

All Children Can Learn

D.R. v. Michigan Department of Education

A Civil Rights Lawsuit for the Children of Flint

Plaintiffs: 15 Flint children and their parents, on behalf of thousands of similar situated children and families.

Defendants: Michigan Department of Education (MDE), Flint Community Schools (FCS), Genesee Intermediate School District (GISD)

Attorneys: ACLU of Michigan; Education Law Center, Newark NJ; White & Case, New York, NY

What is this case about?

- **The catastrophic ongoing failure that is the Flint Water Crisis** has exposed nearly 30,000 children, ages birth to 19, to high levels of lead at both home and school.¹
- **All children can learn:** Young people are remarkably resilient and can overcome environmental stress, health hazards and learning challenges. But K—12 education has been ignored in public discussions about how to respond to the Flint water crisis.
- **Children in Flint are *not* receiving the support they need** to achieve academic, social and behavioral success in school.
- **Samples from Flint’s 11 public schools had lead levels ranging from 61 parts per billion to 2,856 parts per billion (ppb)**, measured between October 2015 and January 2016.²
- **There is no safe level of exposure to lead.** Federal regulations require remedial action for water systems with measurements at or above 15 ppb.
- **Lead is a proven neurotoxin that affects the human brain, especially in young children.** Children exposed to lead are known to suffer learning impairments, behavioral challenges and other disabilities.
- **Sixteen percent of the more than 5,400 children currently enrolled in Flint Community Schools** are qualified to receive special education services.³
- **Local and state school authorities have systematically failed to provide accommodations to ensure a free, appropriate public education** to the *current* caseload of special education students in Flint. This caseload is likely increase in coming years as result of widespread exposure to lead. Immediate action is required to meet the needs of these children, while also ensuring that the rest of the school population in Flint is not shortchanged.
- **Defendants in the case are committing ongoing and systematic violations of federal civil rights laws, including:**
 - The Individuals with Disabilities Education Improvement Act (IDEA) of 2004
 - § 504 of the Rehabilitation Act of 1973
 - Title II of the Americans with Disabilities Act (ADA)

What's gone wrong? FCS, GISD and MDE have:

- **Failed to track the academic and behavior needs** of all students to determine their educational needs.
- **Failed to provide a safe learning environment.**
- **Failed to provide necessary accommodations** to enable all students to achieve a meaningful education.
- **Instead, FCS and GISD, with no corrective action by MDE, have resorted to suspension, discipline and shuttling students** from school to school with no long-term plan for educational progress or success.
 - **Flint Community Schools expelled or suspended special education student more than five times as often** as special education students statewide in 2014-2015 (13.59% vs. 2.48%).⁴
 - **Special education students in Flint Community Schools had a dropout rate 1.6 times higher** than special education students statewide in 2014-2015 (13.11% vs. 7.86%).⁵

Authorities are not taking action to make it right:

- **The FCS School Board has held no meetings or discussions** and has scheduled no agenda items to address the likely increase in special education cases.
- **Gov. Rick Snyder's 75-point "Goals to Strengthen Flint"**, issued in response to the water crisis, does not contain any action steps related to K-12 education.
- **Neither state nor local authorities have committed to resolve the \$10 million deficit** faced by FCS. Lack of resources force layoffs and budget cuts that make it impossible for the district to meet the needs of either special education or general population students.

Injuries suffered by our clients: Flint Community Schools does not have the capacity, resources or training to deal with the current caseload of special education students. For example:

- **C.D.M, an eight-year old special education student** was placed into handcuffs while at a third-party after school program, for a minor infraction of kicking a cart. He is a student with a disability who had a plan as to how to address his behavior, and utilizing handcuffs was not a part of the plan. Behavior plans for students are often not provided, and when they are, are frequently not followed.
- **J.T., a seven-year-old special education student** at a charter school within Flint, was having frequent behavior issues. His mother informed the school of his disability diagnosis of ADHD and lead exposure, and no intervention was provided until after he was put out of school more than 50 times during the 2015-2016 school year, with no plan to make up lost instructional time.
- **D.K is a six-year old special education student.** He is allergic to shellfish and nuts, a fact stated on the first page of his Individual Education Plan (IEP). In May 2016, he was given a cookie containing peanuts. D.K. went into

anaphylactic shock and began vomiting. Rather than administer a life-saving EPI-pen or call an ambulance, the school called D.K.'s mother, who rushed to the building and found him lying on the floor in his own vomit, blue in the face. D.K.'s mother picked up her child and raced him to the hospital, where doctors had to clear his constricted throat to prevent suffocation.

We must act promptly to protect children in Flint. Relief demanded by our clients includes:

- **Identify and meet the academic and behavioral needs** of all Flint students in the FCS school district.
- **Positive Behavioral Interventions** implemented in every school with training provided to all administrators, teachers and staff, including school resource officers.
- **Prevention of unnecessary and illegal suspensions and expulsions.**
- **Require all Flint schools** to identify and provide for special education services and accommodations for children with disabilities.
- **Oversight and monitoring of corrective measures** needed to meet the educational needs of all students.
- **Convene a panel of experts** to evaluate current special education services in Flint.
- **Appointment of a Special Monitor** to oversee implementation of expert recommendations.

¹ Michigan Department of Education, Michigan School Data, available at <https://www.mischooldata.org/>

² Michigan Department of Education, Educational Entity Master; Data Driven Detroit. Created August 2016. Fixtures in Flint public schools were replaced during the summer of 2016 presumably reducing exposure to lead. Exposure to lead that took place at home and at school between 2014 and 2016, however, is irreversible and will continue to have long-term health effects for years to come.

³ Michigan Department of Education, Michigan School Data, available at <https://www.mischooldata.org/>.

⁴ <https://www.mischooldata.org/DistrictSchoolProfiles/StudentInformation>

⁵ <https://www.mischooldata.org/DistrictSchoolProfiles/StudentInformation>