

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

_____)
TANYA ACEVEDO,)
individually and as parent and next friend)
of A.A., a minor child; and)
))
THE KING’S CHOICE LEAH,)
Plaintiffs,)
))
vs.)
))
NEW YORK CITY DEPARTMENT OF)
EDUCATION;)
))
WILLIAM HARRINGTON,)
in his official capacity as)
Director of the New York City)
Central Office of Home Schooling;)
))
CARMEN FARINA,)
in her official capacity as)
Schools Chancellor of New York City; and)
))
ELIZABETH ROSE,)
in her official capacity as Deputy Schools)
Chancellor for Operations, New York City,)
))
Defendants.)
_____)

Index No. _____

**COMPLAINT AND
DEMAND FOR
JURY TRIAL**

Plaintiffs Tanya Acevedo, and The King’s Choice LEAH, by and through counsel, allege upon information and belief the following against Defendants.

INTRODUCTION

1. The New York City Department of Education (also known as the “New York City Board of Education” or the “New York City Panel for Education Policy”) oversees the operation of New York City’s thirty-four (34) school districts, as well as the New York City Central Office of Homeschooling. The Department is managed by Defendant Carmen Farina, in her official

capacity as the Schools Chancellor of New York City, and by a Board of thirteen members. For several years, the Department has followed a policy or custom that has routinely and repeatedly infringed on the rights of parents in New York City to choose the lawful alternative of homeschooling their children. Rather than follow the clear direction of New York's regulation governing homeschooling, these defendants regularly make demands not included in the regulation and fail to follow the deadlines imposed on them by the regulation. This routine, repeated bureaucratic indifference to the rights of parents to choose homeschooling has led to significant delays and loss of services, and has caused false reports of educational neglect to be made to the New York City Administration for Children's Services (hereinafter "ACS"), which have then caused needless, intrusive investigations of innocent parents. Making false reports of educational neglect would be a crime if done by an individual. See, Penal Law § 240.50(4).

2. The Plaintiffs seek declaratory and injunctive relief to compel defendants to simply follow the law that applies to them. Plaintiff Tanya Acevedo also seeks damages under 42 U.S.C. § 1983 for the civil rights violation caused by the Department's policy or custom that led to a false report and investigation of her by ACS.

PARTIES

3. Plaintiff Tanya Acevedo is a resident of the State of New York. Ms. Acevedo resides at 299 E. 3rd Street #6D, New York, NY 10009.

4. Ms. Acevedo is the mother of A.A., a minor child of compulsory attendance age, who resides with her in New York City, New York.

5. The King's Choice LEAH (Loving Education At Home) is an unincorporated voluntary membership association of homeschool families who reside in New York City. The King's Choice LEAH is headquartered at 2220 Burnett Street #6K, Brooklyn, NY 11229.

6. Defendant New York City Department of Education (hereinafter “the Department”) consists of the New York City Schools Chancellor, New York City Board of Education, the Schools Chancellor, and the district superintendents, community and citywide counsels, principals, and school leadership teams for New York City’s thirty-four (34) school districts.

7. Defendant William Harrington is the Director of the New York City Central Office of Home Schooling (hereinafter “Central Office”). In this capacity, Director Harrington is responsible for overseeing the processing of homeschooling paperwork for all parents who reside in a New York City school district. Plaintiffs bring suit against Director Harrington in his official capacity.

8. Defendant Carmen Farina is the Schools Chancellor of New York City. In this capacity, Chancellor Farina is responsible for chairing the New York City Board of Education, and overseeing the Deputy Schools Chancellor for Operations, the Central Office, and the Community Superintendents and High School Superintendents of New York City’s school districts. Plaintiffs bring suit against Chancellor Farina in her official capacity.

9. Defendant Elizabeth Rose is the Deputy Schools Chancellor for Operations for New York City. In this capacity, Deputy Chancellor Rose is responsible for overseeing all nonpublic schools operating in New York City, including the Central Office. Plaintiff brings suit against Deputy Chancellor Rose in her official capacity.

JURISDICTION AND VENUE

10. This court has personal jurisdiction over the Defendants pursuant to N.Y. C.P.L.R. §§ 301 and 302, in that the Defendants’ principal places of business are in the State of

New York, and the acts of the Defendants which are the basis of jurisdiction were committed in the State of New York.

11. This court may render a declaratory judgment as to the rights of the parties pursuant to N.Y. C.P.L.R. § 3001.

12. Venue is proper pursuant to N.Y. C.P.L.R. § 503(a), in that Plaintiff Tanya Acevedo is a resident of New York County.

STATEMENT OF FACTS

A. Home Instruction in New York State, Generally

13. New York law recognizes that a child may satisfy compulsory attendance requirements by either “attend[ing] a public school” or receiving instruction “elsewhere.” Education Law (“EDL”) § 320(4)(1).

14. A child may receive instruction elsewhere than at public school so long as the instruction is “at least substantially equivalent to the instruction given to minors of like age and attainments at the public schools.” EDL § 320(4)(2).

15. Pursuant to this statute, the New York State Board of Education created regulations governing home instruction, codified at 8 N.Y.C.R.R. § 100.10 (hereinafter “Section 100.10”).

16. Home instruction programs are recognized by the State of New York as a lawful form of private instruction.

17. Home instruction programs in New York are governed exclusively by Section 100.10.

18. Section 100.10(a) states that the purpose of Section 100.10 is “to establish procedures to assist school authorities in fulfilling their responsibility under Education Law, and

in meeting their responsibility of determining the competency of the instructor and substantial equivalence of instruction being provided at home to students of compulsory school attendance age, and to assist parents who exercise their right to provide required instruction at home to such students in fulfilling their responsibilities under [the] Education Law.” Section 100.10(a) (internal citations omitted).

19. Section 100.10(b)(1) states that a parent who wishes to homeschool “shall annually provide written notice to the superintendent of schools of their school district of residence of their intention to educate their child at home. . . .”

20. Section 100.10(b)(2) states that a parent who decides to commence home instruction after the start of the school year “shall provide written notice of their intention to educate their child at home within 14 days following the commencement of home instruction within the school district.”

21. Section 100.10(b) is clear that home instruction is “commenced” when the parent withdraws their child from school.

22. Section 100.10(b) is clear that parents may “commence” home instruction up to 14 days before filing the written notice of intent.

23. Section 100.10(c)(1) states that “[w]ithin 10 business days of the receipt of the notice of intention to instruct at home, the school district shall send to the parents a copy of this section 100.10 of the Regulations of the Commissioner of Education and a form on which to submit an individualized home instruction plan (IHIP) for each child of compulsory attendance age who is to be taught at home.”

24. Section 100.10(c)(2) states that within four weeks of receiving the materials from the school district, “the parent shall submit the completed IHIP form to the school district.”

25. Section 100.10(c)(2) states that “The district shall provide assistance in preparation of the forms, if requested by the parents.”

26. Section 100.10(c)(3) states that “[w]ithin 10 business days of receipt of the IHIP ... the school district shall either notify the parents that the IHIP complies with the requirements of subdivisions (d) and (e) of this section or shall give the parents written notice of any deficiency in the IHIP.”

27. Section 100.10(d) states that the IHIP shall contain the child’s name, age and grade level; a list of syllabi, curriculum materials, textbooks, or plan of instruction for each required subject, which are enumerated in Section 100.10(e); the dates for submission of quarterly reports to the school district, spaced in even and logical periods; and the names of the individuals providing instruction. Section 100.10(d)(1)-(4).

28. In addition to these regulations, the Department of Education has also created a document entitled “Home Instruction Questions and Answers” (hereinafter “Home Instruction Q&A”), which is published and publicly available at www.p12.nysed.gov/sss/homeinstruction/homeschoolingqanda.html.

29. In the Home Instruction Q&A, #67, in answer to the question, “**May a district refuse to consider a parent’s request for home instruction if it occurs during the school year?**” the Department says: “*No. The district must respond to a letter of intent and to the submission of an IHIP at any time during the school year.*”

30. In the Home Instruction Q&A, #68, in answer to the question, “**If home instruction begins during the normal school year, which timelines apply?**” the Department says that parents “*must file a letter of intent within 14 days of beginning home instruction within*

the district,” and that “within 10 days of receiving the letter, the district must furnish the parent with a copy of C.R. 100.10 and an IHIP form for each child.”

B. Homeschooling in New York City

31. In 2002, the City reorganized the Board of Education. See, 2002 N.Y. Laws Ch. 91.

32. Under the reorganization the “Board of Education of the City School District of the City of New York” was reconstituted as a thirteen-member panel.

33. The new law granted the Mayor of New York City authority to appoint a Schools Chancellor who shall serve as the chair of the Board.

34. The law further granted the Mayor of New York City authority to appoint seven members to serve on the Board.

35. Additionally, each Borough President was granted authority to appoint one member to serve on the Board.

36. In 2002, the Board adopted Bylaws which designated itself as the “Panel for Educational Policy of the Department of Education of the City School District of the City of New York.”

37. In these Bylaws, the Board designated the Board, together with the Chancellor, superintendents, community and citywide counsels, principals, and school leadership teams as the “Department of Education of the City of New York” (hereinafter “the Department”).

38. New York City consists of thirty-four (34) school districts: District 1, District 2, District 3, District 4, District 5, District 6, District 7, District 8, District 9, District 10, District 11, District 12, District 13, District 14, District 15, District 16, District 17, District 18, District 19,

District 20, District 21, District 22, District 23, District 24, District 25, District 26, District 27, District 28, District 29, District 30, District 31, District 32, District 75, and District 79.

39. Each of these districts is overseen by a Community Superintendent, who is appointed by the Schools Chancellor, and who is responsible for supervising the principals of all public elementary and public middle schools in the school district.

40. Each of these districts is overseen by a High School Superintendent, who is appointed by the Schools Chancellor, and who is responsible for supervising the principals of all public high schools and public secondary schools in the school district.

41. Prior to 2006, district superintendents were responsible for discharging the duties assigned to school districts under Section 100.10 for all families who chose to homeschool in New York City.

42. In 2006, the Government of New York City established the New York City Central Office of Home Schooling (hereinafter "Central Office").

43. The Central Office is overseen by a Director, who is appointed by and reports to the Schools Chancellor and the Deputy Schools Chancellor for Operations.

44. On information and belief, the Central Office was established to fulfill the duties assigned to school district superintendents under Section 100.10 for all families who choose to homeschool in New York City.

45. On information and belief, since its establishment in 2006, the Central Office has assumed the duties assigned to school districts under Section 100.10 for all families who choose to homeschool in New York City.

46. The Department maintains a website for the Central Office of Home Schooling, available at <http://schools.nyc.gov/StudentSupport/GuidanceandCounseling/HomeSchooling/default.htm>.

47. The Central Office's website states that "Parents of children who are currently home schooled in NYC must send all compliance items directly to the NYC Department of Education's Central Office of Home Schooling, 333 Seventh Avenue, 7th Floor, New York, NY 10001. (Please note compliance items are no longer accepted via fax.)"

48. The Central Office's website states that "Parents seeking information about enrolling in home schooling in New York City should contact the NYC Department of Education's Office of Home Schooling."

49. On information and belief, the Central Office has assumed the specific duty to "send to the parents a copy of this section 100.10 of the Regulations of the Commissioner of Education and a form on which to submit an individualized home instruction plan (IHIP) for each child of compulsory attendance age who is to be taught at home" "[w]ithin 10 business days of the receipt of the notice of intention to instruct at home." Section 100.10(c)(1).

50. On information and belief, the Central Office has assumed the specific duty to "either notify the parents that the IHIP complies with the requirements of subdivisions (d) and (e) of this section or shall give the parents written notice of any deficiency in the IHIP" "[w]ithin 10 business days of receipt of the IHIP." Section 100.10(c)(3).

51. On information and belief, the Central Office maintains and updates a registry of students in New York City in an electronic student database.

52. On information and belief, the Central Office is responsible for transferring a student's enrollment status from their assigned public school to a designation as a homeschooled student within the New York City student database.

53. The Central Office receives and processes applications from parents of home instruction students to obtain Student MetroCards, which allow students to ride New York City buses and trains for a reduced rate.

54. Two applications for Student MetroCards are included in the packet that includes the IHIP form and a copy of Section 100.10. The applications must be filled out and returned with the IHIP to the Central Office.

55. On December 30, 2013, Mayor de Blasio appointed Defendant Carmen Farina as New York City Schools Chancellor.

56. On April 3, 2015, Chancellor Farina appointed Defendant Elizabeth Rose as Deputy Schools Chancellor of Operations.

57. On information and belief, Director Harrington was appointed as Director of the Central Office prior to January 28, 2016.

C. Plaintiff Tanya Acevedo

58. Ms. Acevedo enrolled A.A. in The Earth School for the 2015-2016 school year.

59. On Thursday, January 28, 2016, Ms. Acevedo mailed a "Notice of Intention to Instruct at Home" to Defendant Harrington at the Central Office, via USPS Certified Mail.

60. In her "Notice of Intention to Instruct at Home," Ms. Acevedo informed the Central Office that she intended to homeschool A.A.

61. In her "Notice of Intention to Instruct at Home," Ms. Acevedo asked that Defendant Harrington provide the response required by Section 100.10(c)(1), and provided Defendant Harrington with a mailing addressed where those materials could be sent.

62. On Thursday, January 28, 2016, Ms. Acevedo mailed a "Notice of Withdrawal from Public School" to Ms. Abbe Futterman of The Earth School, via USPS Certified Mail.

63. In her "Notice of Withdrawal from Public School," Ms. Acevedo informed The Earth School that she was withdrawing A.A. from The Earth School, effective February 1, 2016.

64. In her "Notice of Withdrawal from Public School," Ms. Acevedo informed The Earth School that she would comply with Section 100.10 by filing a notification of intent to homeschool.

65. On information and belief, The Earth School received Ms. Acevedo's "Notice of Withdrawal from Public School" on Monday, February 1, 2016.

66. The Central Office received Ms. Acevedo's Notice of Intention to Instruct at Home" on Monday, February 1, 2016.

67. Upon receiving Ms. Acevedo's notice on February 1, 2016, the Central Office was required to provide Ms. Acevedo with a copy of Section 100.10 and a form upon which to submit an IHIP within 10 business days. Section 100.10(c)(1).

68. The tenth business day after February 1, 2016, fell on Tuesday, February 16, 2016.

69. The Central Office did not send Ms. Acevedo a copy of Section 100.10 or a form on which to submit an IHIP on or before February 16, 2016.

70. The Central Office did not send Ms. Acevedo a copy of Section 100.10 or a form on which to submit an IHIP until March 16, 2016.

71. Ms. Acevedo did not receive a copy of Section 100.10 or the IHIP form from the Central Office until 31 business days after the Central Office received Ms. Acevedo's notice of intent.

72. On Friday, February 26, 2016, Ms. Acevedo received a phone call from a man who identified himself as an employee of the Central Office.

73. The Central Office's employee asked Ms. Acevedo if she was currently homeschooling A.A.

74. Ms. Acevedo told the Central Office's employee that she was currently homeschooling A.A., with the help of her pastor's family, Richard and Ivette Ramirez.

75. The Central Office's employee then asked Ms. Acevedo for her current address, which Ms. Acevedo provided to him.

76. The Central Office's employee also asked Ms. Acevedo where A.A. was being homeschooled.

77. Ms. Acevedo told the Central Office's employee that A.A. was primarily receiving instruction in the Ramirez's home.

78. The Central Office's employee told Ms. Acevedo that A.A.'s home instruction had to take place in Ms. Acevedo's home.

79. Contrary to the assertion of the Central Office's employee, New York law does not require that a student can receive home instruction only in the parent's home.

80. In fact, Section 100.10 explicitly permits parents to designate other individuals to assist the parent in providing instruction to students who are educated at home.

81. In fact, Section 100.10 places no restriction that requires individuals who are assisting in home instruction to do so solely within the parent's home.

82. The Central Office's employee also demanded that Ms. Acevedo provide the Central Office with a copy of her current lease.

83. Section 100.10 does not require individuals who are homeschooling to provide anyone with proof of residency.

84. Ms. Acevedo requested that the Central Office's employee send any further communication to her in writing.

85. On Tuesday, March 1, 2016, Ms. Acevedo sent a follow-up letter to Defendant Harrington at the Central Office, via USPS Certified Mail.

86. In this letter, Ms. Acevedo informed Defendant Harrington that she had received a call on Friday, February 26, from someone at the Central Office, and requested that future inquiries about her homeschool program be made in writing.

87. In this letter, Ms. Acevedo also provided Defendant Harrington with her current address, and informed him that she would be moving to a new address within a week or two.

88. On Wednesday, March 2, 2016, Ms. Acevedo was preparing to move from her apartment to a new residence in New York City.

89. On the morning of Wednesday, March 2, 2016, Ms. Acevedo received a phone call from a woman who identified herself as an employee of The Earth School.

90. The Earth School's employee told Ms. Acevedo that A.A. had been absent from school for over a month.

91. Ms. Acevedo asked why A.A. was still on the attendance roster.

92. Ms. Acevedo told The Earth School employee that she had withdrawn A.A. from The Earth School to homeschool him, and that she had notified the school of that fact both verbally and in writing.

93. The Earth School's employee told Ms. Acevedo that The Earth School had not yet received any confirmation from the Central Office that A.A. was being homeschooled.

94. Ms. Acevedo told The Earth School's employee that she had mailed her notice to the Central Office on January 28, 2016.

95. Ms. Acevedo told The Earth School's employee that the Central Office had not yet sent her the IHIP and other forms required by Section 100.10(c)(1).

96. The Earth School's employee told Ms. Acevedo that because The Earth School had not yet received any confirmation from the Central Office that A.A. was being homeschooled, The Earth School had kept A.A.'s name on their attendance roster.

97. The Earth School's employee told Ms. Acevedo that because The Earth School had not yet received any confirmation from the Central Office that A.A. was being homeschooled, The Earth School had marked A.A. "absent" from school since his withdrawal from The Earth School on February 1, 2016.

98. Ms. Acevedo reiterated to The Earth School's employee that she had submitted her notice of intent to the Central Office, and that the Central Office was past-due in sending her the IHIP and forms required by Section 100.10(c)(1).

99. Ms. Acevedo asked The Earth School's employee to contact the Central Office to verify that her notice had been received, and that the Central Office had not yet sent her the IHIP and forms required by Section 100.10(c)(1).

100. On information or belief, The Earth School employee never followed up with the Central Office to confirm that Ms. Acevedo's notice had been received by the Central Office, or that the Central Office had not yet sent her the IHIP and forms required by Section 100.10(c)(1).

101. At around 11:00 a.m. on Wednesday, March 2, 2016, while A.A. was receiving instruction, Ivette Ramirez heard the doorbell to her apartment ring.

102. When Ms. Ramirez answered the door, she was confronted by a woman who identified herself as an employee of the "Department of Education."

103. On information and belief, this woman was an employee of the Central Office.

104. The Central Office's employee asked Ms. Ramirez if this was the Acevedo residence.

105. Ms. Ramirez told the Central Office's employee that this was not the Acevedo residence.

106. Upon hearing this, the Central Office's employee left Ms. Ramirez's residence.

107. On Wednesday, March 2, 2016, shortly after 7:00 P.M., Ms. Acevedo was preparing to go to church when she was interrupted by a knock at her front door.

108. When Ms. Acevedo answered the door, she was confronted by a woman who identified herself as April Lestansky, a Social Worker with the New York City Administration for Children's Services ("ACS").

109. ACS is a department in the New York City municipal government.

110. ACS is overseen by the Deputy Mayor for Health & Human Services.

111. ACS is responsible for investigating allegations of educational neglect made in New York City.

112. Ms. Lestansky told Ms. Acevedo that The Earth School had called ACS and reported that A.A. was a child of compulsory attendance age who was not attending school.

113. In actual fact, A.A. had been continuously homeschooled by Ms. Acevedo and the Ramirezes since A.A. was withdrawn from The Earth School on February 1, 2016.

114. Ms. Acevedo told Ms. Lestansky that A.A. had been continuously homeschooled by Ms. Acevedo and the Ramirezes since A.A. was withdrawn from The Earth School on February 1, 2016.

115. Ms. Lestansky demanded that Ms. Acevedo allow her to enter the Acevedo home and interview A.A. and his sibling.

116. Ms. Acevedo asked Ms. Lestansky whether there were any allegations that raised safety concerns about the condition of the Acevedo home.

117. Ms. Lestansky confirmed that there were no safety concerns about the condition of the Acevedo home.

118. Ms. Lestansky told Ms. Acevedo that the only issue was that the school had been marking Ms. Acevedo's son absent for over a month.

119. Ms. Acevedo asked Ms. Lestansky to wait outside her home, and withdrew into her home to call her pastor, Mr. Ramirez.

120. After Mr. Ramirez arrived Ms. Acevedo explained that she was in the process of moving and that her paperwork was packed away but she could provide it on the following day.

121. Ms. Lestansky stated that she wanted to see both the proof of homeschooling and A.A. at her office the next day, and then left the Acevedo home.

122. On Friday, March 5, 2016, Ms. Acevedo and Mr. Ramirez met with Ms. Lestansky.

123. At the meeting, Ms. Lestansky asked Ms. Acevedo questions about her homeschool program.

124. Ms. Acevedo answered Ms. Lestansky's questions, and allowed Ms. Lestansky to review A.A.'s homeschool records and curriculum.

125. Ms. Lestansky told Ms. Acevedo that she would inform the Central Office of Ms. Acevedo's new address.

126. Ms. Lestansky told Ms. Acevedo that she would ask the Central Office to send Ms. Acevedo a copy of Section 100.10 and an IHIP form.

127. On March 16, 2016, 47 days after Ms. Acevedo had submitted her notice, the Central Office provided Ms. Acevedo with a copy of Section 100.10 and an IHIP form.

128. On information and belief, the Central Office did not transfer A.A. from The Earth School to home instruction within the New York City student database until on or after March 16, 2016.

129. On information and belief, the Central Office did not transfer A.A. from The Earth School to home instruction within the New York City student database until at least 47 days had passed since Ms. Acevedo's notice was submitted to the Central Office.

130. On March 21, 2016, ACS determined that the allegations made by The Earth School against Ms. Acevedo were unfounded and closed its investigation of Ms. Acevedo.

131. On March 30, 2016, Ms. Acevedo submitted her IHIP form to the Central Office, which was within four weeks of receiving the materials from the Central Office as required by Section 100.10.

132. The Central Office did not provide Ms. Acevedo with an acknowledgment that her completed IHIP complied with the requirements of Section 100.10.

133. The Central Office did not provide Ms. Acevedo with a written notice of any deficiency in her completed IHIP.

D. Plaintiff The King's Choice LE.A.H.

134. The King's Choice LEAH is a chapter of New York State LEAH (Loving Education At Home), a statewide organization dedicated to supporting and promoting home education throughout New York.

135. The King's Choice LEAH offers support to homeschooling parents, including helping members fill out homeschool notices of intent, IHIPs, and quarterly reports.

136. The King's Choice LEAH offers quarterly meetings that member families can attend to obtain practical, emotional, and spiritual support for their homeschooling.

137. Homeschool families who join The King's Choice LEAH pay an annual fee to belong to the association.

138. Marguerite Hansen is chapter leader of The King's Choice LEAH.

139. As the chapter leader of The King's Choice LEAH, Hansen has personal knowledge of numerous member families who have experienced problems with homeschooling due to the Central Office's failure to correctly and timely process homeschool notices of intent and IHIPs.

140. One member of The King's Choice LEAH submitted her notice of intent to instruct her children at home for the 2016-17 school year to the Central Office by certified mail, return receipt requested. She received no response and no IHIP packet. She mailed the notice a second time, and again received no response and no IHIP form. She then received numerous calls from her local school district, insisting that if she did not immediately enroll her child in public school, they would report her to ACS. Eventually, she had to go down to the Central Office in person and fill out the IHIP before her school district would cease calling and threatening her.

141. Numerous members of The King's Choice LEAH have had to send their notices of intent twice because the Central Office claimed it did not receive the first one, even though they were sent certified mail, return receipt requested. When these members called the Central Office to explain that the notice of intent was already sent, their calls were never returned.

142. Numerous member families have received telephone calls from local schools or school districts, threatening to send ACS to investigate educational neglect, even though the families have filed their notices of intent, because the Central Office has not yet notified the schools that the families are homeschooling.

143. Four years ago, Hansen submitted her notice of intent and her IHIP to the Central Office. The Central Office did not notify her school or school district, so she received a nasty call from the school threatening to report her to ACS if she did not bring her son and enroll him in public school the very next day. She called the Central Office, who then finally contacted the school to confirm that she was homeschooling in compliance with the law.

144. Homeschooled children in New York City are eligible to receive a MetroCard. One member of The King's Choice LEAH timely submitted all legally required information for the 2016-17 school year, including an application for a MetroCard. Although she has called the Central Office numerous times, the Central Office has still not issued her MetroCard or acknowledgment that her IHIP is in compliance.

145. On information and belief, numerous homeschooled children who are otherwise eligible to have a MetroCard have either been denied or delayed in receiving them because of the Central Office's failure to follow the deadlines in Section 100.10.

FIRST CAUSE OF ACTION

Declaratory Judgment (N.Y. C.P.L.R. § 3001)

146. The allegations contained in paragraphs 1 through 145 are hereby realleged and incorporated by reference herein.

147. Under the supervision of the Department, Director Harrington, Chancellor Farina, and Deputy Chancellor Rose, the Central Office requires that parents who wish to homeschool supply all required documentation to the Central Office for processing.

148. Under the supervision of the Department, Director Harrington, Chancellor Farina, and Deputy Chancellor Rose, the Central Office accepted receipt of Ms. Acevedo's Notice of Intent on Monday, February 1, 2016.

149. The Central Office was required by Section 100.10 to provide Ms. Acevedo with an IHIP no later than Tuesday, February 16, 2016, which was ten (10) business days after the Central Office received of Ms. Acevedo's notice of intent.

150. Under the supervision of the Department, Director Harrington, Chancellor Farina, and Deputy Chancellor Rose, the Central Office did not send Ms. Acevedo an IHIP form until March 16, 2016, which was thirty-one (31) business days after the Central Office received of Ms. Acevedo's notice of intent.

151. While Ms. Acevedo was waiting for the Central Office to send her the required IHIP form, the Central Office, acting under the supervision of the Department, Director Harrington, Chancellor Farina, and Deputy Chancellor Rose, continued to list A.A. on the New York City student database as a student enrolled at The Earth School.

152. While Ms. Acevedo was waiting for the Central Office to send her the required IHIP form, she was reported to ACS by The Earth School.

153. The Earth School reported Ms. Acevedo to ACS because the Central Office, acting under the supervision of the Department, Director Harrington, Chancellor Farina, and

Deputy Chancellor Rose, had not updated the New York City student database to reflect that Ms. Acevedo had chosen to homeschool A.A.

154. The Central Office is required by Section 100.10 to provide parents who have submitted an IHIP with either confirmation that the completed IHIP complied with the requirements of Section 100.10, or with written notice of any deficiencies, no later than ten (10) business days after the Central Office receives the completed IHIP.

155. The Central Office's failure to provide an IHIP form to homeschooling parents within the mandatory deadlines established in Section 100.10 is contrary to state law.

156. The Central Office's actions resulted in the filing of a report of educational neglect against Ms. Acevedo.

157. The Central Office's actions resulted in an ACS investigation into the conduct of Ms. Acevedo that was ultimately determined to be unfounded.

158. The Central Office's failure to provide an IHIP form to homeschooling parents within the mandatory deadlines established in Section 100.10 was injurious to the rights of Ms. Acevedo.

159. Ms. Acevedo submitted her completed IHIP form to the Central Office on March 30, 2016.

160. The Central Office was required by Section 100.10 to provide Ms. Acevedo with either confirmation that her IHIP complied with Section 100.10, or written notice of any deficiencies, no later than Wednesday, April 13, 2016, which was ten (10) business days after the Central Office received Ms. Acevedo's completed IHIP.

161. As of the date this complaint was filed, the Central Office, acting under the supervision of the Department, Director Harrington, Chancellor Farina, and Deputy Chancellor

Rose, still has not provided Ms. Acevedo with an acknowledgment that her completed IHIP for the 2015-2016 school year complied with the requirements of Section 100.10, or a written notice of any deficiency in her completed IHIP.

162. The Central Office's failure to provide a response to homeschooling parents who have submitted an IHIP form, within the mandatory deadlines established in Section 100.10, is contrary to state law.

163. The Central Office's failure to provide a response to homeschooling parents who have submitted an IHIP form, within the mandatory deadlines established in Section 100.10, was injurious to the rights of Ms. Acevedo.

164. Member families belonging to Plaintiff The King's Choice LEAH have received hostile communications from their schools or school districts, including threats to report them to ACS, because the Central Office, acting under the supervision of the Department, Director Harrington, Chancellor Farina, and Deputy Chancellor Rose, has not updated the New York City student database to reflect that they are legally instructing their children at home.

165. Member families belonging to Plaintiff The King's Choice LEAH have failed to receive proper acknowledgement that their home instruction programs are in compliance with New York law because the Central Office, acting under the supervision of the Department, Director Harrington, Chancellor Farina, and Deputy Chancellor Rose, has not fulfilled its obligations under Section 100.10.

166. Member families belonging to Plaintiff The King's Choice LEAH have been denied MetroCards (or issuance has been needlessly delayed) because the Central Office, acting under the supervision of the Department, Director Harrington, Chancellor Farina, and Deputy Chancellor Rose, has not fulfilled its obligations under Section 100.10.

SECOND CAUSE OF ACTION

Violation of Plaintiff's Right under the Fourteenth Amendment to Direct the Education of her Child (42 U.S.C. § 1983)

167. The allegations contained in paragraphs 1 through 166 are hereby realleged and incorporated by reference herein.

168. Under the supervision of the Department, Director Harrington, Chancellor Farina, and Deputy Chancellor Rose, the Central Office failed to discharge its duties towards Ms. Acevedo and The King's Choice LEAH in compliance with the requirements of Section 100.10.

169. The Central Office's actions with regards to Ms. Acevedo and The King's Choice LEAH indicates a pattern of behavior whereby the Central Office fails to discharge its duties to homeschooling parents within the mandatory deadlines established by Section 100.10.

170. The Central Office's actions with regards to Ms. Acevedo and The King's Choice LEAH indicate an unofficial custom whereby the Central Office fails to discharge its duties to homeschooling parents within the mandatory deadlines established by Section 100.10.

171. The Central Office's actions with regards to Ms. Acevedo and The King's Choice LEAH indicate an official policy or custom whereby the Central Office discharges its duties towards homeschooling parents on a time table that extends beyond the mandatory deadlines established by Section 100.10.

172. The Central Office's repeated failure to discharge its duties to homeschooling parents in compliance with Section 100.10 interferes with the federal constitutional right of parents who have chosen home instruction as a lawful form of private instruction for their children.

173. Ms. Acevedo, by and through her attorneys, provided Director Harrington with an account of the hardships caused by the Central Office's failure to discharge its duties in compliance with Section 100.10, in March 2016.

174. Director Harrington had actual or constructive knowledge that the Central Office's failure to discharge its duties in compliance with Section 100.10 were causing hardship to families who had chosen to homeschool their children as a lawful form of private instruction.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this court:

A. Declare that the policy or custom adopted by the Defendants in the administration of home instruction in New York City is contrary to state law, specifically 8 N.Y.C.R.R. § 100.10;

B. Enjoin Defendants to cease and desist from following its own policy and custom and instead follow the requirements imposed on them by 8 N.Y.C.R.R. § 100.10;

C. Enjoin Defendants to update the New York City student database to reflect the fact that the student is being homeschooled upon receipt of a parent's notice of intent to homeschool;

D. Enjoin Defendants to cease causing false educational neglect complaints to be made to the Administration of Children's Services;

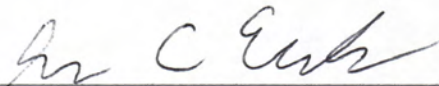
E. Enjoin Defendants to abolish the New York City Central Office of Home Schooling and assign the duties respecting home instruction back to the superintendents of the 34 school districts as required by 8 N.Y.C.R.R. § 100.10;

F. Award compensatory damages in favor of each of Tanya Acevedo and A.A. for interfering with Ms. Acevedo's federal constitutional right to choose home instruction as a lawful form of private instruction for her child, in an amount to be determined by the finder of fact in accordance with the proof, plus interest at the legal rate until paid;

- G. Award Plaintiffs costs and attorney's fees pursuant to 42 U.S.C. § 1988;
- H. Grant the Plaintiffs such other relief as may be deemed just and proper; and
- I. Grant the Plaintiffs a trial by jury when the issues are joined.

Dated: New York, NY
December 5, 2016

THE LAW OFFICE OF SEAN C. ECCLES



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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

_____)
TANYA ACEVEDO,)
 individually and as parent and next friend)
 of A.A., a minor child; and)
_____)
THE KING'S CHOICE LEAH,)
 Plaintiffs,)
_____)
vs.)
_____)
NEW YORK CITY DEPARTMENT OF)
 EDUCATION;)
_____)
WILLIAM HARRINGTON,)
 in his official capacity as)
 Director of the New York City)
 Central Office of Home Schooling;)
_____)
CARMEN FARINA,)
 in her official capacity as)
 Schools Chancellor of New York City; and)
_____)
ELIZABETH ROSE,)
 in her official capacity as Deputy Schools)
 Chancellor for Operations, New York City,)
_____)
 Defendants.)
_____)

Index No. _____

COMPLAINT

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