

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

Eastern Division

JOSEPH JAMES a minor,)	
by and through his parents,)	
NANCY JAMES,)	
and)	
CAMERON JAMES, and on their own behalf,)	
Plaintiffs,)	Case No. _____
)	
v.)	
)	
UPPER ARLINGTON CITY)	
SCHOOL DISTRICT,)	COMPLAINT
UPPER ARLINGTON CITY)	
BOARD OF EDUCATION,)	
WILLIAM SCHAEFER, Superintendent,)	
LINDA READEY, School Board President,)	
EDWARD SEIDEL, MARK SHERIFF,)	
THOMAS C. WILSON, III, and)	
STEVE SIKORA, School Board Members,)	
Defendants.)	
in their official representative capacity.)	

PLAINTIFFS DESIRE A TRIAL BY JURY ON COUNTS TWO AND THREE

PRELIMINARY STATEMENT

1. Joseph James is a seventeen and a half year old child who has a severe form of dyslexia. Dyslexia is a neurological disorder in which an individual is unable to acquire language skills, including reading and writing, without specialized instruction. Dyslexia is a specific learning disability.

Joe was diagnosed with dyslexia in July, 1985, two months before he entered Kindergarten in the Upper Arlington School District. The staff at Barrington Elementary School were provided with a copy of this evaluation when Joe entered public school. Although they were advised that Joe had dyslexia, Upper Arlington did not refer him to "Child Find" eligibility to determine if he was in need of a special education evaluation or special education services.

In the First Grade, Joe was referred for “Reading Recovery” services. When Joe’s mother advised the Reading Recovery Teacher Leader that Joe had dyslexia, she was told “I don’t want to hear about his dyslexia. I’m going to recover Joe.” The parents were “warned” not to inform Joe that he had dyslexia because it could interfere with his “recovery.” Reading Recovery was used indiscriminately with dyslexic and dysgraphic learning disabled students, without evidence that it is appropriate for such students.

During the years that Joe was educated within the Upper Arlington School District, he did not receive an appropriate special education. His parents were never informed that their son had an entitlement to a continuum of educational placements. The parents and Joe were made to feel that it was their fault that Joe could not learn to read.

Because their son did not acquire reading and writing skills over a period of several years, Nancy and Cameron James removed Joe from the Upper Arlington School District and placed him into a special education day school. Later, he was placed in a residential program. Joe James is presently a student at The Kildonan School where he is learning how to read and write.

Joe’s parents were never advised that their son had a right to an appropriate education in which he could learn to read and receive educational benefit. They were never advised that they might have a right to tuition reimbursement if their son required a more comprehensive program than Upper Arlington School District could provide. During the summer of 1995, his parents learned that they had a potential entitlement to reimbursement for their son’s special education.

On May 13, 1996, Joe’s parents requested a special education due process hearing to recover the cost of his tuition. Upper Arlington School District filed a Motion to Dismiss the parents’ request for retroactive and prospective tuition. They asserted that the request should be denied and the due process hearing dismissed because the parents failed to comply with the “stay-put” provision of 20 U.S.C. § 1415(e)(3).

Upper Arlington School District asserts that the parents should have filed for a due process hearing before unilaterally removing Joe from the public school. Upper Arlington School District claims that Joe’s removal from the public school program by his parents rendered the matter moot. Upper Arlington School District asserts that they have no further obligation to offer an educational program to Joe because he does not attend one of their schools.

Upper Arlington School District cited dicta in the Sixth Circuit’s *Wise v. Ohio Department of Education*, 80 F. 3d 177, (6th Cir. 1996) as controlling authority.

The Administrative Hearing Officer dismissed the parents’ request for a special education due process hearing. The Hearing Officer stated that he was bound by Reviewing Officer Craig’s earlier recent decision in *Knable v. Bexley School District*. The parents appealed the Hearing Officer’s decision and requested that a Reviewing

Officer be appointed. The matter was reviewed by Reviewing Officer Craig who upheld the dismissal by Hearing Officer Lane.

There is no “Administrative Record” of testimony and trial exhibits. The matter has been briefed by counsel with affidavits and exhibits to the briefs and affidavits. The Due Process and Review Hearings were decided upon an issue of law.

This is an appeal of the adverse decisions rendered by the Hearing and Reviewing Officers. The plaintiffs request that this Court hear evidence and, basing its decision on a preponderance of the evidence, grant the plaintiffs retroactive and prospective tuition. The parents and child are also requesting damages for the defendant’s violation of substantive and procedural due process for the Upper Arlington School District’s violation of the “child find” requirements.

The plaintiffs are also seeking damages for the continued use of the wholly inappropriate whole language Reading Recovery teaching technique that was used to secure economic gain and benefit for the Upper Arlington School District and the Upper Arlington School District staff to the detriment of their son.

Because an administrative record has not been developed, the following “Statement of Facts” will be detailed. The admissions and denials of the defendant’s Answers can begin to form the basis of an “Administrative Record.”

Nancy and Cameron James should be awarded retroactive tuition and room and board for Joe’s education for the 1993-1994, 1994-1995, and 1995-1996 academic years, and his tuition for this current 1996-1997 academic year at Kildonan School. The plaintiffs are entitled to their attorney’s fees and costs.

JURISDICTION AND VENUE

2. Jurisdiction is conferred upon this Court by 28 U.S. C. § 1331, 1343(3) and (4), 42 U.S.C. § 1983, 42 U.S.C. § 1988, the Individuals with Disabilities Education Act (IDEA), (20 U.S.C. § 1400 et. seq.), Chapter 3323 of the Ohio Revised Code, the “Rules for the Education of Handicapped Children” published by the Ohio Department of Education, Section 504 of the Rehabilitation Act of 1973 (42 U.S.C. § 794 et. seq.), and the Due Process and Equal Protection Clauses of the United States Constitution. Plaintiff’s request for declaratory relief is authorized by 28 U.S.C. § 2201 and 2202.

3. Venue is properly laid in the United States District Court for the Eastern Division of the Southern District of Ohio, as authorized by 28 U.S.C. § 1391 and 1392.

PARTIES

4. Joe James is a minor, born on August 30, 1979. He resides with his parents, Nancy and Cameron James. He is and at all times relating to this matter has been a

resident of the City of Upper Arlington, located in Franklin County, in the State of Ohio, within the Upper Arlington School District. Joe is a child with a disability who is eligible for services under the Individual with Disabilities Education Act and a “qualified individual” under Section 504 of the Rehabilitation Act of 1973.

5. Nancy and Cameron James are the parents of Joe James and are responsible for his care, custody and control. The parents are residents in the Upper Arlington School District in Franklin County, Ohio.

6. Defendant Upper Arlington School District and Board of Education are responsible for providing Joe James with a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act.

7. The Upper Arlington School District and Board of Education are governed by the laws of the State of Ohio, the laws of the United States, and the Constitution of the United States in carrying out these duties and responsibilities. The Upper Arlington School District and Board of Education is a Local Education Agency that is a recipient of federal financial assistance for purposes of the Individuals with Disabilities Education Act.

8. William Schaefer is the Superintendent of the School District, Linda Readey is the President of the Upper Arlington School District Board of Education, and Edward Seidel, Mark Sheriff, Thomas C. Wilson, III, and Steve Sikora are Members of the Board of Education.

STATEMENT OF FACTS

9. Joseph James was born on August 30, 1979. He is seventeen and a half years old.

10. Joe James has dyslexia and dysgraphia which are specific learning disabilities (SLD). Joe’s dyslexia is severe.

11. Dyslexia is a medical/neurological condition. The treatment of dyslexia is educational remediation. There is a body of research and knowledge about how to teach individuals who have dyslexia. According to this body of knowledge and research, dyslexics need to be taught using structured multisensory techniques.

12. On July 25, 1985, when he was five years old, Dr. Sandra M. Stewart, Pediatrician, diagnosed Joe as having a “Learning Disability with difficulty in both visual perceptual and auditory perceptual skills . . .” Dr. Stewart reported her findings and recommended “early testing by the school psychologist to pinpoint particularly his auditory processing problem and if possible, engage him in individual tutoring for language development.” (Exhibit A.)

13. When Joe entered Kindergarten at Barrington Elementary School two months later, Mrs. James provided the staff at his school with Dr. Stewart's report. She requested that Joe be evaluated. Upper Arlington School District did not evaluate Joe and told his mother that Joe "was really too young to be tested." (See Exhibit B, Parent's May 13, 1996 Request for a Due Process Hearing, and Exhibit C, an Affidavit that was previously attached to a Reply Brief)

14. One year later, when Joe was about to enter First Grade, Joetta Beaver, Reading Recovery Teacher Leader, contacted Joe's parents. She informed the parents that Joe qualified for the Reading Recovery program. (Exhibits B, C) Joe entered the Reading Recovery program in September, 1986 and remained in that program for the rest of the academic year.

15. The parents were not advised of the basis for Joe's having "qualified" for Reading Recovery before he was eligible for special education services as a child with a Learning Disability.

16. Joseph James began receiving services from the Reading Recovery Teacher Leader, Joetta Beaver.

17. Reading Recovery was used indiscriminately, without evidence that it was appropriate for children with dyslexia and dysgraphia.

18. There are appropriate and proven ways to teach learning disabled children with dyslexia and dysgraphia how to read and write. Multisensory techniques that stress sound/symbol relationships using visual, auditory, kinesthetic and tactile senses such as Orton-Gillingham techniques have been successful.

19. At the time it was used with Joe, Reading Recovery was not proven to be successful in teaching dyslexic children how to read and write.

20. Research conducted over the past several years has shown that Reading Recovery is not successful in teaching dyslexic children how to read and write.

21. The parents were not informed that Reading Recovery did not have a proven track record with dyslexic children.

22. Unknown at that time to Nancy and Cameron James, and upon present information and belief, the Upper Arlington School District, Joetta Beaver, and the Education Department of the Ohio State University either had, at that time, or have at present, entered into a business financial relationship with each other.

23. The effect of said business and financial relationship is to generate income for the Education Department of Ohio State University by promoting the use of Reading Recovery.

24. The effect of said business and financial relationship is to generate income for the Upper Arlington School District by promoting the use of Reading Recovery.

25. The effect of said business and financial relationship has been to generate income for Joetta Beaver by promoting the use of Reading Recovery.

26. Joe James did not need to “recover” reading skills, Joe needed to be taught the basic skills in the acquisition of sound/symbol relationships that lead to reading.

27. Nancy and Cameron James were not informed of the risks inherent in attempting to use Reading Recovery with their son or possible damage to him should it be unsuccessful.

28. Nancy and Cameron James were clearly entitled to some form of notice of procedural rights as well as meaningful access to that process before consenting to allow their child to be experimented on using the newly marketed approach known called “Reading Recovery.”

29. There is a “window of opportunity” for children to acquire language skills, especially reading and writing. This window is open in early elementary school and, after the “window” closes, it is much more difficult for children like Joe to learn these skills. Remediation of an older child or adolescent is a longer, more difficult process.

30. Upon information and belief, Joe James was part of a pilot project and special study that used Reading Recovery.

31. The plaintiffs were not aware that their son was part of a pilot project and special study that used Reading Recovery.

32. Nancy and Cameron James did not provide informed consent for Reading Recovery to be used in lieu of proven special education techniques that would teach their son how to read and write.

33. When Joetta Beaver contacted the parents about putting Joe into the Reading Recovery program, Upper Arlington School District had not initiated any evaluation of Joe.

34. When Joe’s mother advised Joetta Beaver, the Reading Recovery Teacher Leader, Joe had dyslexia, she was told “I don’t want to hear about his dyslexia. I’m going to recover Joe.” The parents were “warned” not to inform Joe that he had dyslexia because it could interfere with his “recovery.”

35. Joe James needed to learn how to read and write, Joe did not need to be “recovered.”

36. Joe's parents reported that their son had more than 100 Reading Recovery lessons before he was finally referred for a special education evaluation. (Exhibits B, C)

37. Joetta Beaver reported that Joe "received 83 Reading Recovery lessons." (Exhibit D)

38. Later, Joetta Beaver reported that Joe had 86 Reading Recovery lessons after "He was identified 'at risk' in learning to read by his first grade classroom teacher and in accordance with the guidelines established by Dr. Marie Clay, the developer of the Reading Recovery program." (Exhibit E)

39. Reading Recovery is a program that was developed in New Zealand and marketed in the United States by Marie Clay, initially through the faculty of the Education Department at Ohio State University.

40. Unknown to Nancy and Cameron James, and without a release of information consent form, the Reading Recovery faculty at Ohio State University consulted with Joetta Beaver and the public school staff while Joe was enrolled in this program.

41. Joetta Beaver reported that "After much thought and consultation with the RR faculty at Ohio State University, it was decided to transfer Joseph from the RR program in the spring of the year." (Exhibit D)

42. Barrington Elementary School is located approximately one-half mile from Ohio State University.

43. Joe James was damaged by Upper Arlington School District's use of Reading Recovery and by their failure to evaluate him for special education services in a timely manner. This damage has been permanent and is of a continuing nature.

44. Upon information and belief, the Upper Arlington School District and Joetta Beaver had a financial interest in the continued use of Reading Recovery, in lieu of traditional proven special education techniques that teach learning disabled dyslexic and dysgraphic children how to read and write.

45. Throughout Joe's education in the Upper Arlington School District's schools, the Reading Recovery methods were the primary means used to teach Joe how to read.

46. More than one year after the school received Dr. Stewart's report and more than one year after the parents had requested an evaluation of their son, Joe was referred for a speech language evaluation.

47. In a November 5, 1986 document entitled "Speech/Language/Hearing Referral" Joe's teachers reported that he "at times omits beginning sounds - has trouble

identifying sounds.” Despite the earlier finding by the first grade teacher that Joe was “at risk” and Dr. Stewart’s statement that Joe had dyslexia and needed specialized services, the school reported that “no other assessments had been done on Joe.” (Exhibit F)

48. It appears that no assessment was done of Joe before he entered the Reading Recovery program or when he was removed from it.

49. In the November 5, 1986 document, Ms. Bauchmoyer, regular education teacher, and Ms. Beaver, Reading Recovery Teacher Leader, reported that “Other students in the class seem to react negatively toward the student because of his/her speech.” (Note: One of these teachers penned the following statement in the margin -- “I see this alot!”)

50. On April 7, 1987, Sue Bauchmoyer and Joetta Beaver (Reading Recovery Teacher Leader) requested assistance with Joe, and reported that:

Joe is unable to carry ‘learning’ over from one situation to another. He doesn’t always make connections. Both his brother and sister are dyslexic and Joseph may be too. But his “problems” seem to go beyond this. . . More individual attention is required by him (especially in reading and writing) . . . Consultations have been obtained from Dr. Sandra Stewart. (Exhibit G)

51. On April 14, 1987, the parents completed a “Background History” for Upper Arlington School District which described all of the strategies the parents had used at home to help Joe. The parents advised that they had used “Computers, books, diet, workbooks, sand and bean tray for tracing, cutouts, alphabet charts, newspaper cut-outs, Ball-Stick-bird program of remediation, flash cards - you name it!” (Exhibit H)

52. On April 16, 1987, school principal Oakley referred Joe to school psychologist Paula Ford for an evaluation because of “Academic Problems.” (Exhibit I)

53. On May 22, 1987, Paula Ford evaluated Joe. She administered the Wechsler Intelligence Scale for Children, Revised Edition (WISC-R) and the brief form of the Kaufman Test of Educational Achievement (K-TEA). (Exhibit J)

54. On the Wechsler Intelligence Scale for Children, Joe’s Full Scale IQ was 109 (percentile rank of 73). His Verbal IQ was 120 (percentile rank of 91) and his Performance IQ was 93 (percentile rank of 32). (For a standard score to percentile rank comparison, see the Bell Curve chart, Exhibit K)

55. The Wechsler Intelligence Scale for Children consists of several subtests. On the Similarities subtest, which is the best measure of “true general ability and intellectual reasoning, ”Joe scored at the 99.9th percentile rank. The Similarities subtest measures the child’s analytical or logical thinking and reasoning abilities.

56. According to the testing by Upper Arlington, although Joe's Full Scale IQ was measured at the 73rd percentile level, his achievement in reading fell at the 9th percentile level. Therefore, his reading score was far below expectation and represented a very severe deficiency in reading.

57. According to the testing by Upper Arlington, Joe had severe deficiencies in math.

58. In her May 22, 1987 report, school psychologist Paula Ford wrote that as part of her assessment of Joe, she:

. . . obtained some primer and pre-primer level books and read with him. His miscues and type of miscues tended to suggest that Joseph attends to the whole word spatially when trying to decode. For example, help became happy, jump became jack, little became like, my became me, etc. This will impede him considering the difficulties that he has in terms of encoding and decoding symbols.

(Continuing) . . . there is a wide discrepancy between his native potential and his academic achievement. Joseph had also been working with the reading recovery specialist and while she noted that he has made some gains, in the beginning of the year he was able to write five words and now he writes 18 words. She noted, however, that he has great difficulty in transferring strategies of encoding and decoding conceptually into the regular tasks within the classroom . . . Joseph does not transfer these strategies among other tasks and this is causing him a great deal of difficulty.

59. Paula Ford's May 22, 1987 report was completed after Joe had completed a year of Reading Recovery. According to her evaluation, despite the Reading Recovery program "he has great difficulty in transferring strategies of encoding and decoding . . ."

60. At the end of the 1986-1987 school year, after one unsuccessful year of Reading Recovery, Joe was found eligible for regular special education services. This was two years after Upper Arlington School District received Dr. Stewart's report which stated that Joe had dyslexia and needed tutoring for language development and two years after his parents had requested an evaluation.

61. In June, 1987, Upper Arlington School District convened an IEP meeting to develop an IEP for the following school year. At this June, 1987 IEP meeting, Mrs. James:

. . . described in great detail the type of method we thought Joe needed. It should be a multi-sensory, intense, systematic, phonetic approach . . .

They suggested that if you tried to teach Joe the parts he would just become more confused and frustrated . . . Instead of the team focusing on why Reading Recovery had failed Joe, the focus was on why Joe had failed Reading Recovery . . . None of the (educators) ever challenged the appropriateness of using Reading Recovery with our dyslexic child.” (Exhibit B)

62. Reading Recovery continued to be the primary means used to teach Joe how to read. (Exhibits B, C)

63. The parents were concerned that Joe was continuing to fall behind his peer group academically and was suffering from emotional problems and withdrawal. Because of these problems, the parents retained the services of a tutor. (Exhibit B).

64. The tutor used an Orton-Gillingham approach which emphasized phonics. Upper Arlington School District continued to use a “whole language” approach that encouraged Joe to use picture clues and context clues and discouraged him from using phonics or learning how to sound out words.

65. During First Grade, Second Grade and Third Grade, Joe did not acquire academic skills. He regressed in reading, writing and arithmetic. He regressed emotionally. His parents’ attempted to advocate for him to receive more services from Upper Arlington School District but they were not successful.

66. In May, 1988, at the end of Second Grade, Upper Arlington School District administered the Woodcock Reading Mastery Test to Joe. On this test, he earned a Total Test standard score of 75, which placed him at the 5th percentile level in reading. (See Exhibit L, the June 5, 1989 IEP that reports the May, 1988 Woodcock Reading Mastery Scores)

67. After receiving a year of special education to remediate his reading difficulties, Joe regressed from the 9th percentile level, as measured by the Kaufman Test, to the 5th percentile, as measured by the Woodcock Reading Mastery Test. Despite receiving special education from the Upper Arlington School District and private tutoring, Joe was regressed.

68. On June 5, 1989, an Individualized Education Program (IEP) Committee met to develop an IEP for Joe’s fourth grade year. (Exhibit L).

69. At the time of that June 5, 1989 IEP meeting, Joe had been identified as dyslexic and learning disabled for four years.

70. Prior to that June, 1989 IEP meeting, Upper Arlington School District did not administer any independent objective testing, including the Kaufman or the Woodcock, to assess whether Joe was making progress.

71. The June, 1989 IEP developed for Joe's Fourth Grade year included several goals: That Joe would improve his skills in word analysis to the second grade level; develop/improve oral reading at an instructional level one (First grade); and "Develop/improve reading comprehension at the 4th grade level."

72. The June, 1989 IEP did not contain independent measurable goals or objectives to assess whether or not Joe was making progress toward his goals or whether he was benefiting from special education.

73. The earlier IEPs developed by Upper Arlington School District did not indicate whether Joe mastered any of the IEP goals and objectives established for him.

74. Because the June 1989 IEP failed to contain measurable goals and objectives, it was fatally deficient and did not comply with 34 C.F.R. § 300.346 and Appendix C of the Special Education Regulations. (See Questions and Answers #'s 36-41, Exhibit M)

75. During the June 1989 IEP meeting, Joe's parents were not advised that their son was entitled to a full continuum of services beyond what was offered by Upper Arlington School District.

76. During the June 1989 IEP meeting, Joe's parents were advised that they had to sign the IEP in order for their son to receive any special education services. (Exhibit C)

77. 34 C.F.R. Part 300, Appendix C, Question 26, states that "The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the child's IEP. This is an active role in which the parents (1) participate in the discussion about the child's need for special education and related services, and (2) join with other participants in deciding what services the agency will provide to the child."

78. Upper Arlington School District did not allow Joe's parents to be active participants in deciding what services the agency will provide to the child.

79. Upper Arlington School District did not advise Joe's parents that if they disputed the IEP developed by Upper Arlington, their son had a right to services in the "current educational placement" and that a Hearing Officer would rule on the issue pursuant to a special education Due Process Hearing.

80. At the beginning of the 1989-1990 academic year, Joe's Fourth Grade teacher stopped Mrs. James in the hallway. "She appeared panicked. She said she didn't know what to do about Joe. His skills were so far behind the rest of the class." After this discussion with Joe's teacher, Mrs. James requested that an IEP meeting be scheduled. (Exhibits B, C)

81. When Mrs. James attended the October, 1989 “scheduled” IEP meeting, she was advised that this was not an IEP meeting, despite the initial representations of Upper Arlington School District personnel. (Exhibits B, C)

82. During this October, 1989 meeting, Joe’s teacher brought out his writing journal in which he was writing backwards. When his mother questioned why Joe was not being taught how to write correctly, the teacher asserted that “it is important for children to learn through discovery.” (Exhibits B, C)

83. The Reading Recovery Teacher Leader, Joetta Beaver, continued to be involved in Joe’s education.

84. Prior to the October, 1989 non IEP meeting, Joetta Beaver tested Joe who was in the Fourth Grade. Joetta Beaver advised the IEP Team that Joe’s reading level was lower than a first grader. (Exhibits B, C)

85. School Psychologist Ford stated that “Joe is just going to have to learn there are other ways to get information besides reading.” (Exhibits B, C)

86. During this October 1989 meeting, Joe’s parents realized that Upper Arlington School District was either unable or unwilling to modify their existing program to meet Joe’s unique needs and could not provide Joe with the services he required in order to learn how to read.

87. Despite the fact that Joe was reading below the first grade level, the Upper Arlington School District staff did not offer to provide any additional or different services, programs, or placements for him.

88. After the October, 1989 meeting, Joe’s parents could accept Upper Arlington’s position that Joe would never learn how to read or they could secure more intensive educational services from the private sector.

89. Joe James was not provided with an appropriate special education program during the years that he was a student in the Upper Arlington School District.

90. In November, 1989, Joe’s parents withdrew him from Barrington Elementary School and unilaterally placed into Marburn Academy, a private special education school. (Exhibits B, C)

91. Prior to withdrawing Joe from Barrington, the parents discussed their position and concerns with Ted Oakley, Principal of Barrington Elementary School, and with Susan McConnell, Joe’s classroom teacher.

92. After Joe attended Marburn for approximately five months, his parents wrote a letter to Mr. Oakley, Principal of Barrington Elementary School, and requested that Upper Arlington re-evaluate Joe.

93. On March 9, 1990 Mr. Oakley responded to the parents' letter and agreed to schedule a special education re-evaluation of Joe, while noting that it "is not required prior to May, 1990 . . ." (Exhibit N)

94. Although the parents were requesting an IEP meeting and special education services for Joe, Mr. Oakley advised them that:

With regard to our meeting, since Joseph is no longer enrolled at Barrington, it would be inappropriate for us to review or recommend changes in his Individual Educational Plan. Our purpose would be simply one of sharing information with you. (Exhibit N)

95. According to his letter, Mr. Oakley evidently believed that it was inappropriate for Upper Arlington School District to assess whether they could provide Joe with a free appropriate public education at either Barrington Elementary School or at Marburn Academy.

96. Based on Mr. Oakley's letter, the parents believed that their only recourse was to return their son to Barrington Elementary School. On April 6, 1990, they wrote to Mr. Oakley that "we will be reinstating our son Joseph at Barrington for the school year 1990/1991." (Exhibit O)

97. Mr. Oakley did not offer Joe's parents any assistance in developing an IEP for the next school year. Instead, he told the parents that Marburn Academy is "responsible for developing any IEPs during the time Joseph is enrolled in there . . . When he is actually enrolled back at Barrington, we will review the IEP which is transferred with him and meet with you to make any necessary revisions based upon district service guidelines and available resources." (Exhibit P)

98. According to Mr. Oakley's April 9, 1990 letter, the parents were advised that their son's IEP would be based on the "district service guidelines and available resources."

99. It is a violation of special education procedures and substance for IEPs to be based on guidelines and "available resources." IEPs are to comply with the requirements of 34 C.F.R. Section 300.346 and Appendix C to 34 C.F.R. Part 300.

100. According to 34 C.F.R. Section 300.346 and Appendix C to 34 C.F.R. Part 300, IEP must be designed to meet the child's unique needs and must provide an educational program from which the child will derive educational benefit.

101. In his April 9, 1990 letter, Mr. Oakley did not advise the parents that Joe's IEP would be designed to meet his unique needs for remediation in reading and writing or that the IEP would be designed to provide Joe with educational benefit. Mr. Oakley did not address Joe's need to acquire skills in reading and writing.

102. In his April 9, 1990 letter, Mr. Oakley did not advise the parents of their rights or that Joe might be entitled to remain at Marburn Academy at the expense of Upper Arlington School District.

103. In his April 9, 1990 letter, Mr. Oakley did not advise the parents that Joe's current teacher at Marburn Academy was required to be present at the public school IEP meeting or that a decision as to whether the parents could receive tuition reimbursement and continued tuition for Joe's education at Marburn would be made at the IEP meeting.

104. Mr. Oakley did not advise the parents of their right to possible tuition, retroactive and prospective.

105. On April 12, 1990 Marburn Academy assessed Joe to determine if he was ready to return to public school. Based on their assessment, they determined that Joe was "clearly not ready" in the areas of Academic Skills and Work Habits. According to their global assessment, Joe was "Not Ready for Transition" back to public school. (Exhibit Q)

106. On May 2, 1990, Upper Arlington School District Psychologists Paula Ford and Rebecca Klosterman completed assessments of Joe. (Exhibit R)

107. According to Paula Ford's psychological evaluation, Joe's Full Scale IQ had jumped from 109 in 1987 (73rd percentile) to 118 in 1990 (88th percentile). (Exhibit J, Psychological Evaluation of May 22, 1987)

108. In their May 2, 1990 report, Ford and Klosterman wrote that "After being tutored by the Small Group Instruction teacher for approximately 2½ years, Mr. and Mrs. James decided to send Joseph to Marburn where they use the Orton Gillingham Method to teach basic reading skills."

109. In their report, Klosterman and Ford wrote that "Care should be taken that not all of Joseph's energies go into the labor of reading at the expense of the acquisition of information." (Exhibit R)

110. In their report, Klosterman and Ford did not address whether Joseph was benefiting from the Orton-Gillingham method or whether he continued to need remediation. (Exhibit R)

111. In their report, Klosterman and Ford recommended that Joe be taught using "talking books," "readers" and other curriculum modifications and accommodations. (Exhibit R)

112. Ms. Ford urged the parents to return Joe to Barrington School because she felt that “he belonged with his friends.”

113. Ms. Ford advised the parents that they “should not focus on Joe’s weaknesses.” Ford advised Joe’s parents that Upper Arlington School District could use “readers” and “books on tape” with Joe, instead of teaching him how to read and write.

114. Ms. Ford told the parents that they “were wrong in [their] approach” and attempted to dissuade the parents from obtaining remediation for Joe so that he could learn to read.

115. Because Ms. Ford believed that teaching Joe to read was hopeless, she warned his parents that they would damage him by placing him into a program that provided him with remediation. (Exhibit C)

116. Nancy and Cameron James believed that their son needed to learn how to read.

117. In her professional capacity as a school psychologist, Ms. Ford encouraged Joe’s parents to feel guilty for sending Joe to a special education school where he was receiving remediation.

118. Ford and Klosterman recommended that Joe be placed into an L.D. resource room in the public school. (Exhibit R)

119. The Upper Arlington School District staff did not discuss the School District’s obligation to provide a full continuum of special education services, with the parents, including private school placement, if appropriate.

120. In recommending an L.D. Resource class in the public school, Upper Arlington was advising Joe’s parents “that the only option available to us was to continue with the same program that had failed, accept that our son would never learn to read, and accept his continuing emotional regression.” (Exhibit C)

121. Before they re-enrolled Joe into Barrington Elementary School, his parents asked about the special education services Joe would receive. Upper Arlington School District refused to meet with the parents to develop an IEP for Joe. The parents recalled that “When they refused to meet with us to develop an IEP for Joe, we realized that we had no viable choice other than to have Joe continue at Marburn where he had made progress.” (Exhibit C)

122. Upper Arlington School District misled the parents by informing them that the only special education Joe could receive in the public school was an L.D. Resource class at Barrington Elementary School:

It was our understanding that our only option was to return Joe to the Upper Arlington School District where Joe would have to learn from sources other than reading. We learned that Upper Arlington School District would not teach Joe how to read. If we wanted Joe to learn how to read, it was our understanding from all of the staff within the Upper Arlington School District that Joe would have to be educated elsewhere. (Exhibit C)

123. The Upper Arlington School District staff believed that they did not have any obligation to offer an educational program to Joe, “since Joseph is no longer enrolled at Barrington, it would be inappropriate for us to review or recommend changes in his Individual Educational Plan.”

124. The Upper Arlington School District did not develop an IEP for the 1990-1991 academic school year.

125. Based upon the information they received from Upper Arlington School District, Joe’s parents decided not to re-enroll him at Barrington School. He continued to attend Marburn Academy.

126. Later, because of Joe’s declining progress at Marburn, despite the fact that he worked very hard, his parents realized that because “Joe’s dyslexia was severe, he needed a more intensive remedial program than Marburn could provide.” (Exhibit C)

127. Joe James’ parents were not provided with any information in regard to their right to request a special education Due Process Hearing to obtain tuition reimbursement.

128. Joe James’ parents were not provided with any information in regard to any timeline that would affect either their child’s entitlement to services or their right to seek tuition reimbursement.

129. During school year 1992-1993, Joe attended The Gow School. Gow works with children who have dyslexia.

130. Since September, 1993, Joe has attended The Kildonan School in Amenia, New York.

131. In 1994, after Joe completed the first year at Kildonan, his parents met with Sherry Meadows, the Upper Arlington School District’s Director of Special Education, and discussed Joe’s possible return. Meadows told the parents: “Don’t bring him back now, give me a couple of years to get someone trained.”

132. Ms. Meadows did not provide Mr. and Mrs. James with any information about their right to request a special education Due Process Hearing in order to obtain tuition reimbursement.

133. Ms. Meadows did not provide Mr. and Mrs. James with any information in regard to any timeline that would affect either their child's entitlement to services or their right to seek tuition reimbursement for special education services.

134. Ms. Meadows believed that the Upper Arlington School District did not have any obligation to offer an educational program to Joe because he was not attending a public school within the Upper Arlington School District.

135. The Upper Arlington School District staff believed that "since Joseph is no longer enrolled at Barrington, it would be inappropriate for us to review or recommend changes in his Individual Educational Plan."

136. The Upper Arlington School District did not write an IEP for Joe for the 1993-1994 academic school year.

137. The Upper Arlington School District did not write an IEP for Joe for the 1994-1995 academic school year.

138. The Upper Arlington School District did not write an IEP for Joe for the 1995-1996 academic school year.

139. The Upper Arlington School District did not write an IEP for Joe for the 1996-1997 academic school year.

140. Joe James has attended The Kildonan School since the 1993-1994 academic year.

141. Joe James has received an appropriate special education while at The Kildonan School.

142. Joe James is entitled to a free appropriate special education.

143. Joe James' appropriate special education has not been free.

144. Mr. and Mrs. James are entitled to receive retroactive reimbursement for their son's education at The Kildonan School for the 1993-1994, 1994-1995, and 1995-1996 academic years, and reimbursement for the present 1996-1997 academic year.

145. On May 13, 1996, Nancy and Cameron James requested a special education Due Process Hearing. (Exhibit B)

146. On November 5, 1996 Hearing Officer Lane issued his decision which was adverse to the parents. (Exhibit S, Lane Decision) In his decision, he relied upon precedent established by Reviewing Officer Craig in *Knable v. Bexley*. In his decision, Hearing Officer Lane stated that:

The Upper Arlington School District contends that the Request for Impartial Due Process hearing filed by Cameron James on May 13, 1996 must be dismissed due to the unilateral withdrawal of Joseph James from the Upper Arlington School District in November 1989 without first exhausting the grievance procedures set forth in 20 U.S.C.A. §1415. The school district relies upon *Wise v. Ohio Dept. of Education* . . . (Page 8)

Later:

Cameron and Nancy James concede that they unilaterally removed Joseph James from the Upper Arlington School District without first exhausting the grievance procedures set forth in 20 U.S.C.A. § 1415, but argue that the door to the courthouse should not be slammed in the face of parents who are carried there on the horns of a dilemma. Parents, they argue should not be forced to choose between two equally untenable positions. Parents can leave their child in an educationally damaging environment and protect their right to tuition reimbursement, or they can protect their child by unilaterally moving the child to an educationally appropriate environment, and lose their right to tuition reimbursement. Similar arguments were rejected by the Court in *Wise*. (Page 9) . . .

The language of *Wise* is clear and unambiguous, and is binding on this Impartial Hearing Officer. I find, as noted in *Bexley*, that I have no choice but to dismiss this action. (Page 10)

147. In the letter requesting an appeal of the Hearing Officer's Decision, plaintiff's counsel argued that: "The essence of *Wise*, (and Ohio Review Decision *Bexley* [*Knable*]) as presently interpreted, is that parents of disabled children in Ohio may not remove their children from an inadequate and inappropriate and damaging public school placement unless and until they have first initiated and exhausted their administrative procedures, which can be a very lengthy and time consuming process." (Exhibit T, December 3, 1996 letter from Wright requesting an appeal.)

148. On December 31, 1996, Reviewing Officer Craig, who had previously decided *Knable*, affirmed the Decision of the Hearing Officer. In his Review Decision, he wrote: (Exhibit U, Craig Decision)

The controlling language of *Wise*, is clear that administrative remedies under IDEA must be exhausted before a parent can obtain judicial relief, and such administrative remedies must be started (and

conceivably completed) during a period when the L.E.A. has a duty to supply a child with a FAPE.

Once a child is removed from the public school, without first completing administrative grievance procedures, the L.E.A. has no further duty to the child until such time as the child is once again enrolled in the L.E.A.

Petitioners argue that this result is unfair and places parents in an untenable position. That may be so, however, the language is clear and controlling. Mr. and Mrs. James should have filed their request for a due process hearing at any time prior to when the child was removed from school.

Petitioner's unilateral removal of Joseph from Upper Arlington City Schools rendered the entire matter moot, because thereafter, Upper Arlington had no further obligation to provide a FAPE for Joseph, until such time as he re-enrolled.

Accordingly, the decision of the I.H.O. is entirely confirmed.

149. The plaintiffs have exhausted their administrative procedures.

COUNT ONE

IDEA-Administrative Appeal to Court

150. Joe and his parents, Nancy and Cameron James, hereby restate in full and incorporate by reference the allegations contained in Paragraphs 1 through 149.

151. The defendant Upper Arlington School District defaulted in their obligation to provide Joe with a free appropriate public education. Joe's parents secured an appropriate education for their son.

152. On May 13, 1996, the plaintiffs requested a special education due process hearing in order to recover the costs of their son's tuition for his special education.

153. In ruling upon a Motion to Dismiss, the appointed Hearing Officer declined to award the parent's tuition reimbursement. The Hearing Officer relied upon Reviewing Officer Craig's decision in *Knable v. Bexley* which was premised on language in the Sixth Circuit's *Wise* decision.

154. The case was appealed to an Administrative Reviewing Officer, who was the same Reviewing Officer who decided *Knable*.

155. Reviewing Officer Craig affirmed the ruling of the Hearing Officer.

156. This action is an appeal of the Decisions of the Administrative Hearing and Reviewing Officers, pursuant to the Individuals with Disabilities Education Act, (20 U.S.C. § 1415(e)(2),(3),(4)(A)+(B) and 1415(f)), Chapter 3323 of the Ohio Revised Code, and the “Rules for the Education of Handicapped Children” published by the Ohio Department of Education.

157. The plaintiffs have exhausted their administrative remedies and are aggrieved by the findings and Decisions of the Hearing and Reviewing Officers.

158. In *Burlington School Comm. v Department of Educ.*, 471 U.S. 359, (1985), the U. S. Supreme Court stated that parents who unilaterally change a child’s placement do not violate the law or forfeit all remedies under IDEA. In *Burlington*, the Supreme Court found that a unilateral placement by a child’s parent does not constitute a waiver of reimbursement.

RELIEF-COUNT ONE

159. The plaintiffs request that this Court enter an Order requiring that the Administrative Record, i.e., the Briefs, Affidavits, and Exhibits attached to the Briefs, the Due Process Decision, and the Reviewing Officer’s Decision, be filed with the Court.

160. The plaintiffs respectfully request that this Court enter an Order declaring that the U. S. Supreme Court’s ruling in *Burlington* affirms the parents’ right to unilaterally remove their child from an inappropriate and damaging special education placement and place their child into another setting and be reimbursed if the education obtained by the parents is appropriate.

161. The plaintiffs request that, based upon a review of the Answers filed in response to this Complaint, this Court enter an Order declaring that, as a matter of law, because the defendants did not endeavor to offer any IEP to Joseph James since the October, 1989 meeting, despite re-evaluations and requests, the defendants have defaulted on their obligation to offer Joseph James a FAPE and the parents are entitled to tuition reimbursement for their son’s education since October, 1989.

162. The plaintiffs request that this Court hear evidence related to the parent’s request for retroactive and present tuition for their son’s education at The Kildonan School and find that:

a. The Upper Arlington School District defaulted in their obligation to provide Joseph James with a free appropriate education; and

b. That the parents secured an appropriate education for their son at The Kildonan School; and

c. That the parents are entitled to be reimbursed tuition, room and board, and related costs; and

d. That the plaintiffs are the prevailing parties and entitled to an award of their court costs, witness fees, expenditures and reasonable attorney's fees, pursuant to 20 U. S. C. 1415(e)(4) and 42 U.S.C. 1988.

COUNT TWO

SECTION 504 **OF** **THE REHABILITATION ACT**

163. Joe and his parents, Nancy and Cameron James, hereby restate in full and incorporate by reference the allegations contained in Paragraphs 1 through 162.

164. Section 504 of the Rehabilitation Act of 1973 and its implementing regulations prohibit discrimination against any disabled person solely by reason of his disability by a recipient of federal financial assistance.

165. Defendants receive, expend, or administer the expenditure of federal funds within the meaning of § 504.

166. As recipients of public funds, the defendants must ensure the provisions of a free appropriate public education to each qualified disabled student under their legal authority to serve, regardless of the severity of the student's disability.

167. With regard to Joseph, a free appropriate public education should have included his identification as a handicapped student and the provision of special education and related services designed to meet his needs as adequately as the needs of non-handicapped students.

168. Section 504 also mandates a system of procedural protections, including notice and a meaningful opportunity to be heard, with respect to actions regarding the identification, evaluation, educational placement and provision of special education and related services to Joe.

169. The defendants knew that Joseph James was a child with a disability upon his enrollment as a student in the Upper Arlington School District.

170. Joseph James is a qualified individual with a disability, was excluded from participation in or denied the benefits of the Upper Arlington School District programs, and such treatment was by reason of his disability.

171. The defendants did not initiate an evaluation of Joe, “who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any significant change in placement.” (34 C.F.R. § 104.35)

172. Joseph James was denied access to special education services for his Learning Disabilities from his Kindergarten year until the start of his second grade year, in September, 1987.

173. The special education services that Joe received at the beginning of his second grade year did not provide him with a free appropriate public education.

174. Beginning in 1985, the defendants failed to provide Joseph James and his parents with the system of procedural safeguards as required by Section § 504.

175. Beginning in 1985, the defendants failed to provide Joseph James and his parents with the system of procedural safeguards as required by the Individuals with Disabilities Education Act. (IDEA)

176. The defendants denied Joe the benefit of their educational programs and otherwise discriminated against him based solely on his handicap.

177. The defendants began using the Reading Recovery program for Joseph without any justification or research that Reading Recovery was appropriate for a Learning Disabled child with dyslexia and dysgraphia.

178. Upon information and belief, the defendants placed Joseph into a pilot program or research study without notifying Nancy and Cameron James.

179. Upon information and belief, the defendants used Reading Recovery with Joseph because of a financial and business relationship between the Upper Arlington School District, the Education Department of Ohio State University, and the Reading Recovery Teacher Leader, Joetta Beaver.

180. Upon information and belief, the Upper Arlington School District staff consulted with staff from the Education Department at Ohio State University about Joe’s failure in Reading Recovery. Confidential information about Joe was exchanged without parental knowledge or consent.

181. Upon information and belief, Joseph’s Reading Recovery Teacher Leader continued to be involved in Joe’s educational planning until he was withdrawn from Upper Arlington Schools.

182. Upon information and belief, Joseph's Reading Recovery Teacher Leader received substantial sums of monies and other benefits by encouraging and promoting the use of Reading Recovery within the Upper Arlington School District.

183. The educational program designed for Joseph James was based on financial benefit to the Upper Arlington School District and the Reading Recovery Teacher Leader, and did not ensure that Joe would receive an educational benefit from the program.

184. By failing to timely evaluate Joseph, by using and continuing to use the inappropriate Reading Recovery method, and by failing to offer a free appropriate public education to Joseph after he was unilaterally removed from the public school and re-evaluations were requested by his parents, Upper Arlington School District acted under color of law, either through an unofficial policy or custom or because of deliberate indifference to a deprivation of Joseph's federal rights.

185. Upper Arlington School District failed to properly train its employees about how to teach dyslexic and dysgraphic learning disabled children how to read and write. If training was provided, it was inadequate in relation to the tasks that the employees were required to perform and deficiencies in the training program were closely related to the damage to Joe.

186. Upon information and belief, Upper Arlington School District initially used Reading Recovery with Joe and continued to use Reading Recovery despite its failure, because the Upper Arlington School District was receiving or hoped to receive an economic benefit from the use of Reading Recovery.

187. The initial use of Reading Recovery and the continued use of Reading Recovery with Joseph amounted to a deliberate indifference to or tacit authorization of such conduct by the defendants, despite notice that Joseph was being harmed by the continued use of said program. The continued use of Reading Recovery with Joseph and other similarly situated learning disabled children is pursuant to the policy, custom and procedures of Upper Arlington School District, despite their knowledge that Reading Recovery does not provide a learning disabled children with dyslexia and dysgraphia with an appropriate education.

188. The plaintiffs have suffered an economic injury caused by the wrongful conduct of the defendants.

189. By their acts and omissions, which constituted gross misjudgment, the defendants deprived Joseph James and Nancy and Cameron James of numerous procedural and substantive rights secured by U.S.C. § 504, and its implementing regulations, 34 C.F.R. § Part 104, and 42 U.S.C. § 1983, which constitutes injury in fact.

RELIEF-COUNT TWO

190. For violations in violation of Section 504 of the Rehabilitation Act of 1973, the plaintiffs demand A JURY TRIAL and judgment against the defendants, as follows:

- A. Compensatory Damages
- B. The attorney's fees, costs of suit and expenses incurred in prosecuting this action pursuant to 42 U.S.C. § 1988.
- C. Such other and further relief as the Court deems just and proper.

COUNT THREE

THE DUE PROCESS CLAUSE **OF THE** **FOURTEENTH AMENDMENT**

191. Joe and his parents, Nancy and Cameron James, hereby restate in full and incorporate by reference the allegations contained in Paragraphs 1 through 190.

192. The Due Process Clause of the Fourteen Amendment to the United States Constitution prohibits units of government and government officials from depriving persons of liberty or property without adequate notice and a meaningful opportunity to be heard.

193. The defendants failed to have Joseph James evaluated for special education services upon his entering the Upper Arlington School District as a Kindergarten student. Upper Arlington School District was on notice at that time that Joe had a "Learning Disability with difficulty in both visual perceptual and auditory perceptual skills . . . [needed] early testing [and] individual tutoring for language development." (Exhibit A.)

194. Upper Arlington School District did not prove any testing or tutoring for language development was provided.

195. Instead of providing Joe with special education services from which he would benefit, Upper Arlington School District placed him in an untested, experimental program. The parents did not provide an informed consent about their son's placement into this program.

196. The right to an education is a property right.

197. The acquisition of reading skills is one of the most important functions of public school educational institutions and the educational process.

198. After Joe was unilaterally removed from the Upper Arlington School District and placed into a private special education school, his parents consulted with the Upper Arlington School District about Joe's return. Despite evaluations, Upper Arlington School District refused to offer Joseph an IEP unless and until he returned to the public school setting.

199. This continued refusal by Upper Arlington School District to offer Joseph an IEP was the deprivation of a property right, under color of state law, that created economic and emotional injury to the parents and emotional injury to Joseph. To receive an appropriate education in which he learned how to read and write, Joe had to leave his parents, his siblings, and his home and attend an out-of-state school.

200. The failure to timely evaluate Joseph during his first years in the Upper Arlington School District and the subsequent failure to provide Joseph with an appropriate education in those first years, closed the "window of opportunity" on Joseph.

201. Upon information and belief, the "window of opportunity" closed because, upon information and belief, Upper Arlington School District and their staff had a business and financial relationship to promote one method, Reading Recovery, to the exclusion of providing Joe with an appropriate education from which he would benefit.

202. Using experimental educational methods with handicapped and disabled children to generate income for a School District and individual staff is beyond the scope of public education and the mandate of public education which is to ensure that all handicapped children receive a free appropriate public education.

203. By their acts and omissions, the defendants deprived the plaintiffs of their procedural rights secured to them by the IDEA, Section 504 of the Rehabilitation Act, and their Constitutional right of Due Process.

204. As a result of Upper Arlington School District's failure to timely evaluate and educate Joseph, he suffered denial of an equal educational opportunity, loss of an equal educational opportunity, emotional distress, damage to his reputation, and psychological harm. His parents suffered financial damage caused by the expenditures of large sums of money for private school tuition and psychological evaluations and treatment of their son's dyslexia. The parents suffered emotional distress, psychological harm, and the loss of companionship of their son while he attended the out-of-state school.

205. The defendants failed to provide Nancy and Cameron James with adequate notice or a meaningful opportunity to be heard prior to:

- (a) Refusing to provide Joseph with an evaluation when he first entered Kindergarten;

(b) Refusing to provide Joseph with special education services when he first entered Kindergarten.

(c) Placing Joseph into an untested, unproven educational program, i.e., Reading Recovery, that was not designed to be used for learning disabled children who have dyslexia and dysgraphia.

(d) Placing Joseph into that educational program without Notice or Consent that the program was untried, untested and a pilot program.

(e) Placing Joseph into Reading Recovery without making a full disclosure of the economic and business interests of the staff and Upper Arlington School District in Reading Recovery.

(f) Placing Joseph into a regular special education program and continuing to use Reading Recovery methods with Joseph, despite Upper Arlington School District's own test data which showed that Joseph was being damaged by the continued use of Reading Recovery.

(g) Failing to convene an IEP meeting in October, 1989, after advising Nancy James that an IEP meeting was being called to address her concerns and the concerns expressed by Joe's Fourth Grade teacher.

(h) Predetermining at that October, 1989 meeting that Joe and his parents would have to accept the fact that Joe would not learn how to read.

(i) Determining that, on several different occasions, after Joe's removal from public school, that Joe had to return to public school in the Upper Arlington School District before the defendants would consider providing him with an Individualized Educational Program.

206. By their acts and omissions, defendants Upper Arlington School District, members of the Board, and Superintendent Schaefer violated Joe's rights and his parents' rights to due process of law secured by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983, which itself constitutes an injury in fact. Because of these violations, Joe suffered denial of an equal educational opportunity, emotional distress, psychological harm, unfair and discriminatory action. Nancy and Cameron James suffered emotional distress, psychological harm, loss of their son's companionship, economic injury and discriminatory action.

RELIEF-COUNT THREE

207. For the violations of the Due Process Clause of the Fourteen Amendment to the United States Constitution, the plaintiffs demand A JURY TRIAL and judgment against all defendants, as follows:

- A. Compensatory and Punitive Damages
- B. The attorney's fees, costs of suit and expenses incurred in prosecuting this action pursuant to 42 U.S.C. § 1988.
- C. Such other and further relief as the Court deems just and proper.

JOSEPH JAMES a minor,
by and through his parents,
NANCY JAMES,
and
CAMERON JAMES, and on their
own behalf
By Counsel, Pro Hac Vice

Dated: February 12, 1997
Columbus, Ohio

Nancy James

Joseph James

_____, p.q.
Peter W. D. Wright, Esq. (Pro Hac Vice)
TRIAL ATTORNEY
Virginia State Bar # 17606
Courthouse Commons
4104 E. Parham Road
Richmond, Virginia 23228-2734
(804) 755-3000