

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

**Shannon Marie Smith,**  
808 Chesapeake Street, S.E. – Apartment 304  
Washington, D.C., 20020

**Karlene Armstead,**  
559 Foxhall Place, S.E.  
Washington, D.C., 20020

**Marlece Turner,**  
711 Varnum Street, N.W.  
Washington, D.C., and

**Brenda Williams,**  
5744 Blaine Street, N.E.  
Washington, D.C. 20019.

**Ericka S. Black**  
4231 Eads Street, N.E.  
Washington, D.C. 20019.

Plaintiffs,

vs.

Civil Action No. No. 2013 CA \_\_\_\_\_ B

**KAYA HENDERSON, CHANCELLOR,**

**VINCENT C. GRAY, MAYOR, and**

**THE DISTRICT OF COLUMBIA**

Defendants.

**Serve: Irvin B. Nathan**  
**D.C. Attorney General**  
441 – 4<sup>th</sup> Street, N.W.  
Washington, D.C. 20001

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES**

Plaintiffs bring this action against Defendants Kaya Henderson, Chancellor of the District of

Columbia Public Schools, Vincent C. Gray, Mayor of the District of Columbia, individually and in their official capacities, and the District of Columbia (collectively “Defendants”). Plaintiffs seek Declaratory and Injunctive Relief, compelling Defendants to cease in the execution of a School Closings Plan submitted by Defendant Henderson on 13 January 2013; endorsed and promoted by Defendant Gray and presented as official policy of Defendant District of Columbia. The allegations herein are based on Plaintiffs’ knowledge as to themselves, and on information and belief. Plaintiffs also seek damages.

## **INTRODUCTION**

The 2013-2014 “DCPS Consolidation and Reorganization Plan” (“The Plan”) will have a startlingly disparate impact on students of color, special education students and students who live in low income communities; and that disparate impact violates the United States Constitution, the D.C. Human Rights Law and applicable federal laws. There is a striking juxtaposition between how the Plan treats students “East of the Park,” those in predominantly minority, low income communities, and yet spares students “West of the Park,” those in predominantly Caucasian, affluent communities. The same is true with respect to how the Plan treats schools housing special education students. School Closures are not immune to judicial scrutiny.

## **PARTIES**

1. Plaintiff Shannon Marie Smith is an African American, residing at 808 Chesapeake Street, in Southeast Washington, D.C., East of the Park, whose children will be displaced if the School Closure Plan is allowed to stand.
2. Plaintiff Karlene Armstead is an African American, residing at 559 Foxhall Place, in Southeast Washington, D.C., East of the Park, and an Advisory Neighborhood Commissioner with a school scheduled for closing within her Advisory Neighborhood Commission, 8C.
3. Plaintiff Marlece Turner is an African American residing at 711 Varnum Street, in Northwest

Washington, D.C., East of the Park, whose child, an IEP student (Individualized Education Program) will be displaced if the School Closure Plan is allowed to stand.

4. Plaintiff Brenda Williams is an African American, residing at 5744 Blaine Street, in Northeast Washington, D.C., East of the Park, and is the parent of a Special Education student whose child will be displaced if the School Closure Plan is allowed to stand.
5. Plaintiff Ericka S. Black is an African American, residing at 4231 Eads Street, in Northeast Washington, D.C., East of the Park, and an Advisory Neighborhood Commissioner with a school scheduled for closing within her Advisory Neighborhood Commission, 7D.
6. Defendant Kaya Henderson is the Chancellor of the D.C. Public School System and at most of the time relevant to this action was responsible for the acts and omissions of employees and agents of the District of Columbia. For those times that he was not Mayor, under law, he inherits the acts and omissions of those employees and agents.
7. Defendant Vincent C. Gray is the Mayor of the District of Columbia and at most of the time relevant to this action was responsible for the acts and omissions of employees and agents of the District of Columbia. For those times that he was not Mayor, under law, he inherits the acts and omissions of those employees and agents.
8. The District of Columbia is a municipal entity comprised of its agencies, departments, and divisions, and the officers and managers of those agencies, departments and divisions, including the D.C. Public School System, the Chancellor, the Mayor and other administrators. Plaintiffs assert *respondeat superior*, where appropriate.

## **JURISDICTION AND VENUE**

9. This Court has jurisdiction over this action pursuant to the D.C. Code §§ 1 1-921.

10. Defendant Kaya Henderson has sufficient minimum contacts with the District of Columbia to be sued in this jurisdiction and has intentionally availed herself of the markets and services of the District of Columbia by serving as an appointed local government official.
11. Defendant Gray has sufficient contacts with the District of Columbia to be sued in this jurisdiction and has intentionally availed himself of the markets and services of the District of Columbia by serving as an elected official.
12. Both Defendants have sufficient minimum contacts with the District of Columbia to be sued in this jurisdiction and have intentionally availed themselves of the markets and services of the District of Columbia by serving as an elected or appointed official. Venue is appropriate in the District of Columbia given that all of the events and omissions giving rise to this action took place in the District of Columbia.

## **FACTUAL ALLEGATIONS**

13. According to the Plan, the defendants will close schools in two phases: First, 13 schools will close near the end of the 2012-2013 academic school year (“2013 Closings”); and Second, 2 additional schools will close at the conclusion of the 2013-2014 academic school year (“2014 Closings”).
14. The 2013 Closings would result in the closure of public schools attended by 2,571 local students. Of those, in both years, an overwhelmingly disproportionate number are minorities, students with disabilities, and low-income students.
15. The 2013 Closings will result in the closure of the public schools attended by 2,402 black students, 159 Latino students, 12 students of Asian or other ethnicity, and only 1 white student; 2,104 of the students in the affected schools are low-income, and 596 are special education students.

16. As a group, black students make up 93.4% of students enrolled in schools that will be closed by the Plan in 2013; Latinos are 6.2%, Asian and other are 0.5%, and whites are 0.0%. Special education students make up 33.8% of students in those schools, and 81.9% of students in those schools are low income.
17. The DCPS Plan to close schools affecting special education students and move them to another school was done without providing the parents the opportunity to participate in the decision making process.
18. Moreover, when the Plan was submitted on 13 January 2013, Defendants did not and yet do not have an existing program in place when the decision was made to close the schools and move the children.
19. The 2014 Closings would result in the closure of public schools attended by 2,792 local students. Of those, a disproportionate number are minorities, students with disabilities, and low-income students.
20. The 2014 Closings would result in the closure of the public schools attended by 2,600 black students, 180 Latino students, 13 students of Asian or other ethnicity, and only 2 white students; 2,295 of the students in the affected schools are low-income, and 778 are special education students.
21. As a group, African American students make up 93.1% of students enrolled in schools that will be closed by the 2013 Closings; Latinos are 6.4%, Asian and other are 0.5%, and whites are 0.1%.
22. Special education students make up 27.9% of students in those schools.
23. And, 82.2% of students in those schools are low income, residing East of the Park.
24. Contrary to the assertions from the Plan, schools with smaller enrollments do not cost much more, if more at all, than schools with larger enrollments.
25. Contrary to the assertions from the Plan, the proposed closures will not result in substantial

savings and likely will result in no savings at all, indeed likely will result in losses.

26. Contrary to the assertions from the Plan, the proposed closures will not likely result in more and better resources for the receiving schools.

## **NATURE OF THE ACTION**

27. At all times relevant to this action, Plaintiffs Smith, Armstead, Turner and Williams have been residents of the District of Columbia and, except Plaintiff Armstead, parents or legal custodian of children who attend D.C. Public Schools.

28. Each Plaintiff and each Plaintiff's child, among those who have children, is an individual of color, of African American, Hispanic or Latino descent.

29. Plaintiff Karlene Armstead is an Advisory Neighborhood Commissioner representing at least one school that is scheduled for closure.

30. Each of the Plaintiffs and all of the parents and students affected by the proposed school closures reside in areas of the District of Columbia commonly referred to as "East of the Park," predominantly African American and significantly low income communities.

31. No parent or student residing "West of the Park" (predominantly Caucasian and affluent communities) is affected by the proposed school closures.

32. Students in the neighborhoods with closed schools, including the children of Plaintiffs, will be forced to travel longer distances to schools than other students.

33. Students in the neighborhoods with closed schools, including the children of Plaintiffs, will be required to walk or travel through unfamiliar and even dangerous neighborhoods, putting their safety at risk.

34. By the District's own measurements, students previously dislocated by the 2008 school closures are performing no better than they had at their closed neighborhood schools

35. The consolidated schools will be overwhelmed with the sudden influx of greater percentages of

new students and students with disabilities.

36. Any delay in the provision of special education services to affected students will have a compounding adverse impact on students with disabilities from both the closed schools and the new transferring schools and likely lead to greater failures of the District to provide a free and appropriate public education.
37. The school closures also promote what has been described by a recent, credible study as “churn and instability.” Turnover of teachers in the District of Columbia has been unusually high since 2009.
38. The kind of “churn” being experienced results in instability. The study’s results, “How Teacher Turnover Harms Students’ Achievements,” indicate that students in grade-levels with higher turnover score lower in both ELA and math and that this effect is particularly strong in schools with more low-performing and African American students.
39. Moreover, the results of the Study suggest that there is a disruptive effect of turnover beyond changing the distribution in teacher quality.
40. The District cannot demonstrate a “substantial legitimate justification” because it cannot show how the proposed closings will provide any educational benefit.
41. The proposed plan to close fifteen D.C. Public Schools (DCPS) must be educationally necessary to meet its goal of improving the educational prospects of displaced students.
42. However, the Plan will only continue to disproportionately and adversely impact students of color, those with disabilities and those who live in certain neighborhoods.
43. The Plan is extreme, and it will continue to be counterproductive, therefore it does not meet the educational necessity test required.
44. Indeed, the Plan goes against Chancellor Kaya Henderson’s goals to improve achievement for all students, to invest in struggling schools, to increase graduation rates, to improve student satisfaction, and to increase enrollment.

45. Based on past closures, the only result that emerged is a significant disparate impact on students of color, those with disabilities and those residing in certain neighborhoods (the protected groups).
46. In addition, the District has failed to show how the 2008 school closures have made significant improvements or positive changes to help it move closer to meeting its educational goals.
47. In fact, the 2008 school closures were counterproductive to the District’s educational goals. The closures did not improve student performance, increase enrollment or improve achievement for all students, but instead hindered student performance.
48. The 2008 closures did not promote equal educational opportunity for the protected groups, but instead created less opportunity for those groups by removing educational resources from their communities while stretching resources at the receiving schools.
49. The 2008 closures did not help the District invest in the struggling schools, but instead completely ended any chance of investments when it shut down those schools.
50. The 2008 closures did not properly allocate money to DCPS, but instead it lost millions of dollars due to the enormous expenses related to closing schools and accommodating displaced students at receiving schools.
51. The District cannot demonstrate a “substantial legitimate justification” for the disparate impact because it cannot show that its drastic plan to close schools is an educationally necessary action that relates to meeting its educational goals.
52. When schools are closed, students’ learning habits are disrupted and they are faced with a multitude of adjustments that come from enrolling in the receiving schools.
53. Low-income families will have difficulty finding transportation for their children transferring to new schools.
54. Neighborhoods lose a central institution of learning and activity, and communities that have invested in their local schools, will no longer have a focal point where one can feel safe,



promote citizenship, or maintain a sense of community.

55. For these reasons, the District has not demonstrated a convincing educational necessity for why it is making decisions in the way that it has, especially when those decisions are having disparate impacts on racial minorities and students with disabilities.

### **FIRST CAUSE OF ACTION**

56. Plaintiffs are informed and believe, and on that basis allege, that at all times herein mentioned each of the Defendants was an agent, servant, employee, and/or joint venture of the remaining Defendant, and was at all times acting within the course and scope of such agency, service, employment, and/or joint venture, and each Defendant has ratified, approved, and authorized the acts of the remaining Defendant with full knowledge of the facts.

57. There is a unity of interest between Defendants, and each acts as the alter ego of the other.

### **Violation of the D.C. Human Rights Act, D.C. Code § 2-1402.73, § 2-1402.68 and § 2-1402.41**

58. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 54.

59. The D.C. Human Rights Act protects citizens from discrimination based on race, disability and residency among other classifications.

60. The proposed closure of the public schools is an unjustifiable discriminatory practice because it intentionally discriminates on the basis of race, disability and residency and it disproportionately affects African American, Hispanic, Latino, and disabled students all who live in certain parts of the District of Columbia, “East of the Park.”

61. The proposed closures shockingly affect 2,570 people of color, while sparing all but one Caucasian student.

62. The legal arguments concerning these violations are more fully explored in the Memorandum of

Points and Authorities accompanying Plaintiffs' Application for a Temporary Restraining Order and Motion for a Preliminary Injunction, contemporaneously filed.

63. As a consequence of Defendants' acts or omissions, Plaintiffs have been injured in an amount to be proven.

**Failure to provide Notice to the appropriate ANCs; give "Great Weight" to the views of those ANCs; and make decisions in open and public meetings**

64. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 60.

65. Notice of pending governmental action and an opportunity to express views about that pending action are fundamental, inescapable statutory due process requirements when it comes to the role of ANCs. In the instant case, no notice was given to the subject ANCs and thus no opportunity to express its views was provided.

66. The views of the ANCs concerning the proposed school closures were not given any weight, let alone great weight, as required by law.

67. Defendants Chancellor Kaya Henderson and Mayor Vincent Gray in executing and issuing the proposed School Closure Plan issued on 13 January 2013, and on all actions pertaining to the proposed School Closure Plan, failed and continue to fail to comply with the provisions of the Sunshine Amendment in the D.C. Self-Government Act which mandates transparency in local government decision-making, requiring that all such decisions be done in open, public meetings. The decisions regarding the school closures were done in the dark.

68. Plaintiffs have been injured as a result of Defendants' acts or omissions in an amount to be proven.

**SECOND CAUSE OF ACTION**

**Violation of the Americans with Disabilities Act, 42 U.S.C.A. § 12132**

69. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 65.
70. The decision to close 15 schools, although facially neutral, will have a disproportionately adverse effect on students with disabilities.
71. While special education students comprise only 14.4% of all students, they make up 23.2% of students in schools scheduled for 2013 Closings. When looking at the 2014 Closings, special education students make up 27.9% of students in those schools.
72. Plaintiffs have been injured as a result of Defendants' acts or omissions in an amount to be proven.

### **Violation of Section 504 of the Rehabilitation Act of 1973**

73. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 69.
74. The school closings are in violation of Section 504 of the Rehabilitation Act of 1973.
75. Plaintiffs Brenda Williams and Marlece Turner is a qualified individual with a child with a disability under the Rehabilitation Act.
76. Defendant District of Columbia receives Federal financial assistance.
77. Defendants' failure to maintain a free and appropriate education in the plaintiffs' neighborhood schools slated for closure, considering the relevant and unnecessary burdens thrust upon plaintiffs by closing these schools, demonstrate both bad faith and a gross departure of accepted standards among educational professionals. Such treatment of special needs students rises to the level of discrimination based solely on the plaintiffs' disabilities.
78. Taking into account the outcome of the 2008 school closings, the defendant's plan to close fifteen additional schools is a demonstration of bad faith. Of the 2,792 students expected to be impacted by these closures, a full 27.9% are special needs.
79. Plaintiffs have been injured as a result of Defendants' acts or omissions in an amount to be proven.

## **Violation of the Individuals with Disabilities Education Act (IDEA)**

80. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 76.

81. The Individuals with Disabilities Education Act (IDEA) funds special education programs.

Under the Individuals with Disabilities Education Act, each school district shall ensure that the educational placement of each student with a disability is determined at least annually, is based on his or her Individualized Education Program (IEP) and is as close as possible to their home.

82. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if not disabled. In selecting the least restrictive environment, consideration is to be given to any potential harmful effect on the child or on the quality of services that he or she needs, 34 C.F.R. 300.116.

83. The children of Plaintiffs Marlece Turner and Brenda Williams have not been afforded the protections of IDEA.

84. Plaintiffs have been injured as a result of Defendants' acts or omissions in an amount to be proven.

## **THIRD CAUSE OF ACTION**

### **Violation of Title 42, U.S.C. § 1983.**

85. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 81.

86. Title 42 U.S.C. § 1983 provides, "Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress."

87. Defendants' Plan denies students of color, those with disabilities and those residing in low income neighborhoods equal protection in violation of the United States Constitution.

88. Plaintiffs have been injured as a result of Defendants' acts or omissions in an amount to be proven.

#### **FOURTH CAUSE OF ACTION**

##### **Violation of Title VI of the 1964 Civil Rights Act**

89. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 85.

90. Title VI of the 1964 Civil Rights Act and the Department of Education regulations implementing that Act, like the D.C. Human Rights Law, prohibit recipients of federal funding from discriminating based on race, color, or national origin, 42 U.S.C.A §§ 2000d-2000d-7.

91. Under Department of Education regulations, schools and districts violate federal law when they adopt and implement facially neutral policies, and the policies nonetheless have an unjustified effect on students on the basis of race or disability.

92. Any fair analysis of the facts in the instant situation clearly demonstrates the presence of a *prima facie* case of disparate impact.

93. As a consequence, it is within the jurisdiction of this Honorable Court to mandate that appropriate District of Columbia Government authorities take steps to ensure compliance with Title VI.

94. Plaintiffs have been injured as a result of Defendants' acts or omissions in an amount to be proven.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs demand judgment and permanent relief against Defendants as follows:

1. Finding that defendants, the Chancellor and the Mayor violated provisions of the D.C. Human

Rights Act.

2. Finding that the Advisory Neighborhood Commissions were not legally notified of the proposed school closures and that the views of the Advisory Neighborhood Commissions were not given great weight.
3. Finding that Defendants violated the Americans with Disabilities Act.
4. Finding that Defendants violated Section 504 of the Rehabilitation Act of 1973.
5. Finding that Defendants violated the Individuals with Disabilities Act (IDEA).
6. Finding that Defendants violated Title 42 U.S.C. § 1983.
7. Finding that Defendants violated Title VI of the 1964 Civil Rights Act and mandating that Defendant Mayor Gray take action to overcome the violations of that Act.
8. Finding that both defendants, through their acts and omissions, have harmed the education of the children of Plaintiffs.
9. Awarding Plaintiffs appropriate compensatory damages, treble damages and punitive damages.
10. Granting a Temporary Restraining Order and a Permanent Injunction, preventing Defendants from further taking action to implement the proposed school closures.
11. Awarding Plaintiffs appropriate other injunctive relief, including mandating that the Chancellor, Mayor and District of Columbia Government design and implement a plan to improve the performance of all students in the District of Columbia including those attending those schools that are proposed to be closed.
12. Granting a Temporary Restraining Order and Permanent Injunctive relief suspending the implementation of the D.C. Public Schools Consolidation and Reorganization Plan.

13. Awarding Plaintiffs the costs and expenses of this action, including reasonable attorneys' and experts' fees.
14. Granting injunctive relief against Defendants to prevent future wrongful conduct.
15. Awarding Plaintiffs such other and further relief as this Court deems just, equitable, and proper.

### **DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury of twelve persons of each and every claim so triable.

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**DATED: 29 March 2013**

Esau Venzen  
Pro Hac Vice