

UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF NEW YORK

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ELSA GULINO; MAYLING RALPH; PETER WILDS;
and NIA GREENE, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

THE BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK; and
NEW YORK STATE EDUCATION DEPARTMENT,

Defendants.
-----x

96 Civ. 8414
COMPLAINT

Plaintiffs, ELSA GULINO, MAYLING RALPH, PETER WILDS, and NIA
GREENE, on behalf of themselves and all others similarly
situated, by their attorneys, the Center for Constitutional
Rights, complaining of defendants, allege:

NATURE OF THE CASE

1. This action is brought to remedy discrimination in
employment on the basis of race in violation of Title VI of the
Civil Rights Act of 1964 ("Title VI"), as amended, 42 U.S.C. §§
2000d et seq., Title VII of the Civil Rights Act of 1964 ("Title
VII"), as amended, 42 U.S.C. §§ 2000e et seq., the New York State
Human Rights Law ("NYSHRL"), Executive Law § 290 et seq., and the
Amended New York City Human Rights Law ("NYCHRL"), New York City
Administrative Code § 8-101 et seq.

2. This case presents a challenge to two discriminatory
tests used by the Defendants Board of Education of the City
School District of the City of New York ("Board") and the New
York State Education Department ("Department") (collectively
"Defendants") to determine qualification for licensure and

employment rights in the New York City Public School System. Attainment of qualifying scores either on the National Teacher Examination Core Battery ("NTE"), or on the Liberal Arts & Sciences Test of the New York State Teacher Certification Examination ("LAST"), the successor to the NTE, is required by Defendants as a condition of licensure.

3. Neither the NTE nor the LAST are licensing examinations for the teaching profession. Their statutory application -- as well as the entire New York State credentialing process -- extends no further than the Public School System. As such, the NTE and LAST are employment examinations required and administered by Defendants.

National Teacher Examination

4. The NTE is a written multiple-choice test created by the Educational Testing Service ("ETS"), and administered and scored by Defendant Department. Since the design of the test by Defendant Department in 1983 and its subsequent implementation by Defendant Board pursuant to New York State ("State") statute and administrative regulation in 1984, the NTE has had a severe adverse impact on African-American and Latino teachers in New York City public schools. Based upon the State-wide information available to Plaintiffs, for the periods from 1985 through 1989 and 1993 through 1994, white test-takers passed the NTE at an average rate of 83.7%, while during that same period African American and Latino test-takers passed at rates of only 43.9% and 40.3%, respectively.

5. Plaintiffs are African-American and Latino teachers employed by the Board and subject to the licensure requirements imposed by both the Department and the Board. Plaintiffs have completed the substantial requirements imposed on public school teachers by Defendants, and have been found qualified by Defendants to teach in the New York City public schools. Plaintiffs are experienced teachers, and by virtue of their extended and able employment, have accrued licenses and other substantial employment rights.

6. Plaintiffs assert that the NTE discriminates against them on account of their race and has resulted in the loss of significant employment opportunities, rights, and benefits in violation of Title VI, Title VII, the NYSHRL, and the NYCHRL.

7. As a result of the disparity in NTE passing rates, Plaintiff African American and Latino public school teachers have lost their licenses, been demoted to substitute status, suffered significant reductions in compensation, and lost pension rights, seniority rights, and retention rights. However, notwithstanding Plaintiffs' failure to attain qualifying scores on the NTE, Defendants have seen fit to retain Plaintiffs and most of the plaintiff class in the same teaching positions with the same courseload.

8. The NTE has not been, and cannot be, validated to measure the knowledge, skills, and abilities of experienced teachers such as Plaintiffs. Nor has the test been validated for use in revoking the employment rights and privileges of

experienced teachers. ETS, the creator of the test, never intended it to be used as it has been by Defendants. Rather, the NTE was designed solely to evaluate those with no teaching experience who apply for an initial teaching assignment. College students consistently receive substantially higher scores on the test than those holding PhD, Masters, and Bachelors degrees.

9. Defendants have never demonstrated that the NTE measures teaching skills or that the test in any way predicts competent job performance.

10. Moreover, the passing scores established by Defendant Department were not based on any rational, job-relevant criteria.

11. Upon information and belief, Defendants have recognized that the NTE discriminates against African-American and Latino test-takers, and as a result in September 1996 officially discontinued use of the NTE. See CEO 92-16 (Revised 12/92).

The Liberal Arts & Sciences Test

12. The LAST is a written multiple-choice and essay test created by National Evaluation Systems ("NES"), and administered and scored by Defendant Department. Since the implementation of the test by Defendants in 1993, the LAST has had a severe adverse impact on African-American and Latino teachers in New York City public schools. Based upon the State-wide information available to Plaintiffs for the period from March 1993 through June 1995, white test-takers have passed the LAST at an average rate of 93%, while African American and Latino test-takers have passed at rates of only 53% and 50%, respectively.

13. Plaintiffs assert that the LAST discriminates against them on account of their race and has resulted in the loss of significant employment opportunities, rights, and benefits in violation of Titles VI and VII; the NYSHRL; and the NYCHRL.

14. As a result of the disparity among LAST passing rates, Plaintiff African American and Latino public school teachers have been denied or lost their licenses, been demoted to substitute status, suffered significant reductions in compensation, and lost pension rights, seniority rights, and retention rights. However, notwithstanding Plaintiffs' failure to attain qualifying scores on the LAST, Defendants have seen fit to retain Plaintiffs and most of the plaintiff class in the same teaching positions with the same courseload.

15. The LAST has not been, and cannot be, validated to measure the knowledge, skills, and abilities of experienced teachers such as Plaintiffs.

16. Defendants have never demonstrated that the LAST measures teaching skills or that the test in any way predicts competent job performance.

17. Moreover, the passing scores established by Defendant Department were not based on any rational, job-relevant criteria.

18. The tests utilized by Defendants measure neither general knowledge, teaching skills, or competency in content areas. Other more valid, less discriminatory means exist by which to ensure that teachers have competent skills and are proficient in their subject areas.

JURISDICTION

19. This Court has jurisdiction pursuant to 28 U.S.C §§ 1331 and 1343. As to those specific claims arising under Title VII, this Court's jurisdiction is additionally established pursuant to 42 U.S.C. § 2000e-5(f)(3). This Court has jurisdiction over the remaining claims brought under New York State and New York City law pursuant to 28 U.S.C. § 1367(a) in that such claims arise from a common nucleus of operative fact and are so intertwined with other matters pending before this Court as to make exercise of jurisdiction appropriate.

20. Plaintiffs have fully complied with all prerequisites to jurisdiction in this Court under Title VII. Timely charges covering Plaintiffs allegations of discrimination by Defendants were filed with the United States Equal Employment Opportunity Commission. On or about October 11, 1996, the Attorney General of the United States issued Plaintiffs notices informing them of their right to sue Defendants in federal court based on these charges. Plaintiffs have brought this action within ninety days of notice thereof.

21. Authority for attorneys' fees and experts' fees is invoked under 42 U.S.C. § 2000e et seq. and 42 U.S.C. § 1988.

VENUE

22. Venue is proper in this District under 28 U.S.C. § 1391(b) in that the cause of action arose in this District.

PARTIES

a. Elsa Gulino

23. Plaintiff, ELSA GULINO is a Latino woman residing in New York County in the State of New York. Gulino has taken the NTE on numerous occasions and the LAST once. She is seeking to obtain reinstatement of her employment rights and to retain her current employment as an education evaluator in the New York City Public School System.

24. Gulino has been employed as a bilingual education teacher in the New York City Public School System for Defendant Board since 1983. She served as a substitute teacher from 1983 until her appointment as a licensed teacher of bilingual special education in 1988.

25. Gulino received her Master of Arts degree in 1985.

26. From 1985 through 1988, Gulino fully completed the coursework and field work and all other requirements for her position as a bilingual special education teacher.

27. On October 3, 1988, after Gulino passed the examinations administered by the Board of Examiners of Defendant Board, Defendant Board issued Plaintiff her license to serve as a teacher of "Bilingual Special Education - Spanish [in the] Day Schools."

28. In October 1988, Gulino was appointed by Defendant Board as a teacher of bilingual special education at Public School 159 in the Bronx, New York.

29. On October 25, 1991, Gulino was notified by Defendant

Board that she had successfully completed her probationary period. At that time, she had acquired full tenure rights subject only to passage of the NTE.

30. Gulino has continued to teach to the present date. In 1992, she became an education evaluator for Defendant Board. Throughout her tenure in the New York City Public School System, Gulino has received the highest ratings on her performance evaluations for her teaching work and is regarded as an effective and dedicated teacher.

31. After completing her probation, Gulino was informed by Defendant Board that she was required to pass the NTE administered by the Department in order to retain the license and employment rights she had already earned.

32. Gulino took the NTE three times, most recently in October 1995, but on each occasion she failed to obtain the requisite passing scores on all three portions as set by Defendant Department.

33. In February 1996, Gulino took the LAST in an effort to meet Defendants' testing requirements. She failed to obtain a passing score on the test.

34. As a result of Plaintiff's failure to pass the NTE, in October 1995, Defendant Board terminated Plaintiff's license to teach in New York City, demoted her to the position of per diem substitute teacher, drastically cut her salary, and revoked the pension, seniority and retention rights she had previously held. Despite the apparent termination of her license, however,

Plaintiff continues to perform teaching duties for Defendant Board as an education evaluator.

b. Nia Greene

35. Plaintiff, NIA GREENE is an African American woman residing in Kings County in the State of New York. Greene has taken the NTE and the LAST on numerous occasions. She is seeking to obtain a license to teach and a permanent appointment in the New York City Public School System.

36. Greene has been employed as a teacher of Common Branch Subjects in elementary schools in the New York City Public School System for Defendant Board since 1986.

37. In 1986, Plaintiff passed the examinations administered by the Board of Examiners of Defendant Board, and has been a full-time "long-term substitute" since that time.

38. Greene obtained her Masters Degree in Social Science in 1987.

39. Greene has completed all other educational requirements imposed by Defendants as requirements for licensure. She has consistently received satisfactory performance evaluations for her teaching work and is regarded as a dedicated teacher.

40. Since 1991, Greene has taken the NTE six times, most recently in October 1995, but on each occasion she failed to obtain the requisite passing scores. She has also taken the LAST twice, most recently on June 8, 1996, and failed to obtain a passing score.

41. As a result of her failure to obtain a passing score on

either examination, Greene has been denied a license to teach, and, thereby, the opportunity to obtain an appointment and permanent employment in the New York City public schools, solely as a result of her test scores.

42. Greene has been informed that unless she passes either the NTE or the LAST, she will be terminated from her employment by the end of 1996.

c. Mayling Ralph

43. Plaintiff, MAYLING RALPH is an African American woman residing in Freeport, New York. Ralph has taken the NTE on numerous occasions. She is seeking to obtain reinstatement of her employment rights and to retain her current employment in the New York City Public School System.

44. Ralph has been employed as an elementary school teacher in the New York City Public School System for Defendant Board since 1986. She first taught as a substitute teacher from 1986 through 1988.

45. On May 1, 1989, after Ralph passed the examinations administered by the Board of Examiners of Defendant Board, Defendant Board issued Plaintiff her license to serve as a teacher of "Common Branches - In the Day Elementary Schools."

46. In 1989, Ralph was appointed by Defendant Board.

47. During the period from 1986 through 1992, Ralph obtained a Master of Arts degree and completed all of the other educational courses required for a license to teach Common Branches in the New York City Public School System.

48. On September 5, 1992, Ralph was notified by Defendant Board that she had successfully completed her probationary period.

49. Ralph has continued to teach to the present date. She has consistently received satisfactory performance evaluations for her teaching work and is regarded as an effective and dedicated teacher.

50. After completing her probation, Ralph was informed by Defendant Board that she was required to pass the NTE administered by the Department in order to retain the license and employment rights she had already earned.

51. As of June 1995, Ralph had failed to obtain the requisite passing scores on the NTE. As a result, in October 1995, Defendant Board terminated her license to teach in New York City, demoted her to the position of substitute, drastically cut her salary, and revoked the pension, seniority, and retention rights she had previously held. Despite the apparent termination of her license, Ralph continues to perform teaching duties for Defendant Board. Ralph passed the LAST in June 1996.

d. Peter Wilds

52. Plaintiff, PETER WILDS is an African American man residing in Hollis, New York. Wilds has taken the NTE on numerous occasions, and the LAST three times. He is seeking to obtain reinstatement of his employment rights and to retain his current employment as a teacher of special education in the New York City Public School System.

53. Wilds has been employed as a teacher in the New York City Public School System for Defendant Board since 1985. He first taught as a substitute teacher from 1985 through 1988.

54. On May 2, 1988, after Wilds passed the examinations administered by the Board of Examiners of Defendant Board, Defendant Board issued Plaintiff his license to serve as a teacher of "Special Education In the Day Schools."

55. During the period from 1989 through 1991, Wilds completed his Master of Arts degrees in Special Education and Guidance and Counseling along with all other educational courses required for his teaching license to teach special education. He has continued to teach to the present date.

56. On September 6, 1991, Wilds was notified by Defendant Board that he had successfully completed his probationary period.

57. Wilds has consistently received satisfactory performance evaluations for his teaching work and is regarded as an effective and dedicated teacher.

58. After completing his probation, Wilds was informed by Defendant Board that he was required to pass the NTE administered by Defendant Department in order to retain the license and employment rights he had already earned.

59. Wilds took the NTE ten times, most recently in October 1995, but on each occasion he failed to obtain the requisite passing scores on all three portions as set by Defendant Department.

60. In an effort to meet Defendants' testing requirements,

Wilds also took the LAST three times, most recently in June 1996. He failed to obtain a passing score on the test.

61. As a result of Wilds' failure to pass the NTE, Defendant Board terminated his license to teach in New York City, demoted him to the position of substitute, drastically cut his salary, and revoked the pension, seniority and retention rights he had previously held. However, Plaintiff continues to perform teaching duties for Defendant Board.

62. Defendant BOARD is a corporate body created by the State of New York pursuant to Sections 2551 and 2590 of the Education Law. Defendant Board is charged with administering and managing the educational affairs of the City School District and serves as the employer of all persons teaching in New York City public schools.

63. Defendant DEPARTMENT is an agency of the government of the State of New York. Pursuant to Section 101 of the Education Law, the Department is charged with the general management and supervision of all public schools in the State of New York. The Department has administered the NTE at all times relevant herein, created the passing scores for all portions of the test, and has determined that a passing score on the NTE is a requirement for a license to teach in the public schools in the State of New York.

CLASS ACTION ALLEGATIONS

64. Plaintiffs bring this case on behalf of themselves and all others similarly situated, including those African American and Latino teachers who have been or will be deemed unqualified

for licensure based on the NTE or the LAST.

65. Specifically, Plaintiffs seek to represent a class of persons that includes: a) African American and Latino teachers who have met all of the minimum requirements for a license to teach in the New York City School District but have been found not qualified for licensure because they have not attained a qualifying score on all three portions of the NTE; b) African American and Latino teachers whose New York City licenses have been terminated or who have lost salary or other rights because they have not attained a qualifying score on all three portions of the NTE; c) African American and Latino teachers who have met all of the minimum requirements for a license to teach in the New York City School District but have been found not qualified for licensure because they have not attained a qualifying score on the LAST; and d) African American and Latino teachers whose New York City licenses have been terminated or who have lost salary or other rights because they have not attained a qualifying score on the LAST.

66. This action is maintainable as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure as the Defendants have acted with regard to the NTE and LAST and the issuance of credentials on grounds generally applicable to the asserted class, thereby making final injunctive relief appropriate with respect to the class as a whole.

67. This action meets all the requirements of Federal Rule of Civil Procedure 23(a) in that:

(a) The class is so numerous that joinder of all members is impracticable. Thousands of putative members are believed to exist.

(b) There are questions of law and fact common to the class, such as the validity of the tests, and the existence of equivalent, less-discriminatory alternatives.

(c) The claims of the representative parties, in as much as they represent individuals who have all been adversely affected as a result of their failure to attain a qualifying score on the tests, are typical of the claims of the class.

(d) The representatives and their attorneys, who are experienced employment litigators, will fairly and adequately protect the interests of the class.

**FIRST CAUSE OF ACTION
USE OF THE NTE IN VIOLATION OF TITLE VII**

68. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 67 of this Complaint with the same force and effect as if set forth herein.

69. This claim is brought under Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, 42 U.S.C. §§ 2000e et seq.

70. Defendant Department is an "employer" of the aggrieved Plaintiff class of public school teachers within the meaning of Title VII in that Defendant Department a) regularly employs fifteen or more persons, b) has established the minimum standards for certificated positions in the public schools, c) administers the NTE, d) has interfered with the Plaintiff class's ability to obtain licensure and permanent employment and retain their licenses and employment rights with the City School District by mandating NTE passage as a condition of employment, and e) controls the ability of its agents to license Plaintiffs by way

of its NTE requirement and its credentialing process.

71. Defendant Board is an "employer" of the aggrieved Plaintiff class within the meaning of Title VII, in that Defendant Board regularly employs fifteen or more persons and has acted and continues to act as an "agent" of the employer, Defendant New York State Education Department, in its termination of credentials and employment of the Plaintiff class.

72. Defendant Board is itself, independently, an "employer" of the aggrieved Plaintiff class within the meaning of Title VII, in that Defendant Board has interfered with Plaintiffs' ability to obtain licenses to teach in the New York City public schools, and has interfered with Plaintiffs' ability to retain their licenses to teach and other acquired employment rights.

73. Based on the totality of facts, the Department and the Board concurrently exert significant control over the public school positions which Plaintiffs seek or seek to retain, sharing or codetermining matters which govern the essential terms and conditions of employment.

74. Defendants' practice of requiring Plaintiffs to pass the NTE in order to obtain their licenses to teach has prevented Plaintiffs from obtaining said credential and from securing positions of permanent employment in Defendants' public schools for which they are otherwise qualified, together with all of the rights and benefits attached thereto.

75. Defendants' practice of requiring Plaintiffs to pass the NTE in order to retain their licenses and appointments to

teach in the New York City public schools has resulted in the revocation of Plaintiffs' licenses, a significant reduction in their compensation, and the summary termination of their substantial employment rights including tenure, pension, seniority, and retention rights.

76. These practices of Defendants have a disparate impact on the plaintiff class of African American and Latino test-takers insofar as members of these groups disproportionately fail the NTE as compared to white test-takers. The NTE, from the beginning of its most recent use in 1984, has had a disparate racial impact on African American and Latino test-takers. Whites have passed the NTE at an average rate of 83.7%, while the pass rates for African Americans and Latino has been only 43.9% and 40.3%, respectively.

77. Defendants' use of the NTE is not justified by any business necessity.

78. Moreover, alternative, less discriminatory measures exist by which Defendants can ensure that Plaintiffs possess the requisite, job-related skills.

79. Defendants' discriminatory actions against Plaintiffs constitute unlawful discrimination in employment on the basis of race, in violation of 42 U.S.C. § 2000e-2.

80. As a proximate result of Defendants' discriminatory actions against Plaintiffs, as alleged above, Plaintiffs have been harmed insofar as they have been prevented from obtaining public school credentials and certificated positions, and,

thereby, from securing permanent employment in the public schools for which they are otherwise fully qualified.

81. In addition, as a proximate result of Defendants' discriminatory actions against Plaintiffs, as alleged above, Plaintiffs have been harmed by Defendants' revocation of their licenses, and, thereby, have lost their appointments, tenure rights, retention rights, pension and seniority rights, and have suffered significant reductions in salary.

82. Because the credentials and certificated positions sought and/or previously held by Plaintiffs cannot be secured or reinstated absent injunctive relief, no adequate remedy exists at law for the injuries suffered by Plaintiffs herein. If this Court does not grant injunctive relief of the type and for the purpose set forth in the Prayer for Relief below, Plaintiffs will suffer irreparable injury in that they will be unable to obtain licensure or retain their licenses and appointments in the positions for which they have expended substantial time, money, and energy preparing for and for which they are otherwise fully qualified.

83. The NTE is a discriminatory test, in violation of Title VII. Defendant Department administered and scored the NTE given to Plaintiffs and the plaintiff class in violation of Title VII. Defendant Board used the test results to deny and revoke the employment rights and opportunities of Plaintiffs and the plaintiff class in violation of Title VII. Plaintiffs and the plaintiff class have suffered severe harm to their careers as a

result of the above acts of discrimination by Defendants.

**SECOND CAUSE OF ACTION
USE OF THE LAST IN VIOLATION OF TITLE VII**

84. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 83 of this Complaint with the same force and effect as if set forth herein.

85. This claim is brought under Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, 42 U.S.C. §§ 2000e et seq.

86. Defendants' practice of requiring Plaintiffs to pass the LAST in order to obtain their licenses to teach has prevented Plaintiffs from obtaining said credential and from securing positions of permanent employment in Defendants' public schools for which they are otherwise qualified, together with all of the rights and benefits attached thereto.

87. Defendants' practice of requiring Plaintiffs to pass the LAST in order to retain their licenses and appointments to teach in the New York City public schools has resulted in the revocation of Plaintiffs' licenses, a significant reduction in their compensation, and the summary termination of their substantial employment rights including tenure, pension, seniority, and retention rights.

88. These practices of Defendants have a disparate impact on the plaintiff class of African American and Latino test-takers insofar as members of these groups disproportionately fail the LAST as compared to white test-takers. The LAST, from its inception, has had a disparate racial impact on African American

and Latino test-takers. Whites have passed the LAST at an average rate of 93%, while the pass rates for African American and Latino test-takers has been only 53% and 50%, respectively.

89. Defendants' use of the LAST is not justified by any business necessity.

90. Moreover, alternative, less discriminatory measures exist by which Defendants can ensure that Plaintiffs possess the requisite, job-related skills.

91. Defendants' discriminatory actions against Plaintiffs constitute unlawful discrimination in employment on the basis of race, in violation of 42 U.S.C. § 2000e-2.

92. As a proximate result of Defendants' discriminatory actions against Plaintiffs, as alleged above, Plaintiffs have been harmed insofar as they have been prevented from obtaining public school credentials and certificated positions, and, thereby, from securing permanent employment in the public schools for which they are otherwise fully qualified.

93. In addition, as a proximate result of Defendants' discriminatory actions against Plaintiffs, as alleged above, Plaintiffs have been harmed by Defendants' revocation of their licenses, and, thereby, have lost their appointments, tenure rights, retention rights, pension and seniority rights, and have suffered significant reductions in salary.

94. Because the credentials and certificated positions sought and/or previously held by Plaintiffs cannot be secured or reinstated absent injunctive relief, no adequate remedy exists at

law for the injuries suffered by Plaintiffs herein. If this Court does not grant injunctive relief of the type and for the purpose set forth in the Prayer for Relief below, Plaintiffs will suffer irreparable injury in that they will be obtain licensure or retain their licenses and appointments in the positions for which they have expended substantial time, money, and energy preparing for and for which they are otherwise fully qualified.

95. The LAST is a discriminatory test, in violation of Title VII. Defendant Department administered and scored the LAST given to Plaintiffs and the plaintiff class in violation of Title VII. Defendant Board used the test results to deny and revoke the employment rights and opportunities of Plaintiffs and plaintiff class in violation of Title VII. Plaintiffs and plaintiff class have suffered severe harm to their careers as a result of the above acts of discrimination by Defendants.

**THIRD CAUSE OF ACTION
USE OF THE NTE IN VIOLATION OF TITLE VI**

96. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 95 of this Complaint with the same force and effect as if set forth herein.

97. This claim is brought under Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq. Defendants are subject to suit under Title VI insofar as they control or represent a "program or activity" within the meaning of the Act.

98. Upon information and belief, Defendants receive substantial federal financial assistance for the operation of the

public school system in New York State and New York City.

99. Defendants' practice of requiring Plaintiffs to pass the NTE in order to retain their licenses and appointments to teach in the New York City public schools has resulted in the revocation of Plaintiffs' licenses, a significant reduction in their compensation, and the summary termination of their substantial employment rights including tenure, pension, seniority, and retention rights.

100. These practices of Defendants have a disparate impact on the plaintiff class of African American and Latino test-takers insofar as members of these groups disproportionately fail the NTE as compared to white test-takers. The NTE, from the beginning of its most recent use in 1984, has had a disparate racial impact on African American and Latino test-takers. Whites have passed the NTE at an average rate of 83.7%, while the pass rates for African Americans and Latino has been only 43.9% and 40.3%, respectively.

101. Defendants' use of the NTE is not justified by any business necessity.

102. Moreover, alternative, less discriminatory measures exist by which Defendants can ensure that Plaintiffs possess the requisite, job-related skills.

103. Defendants' discriminatory actions against Plaintiffs constitute unlawful discrimination on the basis of race, in violation of 42 U.S.C. §§ 2000d et seq. and the regulations promulgated thereunder.

104. As a proximate result of Defendants' discriminatory actions against Plaintiffs, as alleged above, Plaintiffs have been harmed insofar as they have been prevented from obtaining public school credentials and certificated positions, and, thereby, from securing permanent employment in the public schools for which they are otherwise fully qualified.

105. In addition, as a proximate result of Defendants' discriminatory actions against Plaintiffs, as alleged above, Plaintiffs have been harmed by Defendants' revocation of their licenses, and, thereby, have lost their appointments, tenure rights, retention rights, pension and seniority rights, and have suffered significant reductions in salary.

106. Because the credentials and certificated positions sought and/or previously held by Plaintiffs cannot be secured or reinstated absent injunctive relief, no adequate remedy exists at law for the injuries suffered by Plaintiffs herein. If this Court does not grant injunctive relief of the type and for the purpose set forth in the Prayer for Relief below, Plaintiffs will suffer irreparable injury in that they will be unable to obtain licensure or retain their licenses and appointments in the positions for which they have expended substantial time, money, and energy preparing for and for which they are otherwise fully qualified.

FOURTH CAUSE OF ACTION
USE OF THE LAST IN VIOLATION OF TITLE VI

107. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 106 of this

Complaint with the same force and effect as if set forth herein.

108. This claim is brought under Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq. Defendants are subject to suit under Title VI insofar as they control or represent a "program or activity" within the meaning of the Act.

109. Upon information and belief, Defendants receive substantial federal financial assistance for the operation of the school system in New York State and New York City.

110. Defendants' practice of requiring Plaintiffs to pass the NTE in order to retain their licenses and appointments to teach in the New York City public schools has resulted in the revocation of Plaintiffs' licenses, a significant reduction in their compensation, and the summary termination of their substantial employment rights including tenure, pension, seniority, and retention rights.

111. These practices of Defendants have a disparate impact on the plaintiff class of African American and Latino test-takers insofar as members of these groups disproportionately fail the LAST as compared to white test-takers. The LAST, from its inception, has had a disparate racial impact on African American and Latino test-takers. Whites have passed the LAST at an average rate of 93%, while the pass rates for African American and Latino test-takers has been only 53% and 50%, respectively.

112. Defendants' use of the LAST is not justified by any business necessity.

113. Moreover, alternative, less discriminatory measures exist by which Defendants can ensure that Plaintiffs possess the requisite, job-related skills.

114. Defendants' discriminatory actions against Plaintiffs constitute unlawful discrimination on the basis of race, in violation of 42 U.S.C. §§ 2000d et seq. and the regulations promulgated thereunder.

115. As a proximate result of Defendants' discriminatory actions against Plaintiffs, as alleged above, Plaintiffs have been harmed insofar as they have been prevented from obtaining public school credentials and certificated positions, and, thereby, from securing permanent employment in the public schools for which they are otherwise fully qualified.

116. In addition, as a proximate result of Defendants' discriminatory actions against Plaintiffs, as alleged above, Plaintiffs have been harmed by Defendants' revocation of their licenses, and, thereby, have lost their appointments, tenure rights, retention rights, pension and seniority rights, and have suffered significant reductions in salary.

117. Because the credentials and certificated positions sought and/or previously held by Plaintiffs cannot be secured or reinstated absent injunctive relief, no adequate remedy exists at law for the injuries suffered by Plaintiffs herein. If this Court does not grant injunctive relief of the type and for the purpose set forth in the Prayer for Relief below, Plaintiffs will suffer irreparable injury in that they will be unable to obtain

licensure or retain their licenses and appointments in the positions for which they have expended substantial time, money, and energy preparing for and for which they are otherwise fully qualified.

**FIFTH CAUSE OF ACTION
USE OF THE NTE IN VIOLATION OF
THE NEW YORK STATE HUMAN RIGHTS LAW**

118. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 117 of this Complaint with the same force and effect as if set forth herein.

119. This claim is brought pursuant to the pendent jurisdiction of this Court under the New York State Human Rights Law, Executive Law §§ 290 et seq.

120. The NTE is a discriminatory test, in violation of the NYSHRL. Defendant Department administered and scored the NTE given to Plaintiffs and the plaintiff class in violation of the NYSHRL. Defendant Board used the test results to deny and revoke the employment rights and opportunities of Plaintiffs and the plaintiff class in violation of the NYSHRL. Plaintiffs and the plaintiff class have suffered severe harm to their careers as a result of the above acts of discrimination by Defendants.

121. Defendants have violated the NYSHRL by discriminating against Plaintiffs because of their race in the terms and conditions of their employment, as described above.

**SIXTH CAUSE OF ACTION
USE OF THE LAST IN VIOLATION OF
THE NEW YORK STATE HUMAN RIGHTS LAW**

122. Plaintiffs repeat and reallege each and every

allegation contained in paragraphs 1 through 121 of this Complaint with the same force and effect as if set forth herein.

123. This claim is brought pursuant to the pendent jurisdiction of this Court under the New York State Human Rights Law, Executive Law §§ 290 et seq.

124. The LAST is a discriminatory test, in violation of the NYSHRL. Defendant Department administered and scored the LAST given to Plaintiffs and the plaintiff class in violation of the NYSHRL. Defendant Board used the test results to deny and revoke the employment rights and opportunities of Plaintiffs and the plaintiff class in violation of the NYSHRL. Plaintiffs and the plaintiff class have suffered severe harm to their careers as a result of the above acts of discrimination by Defendants.

125. Defendants have violated the NYSHRL by discriminating against Plaintiffs because of their race in the terms and conditions of their employment, as described above.

**SEVENTH CAUSE OF ACTION
USE OF THE NTE IN VIOLATION OF NEW YORK CITY HUMAN RIGHTS LAW**

126. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 125 of this Complaint with the same force and effect as if set forth herein.

127. This claim is brought pursuant to the pendent jurisdiction of this Court under the Amended New York City Human Rights Law, New York City Administrative Code § 8-101 et seq.

128. The NTE is a discriminatory test, in violation of the Amended New York Human City Rights Law. Defendant Department administered and scored the NTE given to Plaintiffs and the

plaintiff class in violation of the NYCHRL. Defendant Board used the test results to deny and revoke the employment rights and opportunities of Plaintiffs and the plaintiff class in violation of the NYCHRL. Plaintiffs and the plaintiff class have suffered severe harm to their careers as a result of the above acts of discrimination by Defendants.

129. Defendants have violated the NYCHRL by discriminating against Plaintiffs because of their race in the terms and conditions of their employment, as described above.

**EIGHTH CAUSE OF ACTION
USE OF THE LAST IN VIOLATION OF NEW YORK CITY HUMAN RIGHTS LAW**

130. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 129 of this Complaint with the same force and effect as if set forth herein.

131. This claim is brought pursuant to the pendent jurisdiction of this Court under the Amended New York City Human Rights Law, New York City Administrative Code § 8-101 et seq.

132. The NTE is a discriminatory test, in violation of the NYCHRL. Defendant Department administered and scored the NTE given to the plaintiffs and the plaintiff class in violation of the NYCHRL. Defendant Board used the test results to deny and revoke the employment rights and opportunities of Plaintiffs and the plaintiff class in violation of the NYCHRL. Plaintiffs and the plaintiff class have suffered severe harm to their careers as a result of the above acts of discrimination by Defendants.

133. Defendants have violated the NYCHRL by discriminating against Plaintiffs because of their race in the terms and

conditions of their employment, as described above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Certify this matter as a class action, pursuant to Rule 23(b).

B. Declare that the practices and procedures utilized by Defendants violate Title VI, Title VII, the NYSHRL, and the NYCHRL.

C. Enjoin and restrain Defendants from any further violations of these laws.

D. Direct Defendants to take such affirmative steps as are necessary to ensure that the effects of their unlawful employment practices are eliminated.

E. Direct Defendants to place Plaintiffs in the positions they would have been in but for the discriminatory treatment of them, making them whole for all earnings, compensation and benefits they would have received but for Defendants' discriminatory actions, including, but not limited to, wages, supplements, bonuses, pension, medical insurance, and other lost benefits.

F. Award Plaintiffs any and all amounts owing to them that have been withheld in violation of Title VI, Title VII, the NYSHRL, and NYCHRL, together with interest thereon.

G. Award compensatory and punitive damages and other relief as authorized.

H. Award attorney's fees and costs and such other relief as

conditions of their employment, as described above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Certify this matter as a class action, pursuant to Rule 23(b).

B. Declare that the practices and procedures utilized by Defendants violate Title VI, Title VII, the NYSHRL, and the NYCHRL.

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F. Award Plaintiffs any and all amounts owing to them that have been withheld in violation of Title VI, Title VII, the NYSHRL, and NYCHRL, together with interest thereon.

G. Award compensatory and punitive damages and other relief as authorized.

H. Award attorney's fees and costs and such other relief as
is just and proper.

Dated: New York, New York
November 8, 1996

CENTER FOR CONSTITUTIONAL RIGHTS

By: Barbara J. Olshansky
Barbara J. Olshansky (BO 3635)

Laura Davis
666 Broadway, 7th Floor
New York, New York 10012
(212) 614-6439

Stephen G. Seliger
122 South Michigan Ave., Suite 1850
Chicago, Illinois 60603
(312) 427-4500