

REBEKAH DILLER (RD-7791)
ANNA SCHISSEL (AS-1004)
ARTHUR EISENBERG (AE-2012)
DONNA LIEBERMAN (DL-1268)
NEW YORK CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 17th Floor
New York, New York 10004
(212) 344-3005

CAROLINE MALA CORBIN (CC-8985)
125 Broad Street, 26th Floor
New York, New York 10004
(212) 558-4991

Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

JANE DOE, by and through her mother and next friend,
MS. DOE; and SUSAN ROE, by and through her mother
and next friend, MS. ROE, :

Plaintiffs,

No. 03 Civ. ____

v.

COMPLAINT;

JURY DEMAND

LAVERN REID, in her individual and official capacity as
Principal of I.S. 164; VERA HAMBURGER, in her
individual and official capacity as administrator of I.S. 164;
NEW YORK CITY DEPARTMENT OF EDUCATION;
and THE CITY OF NEW YORK, :

Defendants.

----- X

INTRODUCTION

1. This is an action to vindicate the civil rights of the plaintiffs, two recent graduates of Edward W. Stitt School, Intermediate School 164, 401 West 164th Street, New York, NY, 10032 (“I.S. 164”), a New York City public school. As punishment for allegedly attending a “hooky party,” I.S. 164 administrators required plaintiffs to subject themselves to invasive medical examinations, including a pelvic exam, a pregnancy test and a screening for sexually transmitted diseases (“STDs”). Specifically, these administrators, in effect, indefinitely suspended plaintiffs until, as a condition of their return to classes, plaintiffs underwent invasive medical tests and submitted a note from a doctor which specified the tests they had undergone and stated that they were neither pregnant nor infected with any of the tested diseases. Furthermore, these administrators imposed these unlawful conditions on the plaintiffs because of their gender, i.e., upon information and belief, the administrators permitted the male I.S. 164 student who allegedly attended the same party to return to school without undergoing similar invasive medical examinations.

2. These medical examinations bear no relationship to plaintiffs’ fitness to attend school. Indeed, a positive pregnancy or STD test result does not provide a valid basis for excluding a student from school. I.S. 164 administrators violated plaintiffs’ federal constitutional and statutory rights when they compelled them, with no legal justification, to obtain and reveal the results of highly personal medical information as a condition of terminating their suspensions.

3. Plaintiff students JANE DOE and SUSAN ROE, and their mothers, MS. DOE and MS. ROE, seek declaratory and injunctive relief and damages

pursuant to 42 U.S.C. § 1983 and Title IX. In particular, they seek, among other things, (1) a declaration that school officials violated their rights; (2) injunctive relief including but not limited to (a) ordering defendants to expunge all student records of confidential medical records as well as any attendance, disciplinary or other records related to this incident; (b) ordering defendants to return to plaintiffs all school records related to the compelled submission of private medical information; and (c) ordering the Department of Education to adopt rules and regulations and to train school personnel to address violations of students' rights; and (3) compensatory and punitive damages for the unlawful suspension, unreasonable search, invasion of bodily integrity, violation of privacy and confidentiality of personal information and sex discrimination, including but not limited to damages for lost school and work time and emotional distress caused by these constitutional and statutory violations.

JURISDICTION AND VENUE

4. This court has jurisdiction over the federal claims in this action pursuant to 28 U.S.C. § 1343 and 28 U.S.C. § 1331.

5. Jurisdiction to grant declaratory judgment is conferred by 29 U.S.C. §§ 2201, 2202. Injunctive relief is authorized by Rule 65 of the Federal Rules of Civil Procedure. An award of costs and attorneys' fees is authorized pursuant to 42 U.S.C. § 1988.

6. Venue is proper pursuant to 28 U.S.C. § 1391(b) in that all plaintiffs and certain of defendants are residents of this District, and a substantial part of the events, circumstances and occurrences giving rise to plaintiffs' claims have occurred or had their effects in this District.

PARTIES

7. Plaintiff Jane Doe is a 13-year-old resident of the County of New York, New York. Jane is female. During all times relevant to this action she was a student at I.S. 164. She brings this action through her mother and next friend Ms. Doe.

8. Plaintiff Susan Roe is a 14-year-old resident of the County of New York, New York. Susan is female. During all times relevant to this action she was a student at I.S. 164. She brings this action through her mother and next friend Ms. Roe.

9. Defendant New York City Department of Education (the “Department”) is, pursuant to the laws of the State of New York, the newly formed official body charged with the responsibility for developing policies with respect to the administration and operation of the public schools in the City of New York. *See, e.g.*, N.Y. Educ. Law §§ 2590, 2590-g. The Department is the successor in interest to the New York City Board of Education. The Department receives federal financial assistance. The principal office of the New York City Department of Education is located in this District.

10. Defendant City of New York is a municipality organized under the laws of the State of New York.

11. Defendant LaVern Reid was, during all times relevant to this action, employed by defendant New York City Department of Education or its predecessor Board of Education as the principal of I.S. 164. As principal of I.S. 164, defendant Reid had authority to suspend students for up to five days. *See* N.Y. Educ. Law § 3214(3)(b). As such, at all relevant times she was acting under the color of state law. She is sued in her individual and official capacities.

12. Defendant Vera Hamburger was, during all times relevant to this action, employed by defendant New York City Department of Education or its predecessor Board of Education, as an administrator of I.S. 164. As such, at all relevant times she was acting under the color of state law. She is sued in her individual and official capacities.

FACTUAL BACKGROUND

13. On or about Friday, April 11, 2003, approximately 11 girls and one boy from I.S. 164 allegedly skipped school to attend a party. The party was not on school premises.

14. On Monday, April 14, 2003, the female students who allegedly attended the party were called into a school official's office with Principal Reid, Ms. Hamburger and other school personnel. The parents of each girl were telephoned and told they were required to come into the school that afternoon or the following morning.

15. On Monday, April 14, 2003 and Tuesday, April 15, 2003, a series of individual and group meetings took place between Principal Reid, Ms. Hamburger and other school personnel and the female students who allegedly attended the party and their parents.

16. In these meetings, I.S. 164 administrators informed the parents that because their daughters had attended a party that allegedly involved sexual activity, their daughters were required to visit a doctor and submit to a host of invasive medical exams, including a pregnancy test and tests for sexually transmitted diseases.

17. The students and parents were told that each child was required to obtain a note from the doctor that listed the tests performed and stated that the child was not pregnant and was free from the tested diseases.

18. The students and their parents were further told that each child was required to submit this note to the school upon returning from the upcoming spring vacation in order to be allowed to return to classes.

19. At these meetings, neither the students nor their parents were provided with any opportunity to rebut accusations or question the basis for suspension. Moreover, neither students nor their parents were provided with an opportunity to object to the requirement that, as a condition of returning to school, plaintiffs undergo invasive medical tests and submit a note from a doctor revealing confidential medical information.

20. The conditions imposed on plaintiffs constituted an effective suspension of indefinite duration, ending only upon presentation of the note.

Plaintiffs Jane Doe and Ms. Doe

21. Jane Doe and Ms. Doe met with school officials on Monday, April 14, 2003 and again on Tuesday, April 15, 2003.

22. In some of these meetings, New York City police officers interrogated Jane about the particulars of the party.

23. In these meetings, both Principal Reid and Ms. Hamburger informed Jane and Ms. Doe that Jane was required to see a doctor and to obtain a note which (a) stated that Jane was administered pregnancy, STD and HIV tests and (b) included the results of these tests.

24. Principal Reid and Ms. Hamburger said that Jane would not be permitted back to school after the spring vacation unless she submitted this note.

25. Ms. Hamburger also told Ms. Doe that Jane was not permitted to attend school Wednesday, April 16, 2003.

26. As directed, Jane did not attend school on April 16, 2003.

27. Spring vacation began on Thursday, April 17, 2003 and classes resumed on Monday, April 28, 2003.

28. During the spring vacation, Jane and her mother visited a clinic to obtain the tests and doctor's note as ordered. Jane underwent a pregnancy test; a pelvic exam, which was necessary to perform tests for HPV, gonorrhea and chlamydia; and blood draws to test for syphilis and HIV. Jane's health care provider, a nurse practitioner, gave Jane a signed note stating merely that Jane was seen in the clinic. In order to protect Jane's right to keep personal medical information confidential, the nurse practitioner did not list the specific tests performed or their results in this note.

29. On Monday, April 28, 2003, Jane and Ms. Doe arrived at school and presented Ms. Hamburger with the nurse practitioner's letter, which stated that Jane had visited the nurse practitioner's clinic.

30. Ms. Hamburger told Jane and Ms. Doe that the clinic note was unacceptable because it was not signed by a doctor and did not indicate either the tests performed or the results of those tests.

31. Ms. Hamburger told Jane and Ms. Doe that Jane could not return to classes unless and until she obtained a note, signed by a doctor, listing the results of these highly private tests.

32. While at the school that day, Jane and Ms. Doe also encountered Dean Alex Sokol, who inspected the letter and concurred that it was unacceptable, as per the direction of his superiors, because it did not include the tests or their results.

33. Later that same day, Jane and Ms. Doe returned to the clinic and asked for a signed doctor's note as required by Principal Reid and Ms. Hamburger. Jane and Ms. Doe were very anxious that Jane return to classes as soon as possible in order to prepare for an important upcoming standardized math test that was being administered citywide. The clinic gave Jane a note approved by the clinic's medical director, addressed to Jane, stating that her pregnancy test and STD screening were negative.

34. On Tuesday, April 29, 2003, Jane and Ms. Doe returned to the school and presented Principal Reid with this second note. Principal Reid approved the note and stated that Jane could return to class.

35. As a result of defendants' actions, Jane was excluded from at least two full days and substantial portions of three other days of classes.

Plaintiffs Susan Roe and Ms. Roe

36. Plaintiffs Susan Roe and Ms. Roe met with school officials on Tuesday, April 15, 2003. In this meeting, police officers questioned Susan about the alleged party.

37. After the police questioning, Susan and her mother met with Principal Reid and Ms. Hamburger. Principal Reid and Ms. Hamburger asked Susan a number of personal questions including whether she was sexually active, whether she has had pregnancy tests and whether she uses condoms. Susan was extremely upset and embarrassed by the intrusive nature of these questions.

38. Principal Reid then told Ms. Roe that Susan must obtain a vaginal exam, an anal exam, a pregnancy test, STD tests and an HIV test.

39. Principal Reid said that if Susan did not bring a signed doctor's note stating that the results of these tests were negative, she would not be permitted to return to school following the spring vacation.

40. Ms. Hamburger then told Ms. Roe that Susan was not permitted to attend school the following day, Wednesday, April 16, 2003.

41. As instructed, Susan did not attend school on April 16, 2003.

42. Over the spring vacation, Susan visited a clinic to obtain the tests and doctor's note as ordered. Susan submitted to a pregnancy test, a pelvic exam to test for gonorrhea and chlamydia and a blood draw to test for HIV. Susan's health care provider gave her a general note which stated that she had been seen in the clinic, but omitted specific tests and test results to protect Susan's right to maintain the confidentiality of her personal medical information.

43. On the morning of April 28, 2003, Susan went to school as usual. Although Susan and her mother had been told that Ms. Roe must submit the note at 10:00 a.m. that morning, Susan did not want to wait until 10:00 a.m. to resume her classes. Therefore, she arrived at school in the morning when classes began without bringing the note.

44. Principal Reid, upon seeing Susan in the hallway, demanded to see the doctor's note and insisted that Ms. Roe come to school immediately with the note.

45. Susan was taken to Mr. Sokol's office and told to wait outside the office until her mother arrived.

46. Ms. Roe came to the school to present her daughter's note but was not allowed past the security checkpoint.

47. Unaware that Ms. Roe had been denied entry to the school, Mr. Sokol detained Susan outside his office for approximately two hours.

48. Mr. Sokol telephoned Susan's older sister, Sister Roe, and insisted that she come to school. He then told Susan that if her sister did not arrive soon, she would be sent to the police station.

49. Sister Roe immediately left her job, losing several hours of pay, and came to the school.

50. Mr. Sokol told Susan and her sister that the school would not accept a general letter stating merely that Susan had been seen in a clinic because the Principal said that it had to be signed by a doctor and include test results.

51. Susan and her sister then returned to the clinic and asked them to provide a note from a doctor with the tests and their results. Susan was extremely worried about missing class because of an upcoming citywide math examination. The clinic gave Susan a note similar to the second note given to Jane. It was addressed to Susan, signed by a doctor and stated that she tested negative for pregnancy and STDs.

52. Sister Roe submitted this letter to Ms. Hamburger, who noted with approval the inclusion of test results and then permitted Susan to go back to class.

53. As a result of defendants' actions, Susan was excluded from at least two full days of classes and substantial portions of two other class days.

Unlawful and Discriminatory Treatment of the Plaintiffs

54. On information and belief, the male student involved in the party was not told he must see a doctor and was not told he could not return to school until he submitted the results of medical examinations.

55. At all relevant times, Principal Reid was a final policymaker with regard to the students' discipline and suspension.

56. On information and belief, at all relevant times, Ms. Hamburger acted at the direction and with the approval of Principal Reid.

57. On information and belief, at all relevant times, Mr. Sokol acted at the direction and with the approval of Principal Reid.

58. The New York City Department of Education knew to a moral certainty that school personnel would confront situations involving student sexual activity and be faced with decisions concerning appropriate school response. In fact, in the last three years, the New York Civil Liberties Union alone has, on at least nine occasions, alerted the Department to improper responses to revelations of student sexual activity, including illegal exclusion of pregnant students and mandated notification of school officials when a student discloses a pregnancy, and has insisted that school administrators and other personnel receive training on proper responses to such situations and on laws forbidding the exclusion of students from school on the basis of sexual activity or pregnancy. Instead, the Department knew and approved of, and acquiesced in, these repeated violations of students' rights, violations that the Department had the duty, authority, control, discretion and supervisory power to prevent. Moreover, despite knowledge of these violations, the Department did not take steps to prevent future similar violations by its employees.

59. The Department acted with deliberate indifference by failing to train, supervise and discipline school personnel in this area, and this failure caused violations of plaintiffs' rights.

60. Both plaintiffs were excluded from school and suffered great embarrassment, humiliation and emotional distress as a result of this incident. Defendants' actions have also stigmatized plaintiffs.

61. In addition, plaintiffs in the future may incur pecuniary losses for care, counseling, treatment and other expenses.

FIRST CAUSE OF ACTION

(Procedural Due Process under the Fourteenth Amendment
of the United States Constitution)

62. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 61 of this Complaint as though fully set forth herein.

63. As residents of New York State, plaintiffs had a property interest in receiving a free public education. N.Y. Const. art. 11, § 1. Plaintiffs also have a liberty interest in their reputation.

64. In violation of plaintiffs' rights to procedural due process under the Fourteenth Amendment of the United States Constitution, defendants, acting under the color of state law, effectively suspended plaintiffs without any permissible justification and without providing the students or their parents an opportunity to be heard or object to the unwarranted and arbitrary exclusion from school. In violation of plaintiffs' procedural due process rights under the Fourteenth Amendment of the United States Constitution, defendants, acting under color of state law, failed to provide a written

explanation for the suspensions or notice explaining the basis of the decision or the options for appealing.

65. Defendants acted maliciously and with reckless and callous disregard of plaintiffs' feelings and federally protected rights.

66. As a result of defendants' unconstitutional actions, plaintiffs were excluded from school, suffered great humiliation and embarrassment and endured and continue to endure great emotional harm.

SECOND CAUSE OF ACTION

(Substantive Due Process under the Fourteenth Amendment
of the United States Constitution)

67. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 66 of this Complaint as though fully set forth herein.

68. In violation of plaintiffs' rights to privacy, liberty, bodily integrity and procreation guaranteed by the Due Process Clause of the Fourteenth Amendment, defendants, acting under the color of state law, arbitrarily compelled plaintiffs to submit to invasive medical examinations, and furthermore, conditioned their return to school upon approval of the examinations' results.

69. There was no rational basis for coercing plaintiffs to submit to such examinations. The defendants' conduct was not tailored to further any legitimate, substantial or compelling interest.

70. Defendants acted maliciously and with reckless and callous disregard of plaintiffs' feelings and federally protected rights.

71. As a result of defendants' unconstitutional actions, plaintiffs were excluded from school, suffered great humiliation and embarrassment and endured and continue to endure great emotional harm.

THIRD CAUSE OF ACTION

(Substantive Due Process under the Fourteenth Amendment
of the United States Constitution)

72. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 71 of this Complaint as though fully set forth herein.

73. In violation of plaintiffs' rights to privacy and confidentiality of personal information guaranteed by the Due Process Clause of the Fourteenth Amendment, defendants, acting under the color of state law, arbitrarily compelled plaintiffs to submit to invasive medical examinations and compelled them to reveal the highly personal test results.

74. There was no rational basis for coercing plaintiffs to submit to such examinations or for obtaining this confidential information. The defendants' conduct was not tailored to further any legitimate, substantial or compelling interest.

75. Defendants acted maliciously and with reckless and callous disregard of plaintiffs' feelings and federally protected rights.

76. As a result of defendants' unconstitutional actions, plaintiffs were excluded from school, suffered great humiliation and embarrassment and endured and continue to endure great emotional harm.

FOURTH CAUSE OF ACTION

(Fourth Amendment of the United States Constitution)

77. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 76 of this Complaint as though fully set forth herein.

78. In violation of plaintiffs' rights to be free from unreasonable searches under the Fourth Amendment of the United States Constitution, defendants, acting under the color of state law, unlawfully and without plaintiffs' freely given consent, compelled highly intrusive medical testing and compelled disclosure of the results.

79. There was no rational basis or reasonable justification for requiring this search. The defendants' conduct was not tailored to further any legitimate, substantial or compelling interest.

80. Defendants acted maliciously and with reckless and callous disregard of plaintiffs' feelings and federally protected rights.

81. As a result of defendants' unconstitutional actions, plaintiffs were excluded from school, suffered great humiliation and embarrassment and endured and continue to endure great emotional harm.

FIFTH CAUSE OF ACTION

(Equal Protection Clause of the Fourteenth Amendment
of the United States Constitution)

82. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 81 of this Complaint as though fully set forth herein.

83. In violation of plaintiffs' equal protection rights under the Fourteenth Amendment of the United States Constitution, defendants, acting under color

of state law, required female I.S. 164 students and not the similarly situated male I.S. 164 student who had attended the “hooky party” with them to submit to medical tests, and conditioned termination of suspension on the presentation of a doctor’s note with the results only for the female students and not the male student.

84. There was no rational, much less substantial and compelling, basis for this intentionally differential treatment on the basis of sex. The defendants’ conduct was not tailored to further any legitimate, substantial or compelling interest.

85. Defendants acted maliciously and with reckless and callous disregard of plaintiffs’ feelings and federally protected rights.

86. As a result of defendants’ arbitrary, capricious, unreasonable, unlawful and discriminatory treatment on the basis of sex, plaintiffs were excluded from school, suffered great humiliation and embarrassment and endured and continue to endure great emotional harm.

SIXTH CAUSE OF ACTION

(Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a))

87. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 86 of this Complaint as though fully set forth herein.

88. Plaintiffs, at all times relevant to this action, were students at I.S. 164.

89. The New York Department of Education and its predecessor in interest, the New York City Board of Education, public entities created pursuant to the laws of the State of New York and charged with operating and regulating New York City public schools, receive federal financial assistance.

90. In violation of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a), prohibiting discrimination against students on the basis of sex and pregnancy, defendants arbitrarily conditioned school attendance on the submission to a pregnancy test and the submission of a note confirming that a female student was not pregnant before permitting the student to attend classes.

91. In violation of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a), defendants required female I.S. 164 students and not the similarly situated male I.S. 164 student who had attended the “hooky party” with them to submit to medical tests, and conditioned termination of suspension on the presentation of a doctor’s note with the results only for the female students and not the male student, thereby constituting intentional differential treatment on the basis of sex.

92. Defendants acted maliciously and with reckless and callous disregard of plaintiffs’ feelings and federally protected rights.

93. As a result of defendants’ violations, plaintiffs were excluded from school, suffered great humiliation and embarrassment and endured and continue to endure great emotional harm.

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs request that this Court enter judgment:

- (1) Declaring that the defendants violated the plaintiffs’ constitutional and statutory rights as set out in the causes of action;
- (2) Ordering injunctive relief including, but not limited to, (a) directing the defendants to expunge all school records of all medical, attendance and disciplinary information related to this incident; (b) ordering defendants to return to plaintiffs all school records related to the compelled submission of private medical information; (c) ordering the Department of Education to adopt rules and regulations and to train school personnel to address violations of students’ rights including but not limited to privacy of

confidential medical information and freedom from discrimination on the basis of gender; and (d) granting any other injunctive relief the Court deems appropriate;

- (3) Awarding the plaintiffs compensatory damages;
- (4) Awarding the plaintiffs punitive damages;
- (5) Awarding the plaintiffs attorneys' fees as well as costs and disbursements incurred in this action as authorized by 42 U.S.C. § 1988; and
- (6) Granting plaintiffs such other and further relief against defendants as this Court may deem just and proper.

JURY DEMAND

Plaintiffs demand trial by jury of any and all issues properly triable by jury in this action.

Dated: July 8, 2003
New York, New York

Respectfully submitted,

/s/

REBEKAH DILLER (RD-7791)
ANNA SCHISSEL (AS-1004)
ARTHUR EISENBERG (AE-2012)
DONNA LIEBERMAN (DL-1268)
NEW YORK CIVIL LIBERTIES
UNION FOUNDATION
125 Broad Street, 17th Floor
New York, New York 10004
(212) 344-3005
(212) 344-3318 (Fax)

CAROLINE MALA CORBIN (CC-8985)
125 Broad Street, 26th Floor
New York, New York 10004
(212) 558-4991
(212) 558-3588 (Fax)

Counsel for Plaintiffs