

students enrolled in Defendant Dover City Schools are immigrants from Latin America and are therefore Hispanic/Latino. Despite its legal obligations and supplemental funding from both the federal and state governments, Defendants have intentionally both failed to ensure that LEP immigrant children have received or are receiving the appropriate services and supports to learn English and substantive academic content and segregated them physically during both regular class hours and during school lunch periods. This has resulted in Limited English Proficient immigrant children failing to advance their skills in English, earn credits toward graduation commensurate with the time they have attended school, and practices that encourage drop outs or transfers.

II. JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 (federal question) and 1343 (civil rights), and 42 U.S.C. § 1983. Because this lawsuit alleges violations of the United States Constitution as well as violations of federal statutes and regulations, it raises questions of federal law.

3. This Court has subject matter jurisdiction over Ohio state law claims under 28 U.S.C. § 1367(a).

4. This Court has the authority to grant injunctive relief, declaratory relief, and other related relief pursuant to 28 U.S.C. § 1331 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

5. Venue is proper in this Court under 28 U.S.C. § 1391(b) because Defendants and many of the Plaintiffs reside in the district and division and where a substantial part of the acts or omissions giving rise to the claims occurred.

III. PARTIES

6. Plaintiff Ohio Immigrant Worker Project (IWP), an unincorporated association, is dedicated to the struggle for justice and human dignity for Ohio's rural immigrants from Latin America. The Project's membership includes persons who have been and/or are imminently susceptible to being injured by Defendants' unlawful practices, as well as family members of such persons. The IWP has been working with the Latin American immigrant population in the Dover area since 1998, including representing and assisting many current and former LEP students enrolled in Dover City Schools with different types of issues, including obtaining an appropriate education.

7. The IWP first recognized the lack of appropriate education for Latino LEP students at Dover City Schools and obtained legal counsel for itself and the LEP students. The Project's membership includes persons who have been and/or are imminently susceptible to being injured by Defendants' unlawful practices, as well as family members of such persons. The IWP has also had to divert resources to assist LEP students enrolled in Dover City Schools. Most, if not all, of IWP's members are Hispanic.

8. Plaintiff Ruperto Itzep Toc is the parent and next friend of minors F IS and M IS, students enrolled in Dover City Schools, and resides in Dover, Tuscarawas County, Ohio. He is Hispanic as are his children. He is a member of the Ohio Immigrant Worker Project as are F IS and M IS.

9. Plaintiff Ana Ceto Raymundo is the parent and next friend of minors J PC and Jo PC, students enrolled in Dover City Schools, and resides in Dover, Tuscarawas County, Ohio. She is Hispanic as are her children. She is a member of the Ohio Immigrant Worker Project as are J PC and Jo PC.

10. Plaintiff Dennis Hernandez Gonzalez is an adult and was enrolled as a student at Dover City Schools during the 2013 – 2014 and 2014 – 2015 school years. He is a resident of Tuscarawas County, Ohio. He is Hispanic and is a member of the Ohio Immigrant Worker Project.

11. Plaintiff Francisco Brito Brito is an adult student enrolled in Dover City Schools and resides in Dover, Tuscarawas County, Ohio. He is Hispanic and is a member of the Ohio Immigrant Worker Project.

12. Defendant Carla Birney is the Superintendent of Dover City Schools in Tuscarawas County, Ohio, and is sued in her official capacity. She is responsible for the policies, practices, and customs of the Dover City Schools. The Superintendent also directs the hiring, screening, training, retention, supervision, discipline, counseling, and control of the Dover City Schools' teachers and staff. She is charged with the oversight of DCS and its compliance with state and federal laws regarding the education of its students. At all relevant times she was acting under color of law.

13. Defendant Dover City Schools ("DCS") is a political subdivision of the State of Ohio that can sue and be sued in its own name. Defendant DCS operates, governs, and is responsible for the operation of Dover High School, Dover Middle School, East Elementary School, South Elementary School, and Dover Avenue Elementary School pursuant to the laws of the State of Ohio. DCS is charged with providing a public education and education related services to all school age children within its district boundaries. DCS receives state financial assistance from the State of Ohio and is funded directly by the State of Ohio to provide educational services to children who reside and/or are enrolled in public schools within its boundaries.

14. DCS receives, and at all times mentioned herein has received, federal financial assistance and/or sub-grants of federal financial assistance from the state of Ohio to provide educational services to children who reside and/or are enrolled in public schools within its boundaries. At all relevant times DCS was acting under color of law.

IV. FACTUAL ALLEGATIONS

A. Limited English Proficiency and Ohio School District Obligations

15. The term “Limited English Proficient” (LEP) herein refers to those students whose native or home language is other than English, and whose current limitations in the ability to understand, speak, read, or write in English inhibit their effective participation in a school’s educational program.

16. Almost all of the more than 100 LEP students enrolled in DCS schools are of Latino/Hispanic ancestry during the times relevant here, i.e., during the last two years from the date of filing of this action.

17. The term “immigrant” herein means someone who is not a United States citizen.

18. The state of Ohio and others also refer to LEP students as “English Language Learners.” The terms, for purposes of this Complaint, are equivalent.

19. The term “English as a Second Language” (ESL) is still used in educational circles, although it is acknowledged that many immigrants – including the DCS Hispanic students here - already speak two or more languages. It is, again, equivalent to LEP or ELL herein or when used by the parties unless otherwise noted.

20. The state of Ohio mandates that school districts receiving its funding, including Defendant DCS, test LEP students annually to determine their level of English proficiency in four domains – understanding, speaking, reading, and writing.

21. This mandated testing is used to measure the progress of LEP students in becoming proficient in English in the four domains of understanding, speaking, reading, and writing English.
22. The test used within Ohio for testing the English proficiency of LEP students during the 2013 – 2014 and 2014 – 2015 academic years was the OTELA – Ohio Test of English Language Acquisition.
23. The test used within Ohio for testing English proficiency of LEP students during the 2015 - 2016 academic year is the OELPA – Ohio English Language Proficiency Assessment.
24. Both the OTELA and the successor OELPA test were and are administered during the second semester of the academic school year, usually during late February to early March.
25. A different test, the ITP, was and is being used by Defendant DCS to determine the English capabilities of LEP students when they enroll at the beginning of the academic year.
26. The ITP English placement test was the only assessment used to place LEP students in their academic grade levels, a use for which the test is not designed.
27. The OTELA and OELPA are based on grade bands.
28. The grade bands are: Kindergarten; First grade; Second and Third grades; Fourth and Fifth grades; Sixth through Eighth grades; and Ninth through Twelfth grades.
29. Both the OTELA and OELPA use a similar grading system – 1 through 5.
30. A grade of 1 on the tests indicates the student shows limited control of English when participating in grade appropriate classroom activities but can convey simple information, using simply constructed phrases and sentences with a limited range of vocabulary.
31. A grade of 2 on the tests indicates the student shows emerging control of English when participating in grade appropriate classroom activities and can convey briefly sequenced and/or

simply detailed information, using combinations of simple sentence structures and simple vocabulary.

32. A grade of 3 on the tests indicates the student shows developing control of English when participating in grade appropriate classroom activities and can use related paragraphs to convey related events, ideas, and/or opinions, using frequently occurring complex sentence structures and a developing vocabulary.

33. A grade of 4 on the tests indicates the student shows increasingly independent control of English when participating in grade appropriate classroom activities and can convey related events, ideas, and/or opinions, using multiple related paragraphs with increasingly complex, descriptive sentence structures and a wider vocabulary.

34. A grade of 5 on the tests indicates the student shows independent control of English when participating in grade appropriate classroom activities and can convey a complex sequence of events, ideas, opinions, and/or steps in a process, using a wide variety of complex and sophisticated, descriptive sentence structures and a wide vocabulary.

35. A student must score 5 in all four domains before they are considered proficient in English and can officially exit LEP status. They continue to be monitored after their exiting the program.

36. Until a student scores a 5 in all four domains they are enrolled in the district's LEP program, although the parent may withdraw them from the LEP program and/or its services.

37. The OTELA and OELPA not only determine the English proficiency of LEP students, but also demonstrate the student's progress or lack of progress in becoming proficient in English in the four domains.

38. In order to determine the effectiveness of a school district's LEP program, including Dover City Schools, the state of Ohio's Department of Education sets standards for progress on the OTELA and now the OELPA.

39. The Ohio Department of Education sets standards, called Annual Measurable Objectives, for the percentage of a district's LEP students that must progress by one numeric value, i.e., from 1 to 2 or 3 to 4, in order to grade the district in its education of LEP students. The grade indicates if the district met the objective or has not met the objective.

40. Defendant DCS is legally required to communicate in writing with parents of DCS students in a language that the parents can understand.

41. Defendant DCS is legally required to provide interpretation in meetings between DCS employees and parents in a language that the parents can understand.

42. Defendant DCS is legally required to provide information in writing and orally to parents of LEP students in a language the parent(s) can understand regarding how the parent(s) can assist their child(ren) to become proficient in English and to ensure academic progress in substantive academic areas.

43. Teachers employed in Ohio's public schools are licensed by the state of Ohio.

44. The state of Ohio also issues supplemental endorsements to licensed teachers in certain academic and specialization areas.

45. One of those supplemental endorsements available to licensed Ohio teachers is a supplemental endorsement for teaching LEP students, 050275 TESOL (Teaching English to Speakers of Other Languages),

46. These supplemental endorsements are available based on academic training and practice.

47. It is generally accepted within the educational community that an LEP student will achieve English Language proficiency – a 5 on the Ohio testing – in four to six years if enrolled in an evidence-based LEP program.

B. Dover City Schools District Policies And Practices For Limited English Students

1. 2013 – 2014 Academic Year

48. During the 2013 – 2014 academic year the LEP students at Dover City Schools were taught in a manner not based on evidence-based educational practices for LEP students.

49. The LEP students were taught without a specific LEP curriculum.

50. The LEP students were divided into two groups during the school day.

51. For approximately half the day the LEP students were in a classroom in the basement of Dover High School.

52. All of the LEP students assigned to the basement classroom were Hispanic.

53. The teacher in the basement classroom was licensed as an elementary school teacher.

54. The teacher in the basement classroom did not have a supplemental endorsement by the state of Ohio to Teach English as a Second Language.

55. The teacher in the basement classroom was not a Highly Qualified Teacher in English or Language Arts.

56. As a result of the teacher in the basement classroom not being a highly qualified teacher in English or Language Arts any classes offered in that basement classroom could only be used as electives, not as core credits necessary for graduation. This put the students further behind in the amount of credits needed to graduate.

57. Additionally, the teacher in the basement classroom had no experience teaching LEP students.

58. The teacher in the basement classroom did not speak Spanish, the language most common to the LEP students enrolled at DCS.

59. DCS did not employ any licensed teachers with a supplemental endorsement by the state of Ohio to Teach English as a Second Language at the middle school during this academic year.

60. DCS did not employ any licensed teachers with a supplemental endorsement by the state of Ohio to Teach English as a Second Language at any of its elementary schools during this academic year.

61. Defendant DCS did not meet the Annual Measurable Objectives for Limited English Proficient students during the 2013 – 2014 academic year.

62. The LEP students were also segregated by DCS school authorities during lunch period and were not allowed to intermingle with white DCS students.

63. Defendant DCS employed paraprofessionals in its LEP program, but there was no written job description for them.

64. Defendants employed DCS staff as interpreters and translators without training as such.

65. Persons who speak two languages are not necessarily therefore qualified to be interpreters.

66. Even while physically present at Dover City Schools buildings LEP students have been physically segregated from non-LEP students for no educational purpose.

67. DCS records for this academic year falsely state that LEP students had certain teachers during that academic year when, in fact, those teachers never taught or had contact with the students. DCS teachers brought this to the attention of DCS administrators due to the teachers' concerns about their licenses and potential liability/fraud issues. DCS teachers referred to this as "phantom teachers" or "ghost teachers."

68. A complaint was filed regarding this “phantom teacher” or “ghost teacher” issue by one or more of the teachers who were listed as teachers of LEP students with whom the teachers had no contact.

69. During the school year Defendants had no system for identifying LEP students with disabilities.

70. During the school year an assistant principal at the high school, Gina Franks, went to one or more LEP students and asked them if they were going to drop out. The student(s) thought she wanted them to drop out.

71. During the school year LEP students who enrolled for the first time who were over the age of 15 were placed in the 7th grade, but were at the high school where they were segregated into a separate class.

2. 2014 – 2015 School Year

72. During the 2014 – 2015 academic year the LEP students at Dover City Schools were taught in a manner not based on evidence-based educational practices for LEP students.

73. The LEP students were taught without a specific LEP curriculum.

74. The LEP students were divided into two groups during the school day.

75. For approximately half the day the LEP students were bussed to a site where they were in a room with LEP students from New Philadelphia City Schools.

76. All of the LEP students bussed to the off-site facility were Hispanic.

77. The site to which the DCS LEP students were bussed includes a juvenile detention facility, although the LEP students were not in a locked-down area.

78. There were no academic subjects taught at the site to which the DCS students were bussed.

79. The teacher in the bussed-to site was a licensed teacher for Teaching English as a Second Language, but was not a Highly Qualified Teacher as an English teacher or Language Arts teacher.

80. Dover City Schools had told students that they would be earning English credit while at the segregated program, but because the teacher was not highly qualified in English or Language Arts the classes at the segregated facility were only eligible to be used as electives, thus putting the students farther behind in the amount of credits required to graduate.

81. The teacher in the bussed-to site did not speak Spanish, the language most common to the LEP students enrolled at DCS.

82. DCS did not employ any licensed teachers with a supplemental endorsement by the state of Ohio to Teach English as a Second Language at the middle school during the 2014 – 2015 academic year.

83. DCS did not employ any licensed teachers with a supplemental endorsement by the state of Ohio to Teach English as a Second Language at any of its elementary schools during the 2014 - 2015 academic year.

84. Defendant DCS employed paraprofessionals in its LEP program, but there was no written description job for them.

85. Defendant DCS employed paraprofessionals in its LEP program, but there was no job written description for them.

86. Defendants employed DCS staff as interpreters and translators without training as such.

87. Persons who speak two languages are not necessarily therefore qualified to be interpreters.

88. Defendant DCS did not meet the Annual Measurable Objectives for Limited English Proficient students during the 2014 – 2015 academic year.

89. Even while physically present at Dover City Schools buildings LEP students have been physically segregated from non-LEP students for no educational purpose.

90. The LEP students were also segregated by DCS school authorities during lunch period and were not allowed to intermingle with white DCS students.

91. DCS records for this academic year falsely state that LEP students had certain teachers during that academic year when, in fact, those teachers never taught or had contact with the students. DCS teachers brought this to the attention of DCS administrators due to the teachers' concerns about their licenses and potential liability/fraud issues. DCS teachers referred to this as "phantom teachers" or "ghost teachers."

92. A complaint was filed regarding this "phantom teacher" or "ghost teacher" issue by one or more of the teachers who were listed as teachers of LEP students with whom the teachers had no contact.

93. During the school year Defendants had no system for identifying LEP students with disabilities.

94. During this school year one or more of the LEP students being bussed to the juvenile detention school site asked to be mainstreamed at Dover High School and not be forced to attend the bussed-to site.

95. During the school year an assistant principal at the high school, Gina Franks, went to one or more LEP students and asked them if they were going to drop out. The student(s) thought she wanted them to drop out.

96. During the school year LEP students who enrolled for the first time who were over the age of 15 were placed in the 7th grade, but were at the high school where they were segregated into a separate class.

3. 2015 – 2016 School Year

97. During the 2015 – 2016 academic year the LEP students at Dover City Schools were and are not being taught in a manner based on evidence-based educational practices for LEP students.

98. The LEP students were initially being taught during this academic year without a LEP curriculum.

99. The LEP students are being divided into two groups during the school day.

100. For approximately half the day the LEP students are bussed to a site where they were and are in a room with only LEP students.

101. The site to which the DCS LEP students are being bussed includes a juvenile detention facility, although the LEP students are not in a locked-down area.

102. There were no academic subjects taught at the site to which the DCS students were and are being bussed.

103. The teacher in the bussed to site is licensed as a teacher by the state of Ohio.

104. The teacher in the bussed to site does not have a supplemental endorsement by the state of Ohio to Teach English as a Second Language.

105. The teacher in the bussed-to site does not speak Spanish, the language most common to the LEP students enrolled at DCS.

106. DCS is not employing any licensed teachers with a supplemental endorsement by the state of Ohio to Teach English as a Second Language at the middle school during this academic year.

107. DCS did not and are not employing any licensed teachers with a supplemental endorsement by the state of Ohio to Teach English as a Second Language at any of its elementary schools during the 2015 - 2016 academic year.

108. Defendant DCS employs paraprofessionals in its LEP program, but there is no written description job for them.

109. Defendants employ DCS staff as interpreters and translators without training as such.

110. Persons who speak two languages are not necessarily qualified to be interpreters.

111. Defendants do not believe DCS will meet the Annual Measurable Objectives for Limited English Proficient students during the 2015 – 2016 academic year.

112. Even while physically present at DCS buildings LEP students have been and will be physically segregated from non-LEP students for no educational purpose.

113. The LEP students were also segregated by DCS school authorities during lunch period and were not allowed to intermingle with white DCS students.

114. Based on its past record and its current practices DCS administrators do not believe DCS will meet the Annual Measurable Objective for LEP students during the 2015 – 2016 academic year.

115. The majority of LEP DCS high school students fail to accumulate appropriate numbers of high school credits in core subjects required for graduation commensurate with their full-time attendance.

116. The majority of white or Caucasian DCS high school students accumulate appropriate numbers of high school credits in core subjects required for graduation commensurate with their full-time attendance.

117. DCS records for this academic year falsely state that LEP students had certain teachers during that academic year when, in fact, those teachers never taught or had contact with the students. DCS teachers brought this to the attention of DCS administrators due to the teachers' concerns about their licenses and potential liability/fraud issues. DCS teachers referred to this as "phantom teachers" or "ghost teachers."

118. A complaint was filed regarding this "phantom teacher" or "ghost teacher" issue by one or more of the teachers who were listed as teachers of LEP students with whom the teachers had no contact.

119. During the school year Defendants had no system for identifying LEP students with disabilities.

120. During the school year an assistant principal at the high school, Gina Franks, went to one or more LEP students and asked them if they were going to drop out. The student(s) thought she wanted them to drop out.

121. During the school year LEP students who enrolled for the first time who were over the age of 15 were placed in the 7th grade, but were at the high school where they were segregated into a separate class.

4. Other Facts Regarding Dover City Schools Regarding LEP Students

122. Defendant Dover City Schools receives federal funding for its educational activities.

123. The federal funding received by Dover City Schools includes separate funding for immigrant and LEP students.

124. The discrete federal funding received by Dover City Schools for immigrant and LEP students is considered supplemental funding.

125. Defendant Dover City Schools receives state of Ohio funding for its educational activities. *See, e.g.*, Ohio Revised Code § 3317.01.

126. The state of Ohio funding received by Dover City Schools includes separate funding for LEP students. Ohio Revised Code § 3317.016.

127. Defendant Dover City Schools received federal funding for its educational activities during the 2013 – 2014, 2014 – 2015, and 2015 – 2016 academic years.

128. Defendant Dover City Schools received state funding for its educational activities during the 2013 – 2014, 2014 – 2015, and 2015 – 2016 academic years.

129. Defendant Dover City Schools had more than 110 LEP students enrolled during the 2013 – 2014 school year.

130. Defendant Dover City Schools had more than 110 LEP students enrolled during the 2014 – 2015 school year.

131. Defendant Dover City Schools has more than 110 LEP students enrolled during the 2015 – 2016 school year.

132. Defendant Dover City Schools' school year is generally from late August to the following year in early June, depending on severe weather and public calamity.

133. Some of the LEP students enrolled in Dover City Schools are in a custodial arrangement with an adult who agreed to sponsor them with the Office of Refugee Resettlement (ORR), Division of Children's Services, U.S. Department of Health and Human Services.

134. Under that custodial arrangement with ORR the Sponsor is to “[p]rovide for the physical and mental well-being of the minor, including but not limited to, food, shelter, clothing, education, medical care and other services as needed.”

135. The Sponsor is authorized to enroll students in schools, including Dover City Schools.

136. Many of the Sponsors, like the children entrusted to them, are LEP.

137. Many of the LEP students enrolled in Dover City Schools are from Guatemala.

138. Many of those Dover City Schools-enrolled students from Guatemala suffered trauma in Guatemala and came to the United States to escape further trauma.

139. Many of the Dover City Schools students originally from Guatemala speak more than one language.

140. Many of the Dover City Schools students originally from Guatemala speak Spanish and indigenous, pre-Columbian languages, e.g., Quiche and Ixil.

141. Dover City Schools has AP classes at the high school and accelerated academic paths in elementary and middle school.

142. Dover City Schools, upon information and belief, have never considered determining if any of the LEP students would qualify for AP classes or accelerated academic paths.

143. During one of the school years relevant here a teacher in the LEP classroom, Dan Ifft, stood up on a desk or chair and yelled “Immigration! Immigration!” attempting to gain control of the classroom by scaring or intimidating the LEP students.

C. Plaintiff Immigrant Worker Project’s Work With Dover City Schools Parents And Students

144. The IWP was initiated in 1999 as a result of a study commissioned by the Ohio Catholic Rural Life Conference that was carried out in 1998. The IWP works with and organizes

immigrants regarding, e.g., workplace rights, human and immigration rights, leadership training, Limited English Proficiency (LEP) rights and health care, advocacy and networking, cultural and pastoral celebrations, educational programs, and microenterprise.

145. The IWP's activities and membership are focused on the Hispanic community. The IWP's members in Tuscarawas County, Ohio who are enrolled in DCS or are parents of DCS students are especially likely to be subjected to the Defendants' violations of the U.S. Constitution and federal law.

146. The Immigrant Worker Project has more than 600 members in Tuscarawas County, Ohio.

147. The Immigrant Worker Project has more than 350 members living in the city of Dover, Tuscarawas County, Ohio.

148. Most of the IWP members in the city of Dover are younger than 40 years of age and are thus school age or in prime childbearing years.

149. Many of the IWP members who live in Tuscarawas County, but not within the city of Dover, may relocate to the city of Dover.

150. IWP members in Dover, Ohio have talked to the Project about problems with obtaining an education in the Dover City Schools.

151. IWP members in Dover, Ohio have talked to the Project about the hostile attitude they experienced from Dover City Schools' administrators. The members believed this hostility was directed at them because of their national origin and Hispanic ethnicity.

152. Dover City Schools' administrators, including Defendant Birney and staff responsible for LEP students, were told by both their own staff and other professional educators that the education of LEP students by DCS was educationally unsound and based on discriminatory attitudes.

153. The IWP has been, and continues to be, harmed by Defendants' practices because those practices undermine IWP's organizational mission and divert IWP resources from the pursuit of other, related goals.

154. The IWP staff and members believe and have witnessed the concern caused in the Hispanic community by the Defendants' pattern or practice of intentionally discriminating against LEP students by their actions and low expectations of LEP students.

155. The IWP seeks only injunctive and declaratory relief from Defendants, as discussed below.

D. LEP Students' Experiences At Dover City Schools

1. Credits Required For Ohio High School Graduation

156. An average student receives 5.75 to 6.5 credits toward high school graduation in one academic year.

2. Ruperto Itzep Toc, F IS, And M IS

157. Plaintiff Ruperto Itzep Toc is the father of five children. He is acting as the next friend of two of those children in this action, M IS and F IS. He is employed in the chicken processing industry, a major employer in the Dover area.

158. Defendant DCS had Plaintiff Ruperto Itzep Toc complete forms in English, even though he does not read English. DCS also sent form letters to him in English only.

159. M IS, son of Ruperto, was born in Aldea Acul, Nebaj, Quiche, Guatemala, on November 26, 1999. He attended school through the sixth grade in Guatemala.

160. M IS enrolled in Dover City Schools in October, 2014. He was placed in the seventh grade by Dover City Schools.

161. M IS took the OTELA test in early 2015, received a Composite score of 1 and all of his domain scores were level 1 – 398 in Reading, 178 in Listening, 299 in Writing, and 226 in Speaking.

162. M IS was only evaluated by DCS for his knowledge of English, not for academic proficiency. He was placed in the seventh grade as are all high school age LEP Hispanic students in their initial enrollment.

163. F IS, daughter of Ruperto, was born in Aldea Acul, Nebaj, Quiche, Guatemala, on July 30, 2002. She attended school through the fifth grade in Guatemala.

164. F IS enrolled in Dover City Schools in April 2015. She was placed in the sixth grade by Dover City Schools.

165. F IS was only evaluated by DCS for her knowledge of English, not for academic proficiency.

166. F IS is repeating the sixth grade during the 2015 – 2016 academic year.

167. Plaintiff Ruperto Itzep Toc has two younger children – preschool age currently – that will enter Dover City Schools in the next few years.

168. Plaintiff Ruperto Itzep Toc believes those two younger children will not progress in English or academic proficiency if DCS continues in its failed LEP policies and practices.

169. Documents sent Ruperto by DCS are in English.

170. Interpreters have not been made available by DCS in Ruperto's contacts with DCS.

171. DCS has not advised Ruperto in writing as to how he can assist his children in becoming proficient in English and learning age appropriate academic content.

172. DCS has not advised Ruperto orally as to how he can assist his children in becoming proficient in English and learning age appropriate academic content.

3. Ana Ceto Raymundo, Jo PC And J PC

173. Plaintiff Ana Ceto Raymundo is the widowed mother of three children. She is acting as the next friend of two of those children in this action, J PC and Jo PC. She is employed in the chicken processing industry, a major employer in the Dover area.

174. Jo PC was born April 26, 2000, in Nebaj, Quiche, Guatemala.

175. Jo enrolled in Dover City Schools in January 2013.

176. Jo has taken the OTELA test three times.

177. Jo's Composite score on the OTELA in 2013 was 1.

178. Jo's Composite score on the OTELA in 2014 was 1.

179. Jo's Composite score on the OTELA in 2015 was 2.

180. Jo's domain scores on the 2015 OTELA test were still 1 on both Reading and Listening.

This means he was pre-functional in being able to understand English and in reading English.

181. J PC was born in Canton Xolacul, Nebaj, Quiche, Guatemala on May 20, 1998.

182. J PC enrolled in Dover City Schools in January 2013.

183. J PC progressed on his OTELA results from 1 to 2 to 3 on the 2013, 2014, and 2015 tests.

184. J PC has nevertheless received poor and mediocre grades

185. J PC was not identified by DCS as gifted or for AP classes.

186. Documents sent to Ana by DCS are in English.

187. For example, a letter was sent by DCS to Ana in January 2014 telling her that J PC failed a class, World History that he would need to graduate from high school.

188. Interpreters have not been made available by DCS for Ana's contacts with DCS.

189. DCS has not advised Ana in writing as to how she can assist her children in becoming proficient in English and learning age appropriate academic content.

190. DCS has not advised Ana orally as to how she can assist her children in becoming proficient in English and learning age appropriate academic content.

4. Dennis Hernandez Gonzalez

191. Plaintiff Dennis Hernandez Gonzalez was born in Aguacatán, Huehuetenango, Aldea Chex, Guatemala, on September 11, 1996.

192. Plaintiff Dennis Hernandez Gonzalez enrolled in Dover City Schools on May 13, 2013, and continued to be enrolled through the 2014 – 2015 academic year at Dover City Schools.

193. Plaintiff Dennis Hernandez Gonzalez earned only 4.50 high school credits during the 2013 – 2014 academic year, none of which were in core academic subjects required for graduation, but were instead electives.

194. After attending DCS for two years he was told he was still a freshman.

195. Plaintiff Dennis Hernandez Gonzalez earned only 2 high school credits during the 2014 – 2015 academic year, neither of which were in core academic subjects required for graduation, but were instead electives.

196. His OTELA scores decreased from the 2014 testing to the 2015 testing. His Composite OTELA score remained the same, a 1, but three of his four domain scores decreased from 2014 to 2015, i.e., Reading went from 548 to 454, Listening went from 523 to 398, Writing went from 482 to 544, and Speaking went from 510 to 466.

197. He moved to New Philadelphia, Tuscarawas County, Ohio, and enrolled in New Philadelphia Schools for the 2015 – 2016 academic year because of the discrimination he faced in the DCS system and because of DCS's failure to operate a evidence-based LEP program.

5. Francisco Brito Brito

198. Plaintiff Francisco Brito Brito was born on May 23, 1996, in Nebaj, Quiche, Guatemala.

199. Francisco enrolled in the Dover City Schools in August 2013.

200. Francisco advanced in the OTELA testing from a Composite 2 to a Composite 4 during the 2014 and 2015 testing. Additionally, all of his Domain scores improved in those two tests.

201. Despite his obvious academic ability he was subjected to the same policies described *supra* during the three academic years in question here.

202. Francisco was not identified for Advanced Placement courses.

203. Francisco did not accumulate credits commensurate with high school graduation in four years due to DCS's policies and practices.

6. Other DCS Students

204. Many LEP DCS students do not advance or they actually regress in their OTELA scores from year to year. For example, Claudia Ixcoy Lopez, an IWP member, enrolled in DCS since August 2009, has scored composite scores of 1, 1, 2, 2, 2, 2 for the 2010 through 2015 OTELA testing.

205. DCS's LEP program fails to meet Annual Measurable Outcomes.

206. Many Hispanic and LEP DCS students do not graduate and have dropped out or moved out of the district when they realized the combination of an inadequate LEP program and no academic progress toward high school graduation.

207. DCS routinely communicates in writing to parents and Sponsors² in English.

208. DCS routinely has parents or Sponsors who are LEP sign documents in English without adequate interpretation or explanation.

209. Many DCS staff are indifferent or even hostile to LEP students enrolled and attending DCS schools.

² The Office of Refugee Resettlement, U.S. Department of Health and Human Services, releases unaccompanied immigrant children to Sponsors. These Sponsors can be parents, relatives, or friends.

210. A good example of this indifference or hostility is when Defendant Birney, then the Dover High School principal, stated in a meeting regarding LEP issues that the LEP immigrant children enrolled in Dover Schools: “These children do not need to know a lot of English, only the difference between the words “mop” and “broom.” Also present at the meeting were Dover City Schools staff Brooke Grafe, Jack Edwards, Amy Harris, and others.

211. This statement by a major administrator made in the presence of and directed to DCS staff, communicated the belief that the LEP students are not intelligent, that the LEP students need only be educated or trained to a minimal level to work menial jobs and that the LEP immigrant students are not worthy of the same educational opportunities as the white DCS students.

212. Throughout the time period relevant here DCS administrators, were advised of the serious problems and legal violations of the Defendants’ LEP program.

213. These advisements regarding serious problems and legal violations were made by both DCS staff and professional educators not employed by Defendants.

214. Defendants Birney and DCS failed to comply with its various statutory and constitutional obligations by establishing a system and a pattern and practice of education that discriminates against LEP students and directly results in the denial of equal access to the education services in DCS, or by failing to effectively monitor, oversee and take action to ensure that such discrimination does not occur.

E. Harm to LEP Students by Defendants’ Discriminatory Conduct

215. Defendants knew or should have known that their discriminatory actions toward their LEP students could cause extensive harm to those students.

216. Defendants' discriminatory actions are known to cause psychological, physiological, academic, economic, and social harms.

217. As a result of Defendants' policies and pattern and practices toward LEP students enrolled in DCS Plaintiffs, and their members, have suffered harm in the form of negative academic outcomes.

218. These negative academic outcomes include lower academic performance, lower feelings of school belonging, less enjoyment of school, lower perceived value of DCS's belief in their ability, and less academic engagement.

219. As a result of Defendants' policies and pattern and practice of behavior toward LEP students enrolled in DCS, Plaintiffs and their members have suffered harm in the form of negative social outcomes.

220. These negative social outcomes include the increased chance of risky behaviors, delinquency, hanging out with deviant peers and rejection and isolation.

221. All of the negative social outcomes are predictive of poor mental health and dropping out of school.

222. Defendants' policies and pattern and practices toward LEP students in the early years of school has affected and continues to affect development as well as academic performance in the long and short-term.

223. Defendants' policies and pattern and practices have caused the disengagement of parents, adult family members, and Sponsors of LEP students within DCS.

224. Discrimination by Defendants prevents them from being seen by LEP students and their parents as places that welcome and help Hispanic parents and families overcome the struggles and discrimination they face in the larger society.

225. Defendants' policies and pattern and practices have resulted in structural discrimination in the form of segregation, lack of high-quality LEP programs, low teacher/school engagement with parents, and possible misdiagnosis of special education needs.

226. Defendants' policies and pattern and practices have resulted in personal discrimination against DCS LEP students resulting in negative interactions at school, narrow learning experiences, low intellectual expectations, and devaluation of home languages.

F. Class Action Allegations

227. Plaintiffs bring this class action on behalf of themselves and all others similarly situated.

The proposed class is defined as follows:

Class: All Limited English Proficient Hispanic students enrolled in Dover City Schools since May 16, 2014.

228. Plaintiffs and members of the Class bring this action for equitable, declaratory, and injunctive relief pursuant to subdivision (b)(2) of Rule 23 of the Federal Rules of Civil Procedure.

229. Plaintiffs are informed and believe and based thereon allege that there are more than 125 members of the proposed class making it so numerous that individual joinder of all of their members would be impracticable.

230. Joinder is also impracticable because the LEP student population of Dover City Schools undergoes change, because many class members are unaware of their rights, and, because class members' access to legal services and representation is hampered by language, cultural and economic barriers.

231. The Ohio Department of Education estimated an enrollment of 125 LEP students in Dover City Schools for the 2015 – 2016 academic year.

232. There are many questions of law and fact common to the representative Plaintiffs and the members of the Class, including the following:

a. The failure of Defendants to implement an educational program for Limited English Proficient students based on best practices or evidenced-based practices.

b. The existence of the policy or pattern and practice of the Defendants to intentionally discriminate against the Class by implementing educational programs for LEP students that have failed to assist them in becoming proficient in English and learn appropriate academic content.

233. The claims of the named Plaintiffs are typical of the claims of the Class because the named Plaintiffs have been subjected to or threatened with policies or practices that are identical or substantially similar to the policies and practices to which the class members have been subjected or with which the members of the Class have been threatened.

234. The organizational Plaintiff IWP has members or has worked with LEP students and their parents, guardians, or sponsors currently or formerly enrolled in Dover City Schools. IWP members have been subjected to Defendants' violations of the U.S. Constitution and federal law.

235. The named Plaintiffs will fairly and adequately protect the interests of the class. There is no conflict between the Plaintiffs and other class members. Moreover, Plaintiffs have retained counsel who are experienced in class action litigation and can adequately represent the interests of the class members as well as those of the named Plaintiffs.

236. Defendants have acted on grounds generally applicable to both the named Plaintiffs and other class members, making appropriate final declaratory and injunctive relief with respect to the members of the Class. The injuries suffered by the named Plaintiffs and other class members

as a result of Defendants' actions are capable of repetition yet may evade review, thereby making individual and class relief appropriate.

V. CLAIMS

FIRST CLAIM FOR RELIEF

Claim For Violation Of Title VI Of The 1964 Civil Rights Act, 42 U.S.C §§ 2000d - 2000d-

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237. Plaintiffs incorporate by reference the allegations in the paragraphs above as though fully set forth here.

238. Title VI of the Civil Rights Act of 1964 ("Title VI"), 42 U.S.C. § 2000d states that "no person in the United States shall be on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

239. Dover City Schools District's programs and activities receive federal financial assistance.

240. Plaintiffs have been denied participation in Dover City School District's programs by Defendants based upon their race, color, or national origin.

241. As a direct and proximate result of the Defendants' intentional discrimination Plaintiffs have suffered and will continue to suffer the harms and damages described above, and seek relief against the Defendants in their official capacity.

242. Plaintiffs seek injunctive and declaratory relief against Defendants Dover City Schools and Birney in their official capacities, enjoining them from continuing to engage in the above-described customs, policies, practices or conduct of failing to provide an evidence-based English

as a Second Language educational program to Limited English Proficient students that will assist them to become proficient in English.

SECOND CLAIM FOR RELIEF

**Fourteenth Amendment (42 U.S.C. § 1983) Claim For Violation Of The Right To Equal
Protection Of Law**

243. Plaintiffs incorporate by reference the allegations in the paragraphs above as though fully set forth here.

244. The Fourteenth Amendment to the U.S. Constitution provides that “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

245. Defendants, acting under color of state law, knowingly and intentionally perpetuated widespread and persistent customs, policies or practices in the administration of the education of Hispanic LEP students in a manner that impermissibly and invidiously targets Hispanic LEP students on account of their race, color, ethnicity, ancestry, and/or national origin.

246. Defendants’ customs, policies and practices impermissibly deprived these students of their right to full and equal access to educational opportunities, programs and activities and have been irreparably harmed.

247. Plaintiffs have a personal interest in their educational rights and/or the educational rights of themselves, their members, or their children.

248. Plaintiff parents have an obligation under state law to see that their minor children attend school and are hampered in the performance of that obligation by their reluctance to send their children to a school system where they will be subjected to an inferior education and discriminatory practices.

249. In addition and in the alternative, Defendants' widespread and persistent customs, policies and practices in the administration of the LEP educational program, including the varying non evidenced-based practices, violates the Equal Protection Clause of the United States Constitution because they resulted in harmful and invidious racially-disproportionate impact on Hispanic LEP students, which is unconstitutional discrimination on the basis of race, color, ethnicity, ancestry, and/or national origin.

250. The segregation of the LEP students by Defendants is a violation of Equal Protection.

THIRD CLAIM FOR RELIEF

Equal Educational Opportunities Act, 20 U.S.C. § 1703, Claim For Defendants Denying LEP Students Equal Educational Opportunity On Account Of Race, Color, Or National Origin

251. Plaintiffs incorporate by reference the allegations in the paragraphs above as though fully set forth here.

252. The Equal Educational Opportunities Act provides in relevant part that “[n]o [state actor] shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by--

(a) the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools; . . .

(c) the assignment by an educational agency of a student to a school, other than the one closest to his or her place of residence within the school district in which he or she resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, sex, or national origin among the schools of such agency than would result if such student were assigned to the school closest

to his or her place of residence within the school district of such agency providing the appropriate grade level and type of education for such student; . . .

(e) the transfer by an educational agency, whether voluntary or otherwise, of a student from one school to another if the purpose and effect of such transfer is to increase segregation of students on the basis of race, color, or national origin among the schools of such agency; or

(f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.”

253. Defendants, acting under color of state law, knowingly and intentionally perpetuated widespread and persistent customs, policies and practices in the administration of the education of Hispanic LEP students in a manner that impermissibly and invidiously targets Hispanic LEP students on account of their race, color, ethnicity, ancestry, and/or national origin.

FOURTH CLAIM FOR RELIEF

Ohio Constitutional Guarantee of Equal Protection, Ohio Constitution, Art. I, § 2

254. Plaintiffs incorporate by reference the allegations in the paragraphs above as though fully set forth here.

255. Article I, § 2 of the Ohio Constitution provides that “All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.”

256. Defendants, acting under color of state law, knowingly and intentionally perpetuated customs, policies and practices in the administration of the education of Hispanic LEP students in a manner that impermissibly and invidiously targets Hispanic LEP students on account of their race, color, ethnicity, ancestry, and/or national origin.

257. Defendants' customs, policies and practices impermissibly deprived these students of their right to full and equal access to educational opportunities, programs and activities and have been irreparably harmed.

258. Plaintiffs have a personal interest in their educational rights and/or the educational rights of their members and the obligation under state law to attend school and are hampered in the performance of that obligation by their reluctance to send their children to a school system where they will be subjected to an inferior education and discriminatory practices.

259. In addition and in the alternative, Defendants' customs, policies and practices in the administration of the LEP educational program, including the varying non evidenced-based practices, violates the Article I, § 2 of the Ohio Constitution because they resulted in harmful and invidious racially-disproportionate impact on Hispanic LEP students, which is unconstitutional discrimination on the basis of race, color, ethnicity, ancestry, and/or national origin.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Assert jurisdiction over this matter;
- B. Issue an order certifying this action to proceed as a class action pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure;
- C. Appoint the undersigned as class counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure;

D. Issue a judgment declaring that Defendants' policies, practices, acts, and omissions described herein violate Plaintiffs' rights under Title VI of the 1964 Civil Rights Act, 42 U.S.C §§ 2000d - 2000d-7;

E. Issue a judgment declaring that Defendants' policies, practices, acts, and omissions described herein violate Plaintiffs' rights under the Equal Educational Opportunities Act, 20 U.S.C. § 1703;

F. Issue a judgment declaring that Defendants' policies, practices, acts, and omissions described herein violate Plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States;

G. Issue a judgment declaring that Defendants' policies, practices, acts, and omissions described herein violate Plaintiffs' rights under the Equal Protection Clause of the Constitution of Ohio, Art. I, § 2;

H. Permanently enjoin Defendants, their subordinates, agents, employees, and all others acting in concert with them from subjecting Plaintiffs to the unconstitutional and illegal conditions described herein, and issue injunctive relief sufficient to rectify those conditions, including:

i. Immediately adopting an evidence-based system to teach Limited English Proficient students enrolled in Dover City Schools;

ii. Hiring qualified teachers licensed in Ohio and having a supplemental endorsement by the state of Ohio to Teach English as a Second Language;

iii. Within 30 days of the start of the school year the parent(s), guardian, or sponsor of LEP Dover City Schools must receive notice that their child has been identified as Limited English Proficient from Defendants;

iv. Dover City Schools must tell the parent the reasons for identifying their child as Limited English Proficient;

v. Dover City Schools must tell the parent their child's level of English proficiency, how that level was determined, and the status of the child's academic achievement, including

a. The methods of instruction child will receive and any other method the school system is using

b. How the program will meet the educational strengths and needs of the child;

c. How the program will specifically help the child learn English and meet age appropriate academic achievement standards for promotion and graduation;

d. The standards for the child being moved out of the LEP program and the expected rate of graduation from H.S. for such program;

e. If the child has a disability, how the program meets the child's Individual Education Program (IEP);

f. Right of the parent(s) to remove their child from the program;

g. Right of the parent to decline to enroll their child in the program;

h. Whether Dover City Schools failed to make progress on meeting objectives (Annual Measurable Objectives);

vi. These notifications will be understandable and in a language the parent can understand;

vii. Dover City Schools will outreach to parents of LEP children to inform parents how they can-

- a. be involved in the education of their children; and,
- b. be active participants in assisting their children--
 - (A) learn English;
 - (B) achieve at high levels in core academic subjects; and,
 - (C) meet the same challenging State academic content and student academic achievement standards as all children are expected to meet.

viii. The outreach by the school system shall include holding, and sending notice of opportunities for, regular meetings for the purpose of formulating and responding to recommendations from parents.

ix. Hire sufficient a licensed teachers with a supplemental endorsement by the state of Ohio to Teach English as a Second Language or carry out the education of LEP students so they meet Ohio Department of Education Annual Measurable Objectives for LEP students;

x. Hire sufficient paraprofessionals/interpreters to support LEP students so the students can progress their scores at least one numeric value on each year's OELPA test (or its successors);

xi. Provide effective services that include English language development as well as full access to and engagement in the District's comprehensive grade-level academic college and career readiness programs, core curriculum, electives, and extracurricular activities;

xii. DCS will strive to avoid linguistic isolation across and within schools by ensuring to the greatest extent possible that LEP students are integrated with non-LEP students in content-area instruction and for recess, electives, physical education, lunch, and library, and are not excluded from activities available to the general school population.

xiii. DCS will establish a program to identify LEP students who should be placed in accelerated pathways, Advanced Placement classes, and students who might have disabilities.

I. The Defendants will implement a program for protection against discrimination by encouraging a strong and positive ethnic identity for its LEP students, including using their diversity as a strength and learning tool for non-LEP students;

J. Award reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and 28 U.S.C. § 2412; and,

K. Grant any other relief the Court deems appropriate.

JURY DEMAND

Plaintiffs demand a jury trial on the claims triable as of right by jury set forth herein.

Respectfully submitted,

By: /s/ Mark Heller
Mark Heller (0027027)
Robert Cole (0083053)
Eugenio Mollo, Jr. (0081860)
ADVOCATES FOR BASIC LEGAL EQUALITY, INC.
525 Jefferson Ave., Suite 300
Toledo, OH 43604
419.255.0814 (phone)
419.259.2880 (fax)

mheller@ablelaw.org
bcole@ablelaw.org
emollo@ablelaw.org