direct who needs special education services.
5 They claim that Newark Public Schools or Newark has failed to
6 provide the "free appropriate public education" they are
7 required to provide to children with special needs.

8 Plaintiffs claim that Newark has failed to (1) identify
9 children within their jurisdiction that need services, (2)
10 they have failed to timely evaluate these children for
11 special education eligibility, (3) for those determined to
12 have a disability, plaintiffs claim that Newark has not
13 timely provided and implemented the IEPs that individualized
14 education programs that are necessary, and (4) for those who
15 have received an IEP, defendants have not remedied the delay
16 with compensatory education.

17 In a preliminary statement the complaint identifies
18 the lawsuit as "a class action on behalf of all children with
19 disabilities ages 3 through 21, who require special education
20 services from the Newark Public Schools but have not been
21 evaluated for or provided with such services." Paragraph 24.
22 Both Newark and the DOE, the State Commissioner of Education
23 and two administrators are alleged to have failed to
24 identify, locate, refer and evaluate the plaintiffs for
25 special education eligibility. Have failed to provide them

