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13 Attorneys for Plaintiffs

14 IN THE UNITED STATES DISTRICT COURT

15 FOR THE DISTRICT OF ARIZONA

16 RAYMOND RAMON, a minor, by and )  
17 through his father and Next Friend, )  
18 Raymond Ramon, Sr., and RUBEN )  
19 VENTURA, a minor, by and through )  
20 his mother and Next Friend, )  
21 Margaret Johnson, on behalf of )  
22 themselves and all others )  
23 similarly situated, )

24 Plaintiffs, )

25 vs. )

26 PETE SOTO, Area Director of )  
27 Education, Phoenix Area Office, )  
28 Bureau of Indian Affairs, U.S. )  
29 Department of the Interior, )  
30 individually and in his official )  
31 capacity; DR. JOHN DERBY, Principal, )  
32 Phoenix Indian High School, )  
33 individually and in his official )  
34 capacity; CHARLES SMITH, Assistant )  
35 Principal, Phoenix Indian High )  
36 School, individually and in his )  
37 official capacity; DELMAR NEJO; )  
38 and GRAM THOMAS, )

39 Defendants. )

Civil Action No.

CIVIL RIGHTS COMPLAINT  
FOR DECLARATORY,  
INJUNCTIVE AND  
EQUITABLE RELIEF,  
AND DAMAGES

(CLASS ACTION)

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1 expelling any student from the school without affording said  
2 student the procedural and other protections to which the student  
3 is entitled. The named plaintiffs also seek damages for viola-  
4 tions of their constitutional and other civil rights and for  
5 mistreatment by the defendants.

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JURISDICTION

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2       4. This Court has jurisdiction of this action under 28  
3 U.S.C. §1331(a), this being an action arising under the  
4 Constitution and the laws of the United States.

5       5. This Court also has jurisdiction of this action under  
6 28 U.S.C. §1343(4), this being an action to recover damages and  
7 to secure equitable and other relief under the provisions of  
8 Public Law 94-142 which guarantee procedural and other pro-  
9 tections to handicapped children.

10       6. This Court also has jurisdiction of this action under  
11 28 U.S.C. §1361, this being an action in the nature of mandamus  
12 to compel officers and employees of the United States to perform  
13 duties owed to the plaintiffs.

14       7. This Court also has jurisdiction of this action under  
15 28 U.S.C. §2201 and 2202, and Rules 57 and 65 of the Federal  
16 Rules of Civil Procedure, this being an action for a declaration  
17 of the rights of plaintiffs, and for injunctive and other  
18 equitable relief based upon said declaratory judgment, for  
19 violations of plaintiffs' constitutional and other civil rights.

20       8. This Court has jurisdiction of plaintiffs' state law  
21 claims under the doctrine of pendent jurisdiction, which permits  
22 federal courts to determine state law claims which form separate  
23 but parallel grounds for relief also sought in substantial claims  
24 based on federal law.

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DEFENDANTS

11. Defendant PETE SOTO is the Area Director of Education for the Phoenix Area Office of the B.I.A. As such, said defendant is directly responsible for education programs in the Phoenix Area, and is directly responsible for insuring that the students at B.I.A. schools in the Phoenix Area are afforded the procedural and other protections to which they are entitled during suspension and expulsion. Said defendant is sued individually and in his official capacity.

12. Defendant DR. JOHN DERBY is Principal of the Phoenix Indian High School and defendant CHARLES SMITH is Assistant Principal of the Phoenix Indian High School. As such, said defendants are directly responsible for insuring that students at the school are afforded the procedural and other protections to which they are entitled during suspension and expulsion. Said defendants are sued individually and in their official capacities.

13. Defendants DELMAR NEJO and GRAM THOMAS are employees at the school and agents of the other defendants. As such, said defendants are responsible for properly implementing procedural and other protections for students at the school during suspension and expulsion, under the direction of defendants DERBY and SMITH.

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1                                    CLASS ACTION

2            14. Plaintiffs bring this action on behalf of themselves  
3 and all others similarly situated, pursuant to Rule 23(a), (b)(1)  
4 and (b)(2) of the Federal Rules of Civil Procedure. The class  
5 consists of all juveniles who are at the present time or will  
6 in the future be students at Phoenix Indian High School. A  
7 subclass consists of all juveniles who are at the present time  
8 or will in the future be students at the school, and are handi-  
9 capped under Public Law 94-142 or Section 504 and the regulations  
10 promulgated thereunder.

11           15. The members of the class are so numerous that joinder  
12 of all members is impracticable. Upon information and belief,  
13 plaintiffs allege that at least four students at the school, in  
14 addition to the named plaintiffs herein, were suspended or  
15 expelled from the school during February, 1981, without being  
16 afforded the procedural and other protections to which they  
17 were entitled, and that many other students at the school have  
18 been so suspended or expelled during the past year. In addition,  
19 there are questions of law and fact common to members of the  
20 plaintiff class regarding practices of the defendants, and the  
21 claims of the named plaintiffs are typical of the claims of the  
22 members of the plaintiff class. The named plaintiffs and their  
23 counsel will fairly and adequately protect the interests of the  
24 members of the class.

25           16. The prosecution of separate actions by individual  
26 members of the class would create a risk of inconsistent or  
27 varying adjudications with respect to individual members of  
28 the class which would as a practical matter be dispositive of  
29 the interests of the other members not parties to the adjudi-  
30 cations or substantially impair or impede their ability to  
31 protect their interests.

32           17. By their policies and actions, the defendants have

1 acted and continue to act on grounds and in a manner generally  
2 applicable to the class, thereby making appropriate final in-  
3 junctive relief or corresponding declaratory relief with respect  
4 to the class as a whole.

5 18. The injuries suffered by the named plaintiffs and the  
6 members of the plaintiff class as a result of the policies and  
7 actions of the defendants complained of herein are capable of  
8 repetition, yet may evade review, thereby making class relief  
9 appropriate.

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1 FACTUAL ALLEGATIONS

2 I. PROCEDURAL AND OTHER RIGHTS OF PLAINTIFFS

3 19. Phoenix Indian High School is a boarding school operated  
4 by the Bureau of Indian Affairs in Phoenix, Arizona.

5 20. Under 25 U.S.C. §2017, the Secretary of the Interior  
6 is required to prescribe such rules and regulations as are  
7 necessary to insure the constitutional and civil rights of  
8 Indian students attending B.I.A. schools, including the right  
9 of such students to due process in connection with suspensions  
10 and expulsions.

11 21. Pursuant to his authority under 25 U.S.C. §2017, the  
12 Secretary of the Interior has promulgated regulations regarding  
13 student rights and due process procedures in B.I.A. schools.  
14 Said regulations are codified at 25 C.F.R. §35.1 through 35.5.

15 22. The aforesaid regulations of the Secretary of the  
16 Interior provide, at 25 C.F.R. §35.3(i), that individual students  
17 at B.I.A. schools have, and shall be accorded, the right to due  
18 process in every instance of disciplinary action for alleged  
19 violation of school regulations for which the student may be  
20 subjected to penalties of suspension, expulsion, or transfer.

21 23. The aforesaid regulations of the Secretary of the  
22 Interior provide, at 25 C.F.R. §35.4, that students at B.I.A.  
23 schools are entitled to the following procedural due process  
24 protections when subjected to possible suspension, expulsion,  
25 or transfer:

26 (a) Written notice of charges within a  
27 reasonable time prior to a hearing. Notice  
28 of the charges shall include reference to  
29 the regulation allegedly violated, the facts  
30 alleged to constitute the violation, and  
31 notice of access to all statements of per-  
32 sons relating to the charge and to those  
parts of the student's school record which  
will be considered in rendering a discipli-  
nary decision.

(b) A fair and impartial hearing prior  
to the imposition of disciplinary action

1 absent the actual existence of an emergency  
2 situation seriously and immediately endanger-  
3 ing the health or safety of the student or  
4 others. In an emergency situation the  
5 official may impose disciplinary action not  
6 to exceed a temporary suspension, but shall  
7 immediately thereafter report in writing  
8 the facts (not conclusions) giving rise to  
9 the emergency and shall afford the student  
10 a hearing which fully comports with due  
11 process, as set forth herein, as soon as  
12 practicable thereafter.

13 (c) The right to have present at the  
14 hearing the student's parent(s) or guardian(s)  
15 (or their designee) and to be represented  
16 by lay or legal counsel of the student's  
17 choice. Private attorney's fees are to be  
18 borne by the student.

19 (d) The right to produce, and have  
20 produced, witnesses on the student's behalf  
21 and to confront and examine all witnesses.

22 (e) The right to a record of hearings of  
23 disciplinary actions, including written  
24 findings of fact and conclusions in all  
25 cases of disciplinary action.

26 (f) The right to administrative review  
27 and appeal.

28 (g) The student shall not be compelled  
29 to testify against himself.

30 (h) The right to have allegations of  
31 misconduct and information pertaining  
32 thereto expunged from the student's school  
record in the event the student is found  
not guilty of the charges.

24. The Bureau of Indian Affairs Education Manual, at  
Section 9.8(B) and (C) [62 BIAM 9.8(B), (C)], provides that  
students at B.I.A. schools have, and shall be accorded, proce-  
dural due process protections identical to those listed at 25  
C.F.R. §35.4 in every instance of disciplinary action for  
which alleged violation of school regulations for which the  
student may be subjected to penalties of suspension, expulsion,  
or transfer.

25. Under the authority of 20 U.S.C. §1411(f), the  
Secretary of the Interior receives funds from the Secretary  
of Education to provide for special education for handicapped

1 Indian children. The Secretary of the Interior provides special  
2 education for handicapped Indian children pursuant to the Annual  
3 Program Plan of the Office of Indian Education Programs of the  
4 B.I.A. .

5 26. Public Law 94-142, the regulations promulgated there-  
6 under at 45 C.F.R. §121a, and the aforesaid Annual Program Plan  
7 of the Office of Indian Education Programs of the B.I.A. provide  
8 that changes in placements of handicapped children must be made  
9 according to prescribed procedures, including that such changes  
10 must be made by teams of professionals[45 C.F.R. §121a.533a(3)]  
11 with the opportunity for participation by the parents of such  
12 children [45 C.F.R. §121a.345]. Handicapped children in B.I.A.  
13 schools who are subjected to suspension or expulsion are  
14 entitled to the aforesaid protections.

15 27. Section 504 and the regulations promulgated thereunder  
16 also require that placement decisions for handicapped children  
17 in federally-supported or federally-conducted facilities be  
18 made according to prescribed procedures, including that such  
19 changes must be made by teams of professionals [45 C.F.R.  
20 §84.35], with notice, an impartial hearing, and an opportunity  
21 for participation by the parents of such children [45 C.F.R.  
22 §84.36]. Handicapped children at B.I.A. schools who are sub-  
23 jected to suspension or expulsion are entitled to the aforesaid  
24 protections.

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## 26 II. DENIAL OF PLAINTIFFS' RIGHTS

27 28. On February 28, 1981, plaintiffs RAYMOND RAMON and  
28 RUBEN VENTURA were students at the Phoenix Indian High School.  
29 On that date, defendants accused said plaintiffs of breaking  
30 into the kitchen of the school during the previous evening and  
31 taking bread, ham and cheese.

32 29. On February 18, 1981, in consequence of the aforesaid

1 accusations, defendants sent plaintiffs RAMON and VENTURA home  
2 to the Papago reservation. Defendants failed and refused to  
3 inform said plaintiffs whether they were suspended or expelled  
4 from the school. Defendants failed and refused to give  
5 plaintiff RAMON transportation to his home in Covered Wells,  
6 Arizona. Instead, defendants took said plaintiff to Sells,  
7 Arizona, left him there with his belongings, and forced him  
8 to hitchhike thirty miles to his home in Covered Wells.

9 30. Prior to the suspensions or expulsions of plaintiffs  
10 RAMON and VENTURA from the school on February 18, 1981,  
11 defendants failed and refused to provide said plaintiffs with  
12 written notice of the charges against them, as required by 25  
13 C.F.R. §35.4(a) and the Bureau of Indian Affairs Education  
14 Manual.

15 31. Prior to the suspensions or expulsions of plaintiffs  
16 RAMON and VENTURA from the school on February 18, 1981,  
17 defendants failed and refused to accord said plaintiffs a fair  
18 and impartial hearing, as required by 25 C.F.R. §35.4(b) and  
19 the Bureau of Indian Affairs Education Manual.

20 32. At the time of the suspensions or expulsions of  
21 plaintiffs RAMON and VENTURA from the school on February 18,  
22 1981, defendants informed said plaintiffs that they were not  
23 being afforded a hearing because they represented an "emergency  
24 situation" within the meaning of 25 C.F.R. §35.4(b).

25 33. On February 18, 1981, plaintiffs RAMON and VENTURA  
26 did not represent an "emergency situation" within the meaning  
27 of 25 C.F.R. §35.4(b).

28 34. Prior to the suspensions or expulsions of plaintiffs  
29 RAMON and VENTURA from the school on February 18, 1981,  
30 defendants failed and refused to notify the parents of said  
31 plaintiffs of the suspensions or expulsions, and defendants  
32 failed and refused to allow said plaintiffs the opportunity to

1 obtain lay or legal counsel, all as required by 25 C.F.R. §35.4(c)  
2 and the Bureau of Indian Affairs Education Manual.

3 35. After their suspensions or expulsions from the school  
4 on February 18, 1981, plaintiffs RAMON and VENTURA obtained as  
5 legal counsel one of their present attorneys, Mary Jo O'Neill.  
6 As a result of said counsel's efforts on behalf of said  
7 plaintiffs, defendants allowed said plaintiffs to return to the  
8 school, but only after eighteen days had elapsed.

9 36. After the suspensions or expulsions of plaintiffs  
10 RAMON and VENTURA from the school on February 18, 1981,  
11 plaintiffs' counsel Mary Jo O'Neill advised defendant DERBY of  
12 her representation of said plaintiffs and requested notifica-  
13 tion of any disciplinary hearings regarding said plaintiffs.  
14 On March 19, 1981, without receiving any notification from  
15 defendants, plaintiffs' counsel learned from third parties that  
16 a disciplinary hearing for said plaintiffs was set for the next  
17 day.

18 37. On March 19, 1981, plaintiffs' counsel wrote to  
19 defendant DERBY requesting that the disciplinary hearing set  
20 for the next day be continued for two weeks. The hearing was  
21 continued until April 3, 1981.

22 38. As of the present time, defendants have failed and  
23 refused to provide plaintiff RAMON, plaintiff VENTURA, or their  
24 counsel with written notice of the charges against them, as  
25 required by 25 C.F.R. §35.4(a) and the Bureau of Indian Affairs  
26 Manual.

27 39. As of the present time, defendants have failed and  
28 refused to provide plaintiff RAMON, plaintiff VENTURA, or their  
29 counsel with a copy of the written report, required by 25 C.F.R.  
30 §35.4(b) and the Bureau of Indian Affairs Education Manual, of  
31 the facts giving rise to the "emergency situation" on February  
32 18, 1981, despite repeated requests by plaintiffs' counsel to

1 defendant DERBY for said report.

2       40. As of the present time, defendants have failed and  
3 refused to afford plaintiff VENTURA the protections  
4 to which he is entitled, under Public Law 94-142, and the  
5 regulations at 45 C.F.R. §121a, and under Section 504 and the  
6 regulations at 45 C.F.R. §84, prior to any changes in his place-  
7 ment, including determination of any such changes by a team of  
8 professionals, and notice, an impartial hearing, and the  
9 opportunity for participation in such decisions by said  
10 plaintiffs' parents.

11       41. Since plaintiffs RAMON and VENTURA returned to the  
12 school after their suspensions or expulsions on February 18,  
13 1981, defendants have subjected said plaintiffs to harassment  
14 and intimidation, in retaliation for said plaintiffs' challenge  
15 through legal counsel of their suspensions or expulsions from  
16 the school. Defendants SMITH, NEJO, and THOMAS have repeatedly  
17 threatened said plaintiffs with suspensions or expulsions for  
18 no just cause. Said defendants have singled out said plaintiffs  
19 from other students at the school and have closely scrutinized  
20 the conduct of said plaintiffs, watching for any possible  
21 violation of rules or regulations of the school no matter how  
22 minor. Said defendants have also physically assaulted said  
23 plaintiffs and repeatedly used excessive physical force in  
24 confronting said plaintiffs. When defendant NEJO observed  
25 plaintiff VENTURA returning to the school late one evening,  
26 defendant NEJO handcuffed plaintiff VENTURA to the fence at  
27 the school from approximately 2:00 a.m. until 5:00 a.m.

28       42. The facts alleged in the foregoing paragraphs con-  
29 stitute denials of the procedural and other rights of  
30 plaintiffs RAMON and VENTURA by defendants. Defendants will  
31 continue to deny said plaintiffs their procedural and other  
32 rights unless said plaintiffs are granted the relief requested

1 herein.

2 43. Defendants suspended or expelled at least four other  
3 students at the school during February, 1981, without affording  
4 said students the procedural and other rights to which said  
5 students were entitled.

6 44. Defendants regularly suspend or expel students at the  
7 school without affording said students the procedural and  
8 other rights to which said students are entitled. Defendants  
9 will continue to suspend or expel students at the school without  
10 affording said students the procedural and other rights to  
11 which they are entitled unless plaintiffs are granted the relief  
12 requested herein.

13 45. Defendant PETE SOTO, as Area Director of Education for  
14 the Phoenix Area Office of the B.I.A., is responsible for  
15 insuring that students at B.I.A. schools in the Phoenix Area  
16 are afforded the procedural and other protections to which  
17 they are entitled during disciplinary actions for alleged vio-  
18 lations of school regulations for which said students may be  
19 subjected to suspension or expulsion. In such capacity, said  
20 defendant knew or should have know of the circumstances alleged  
21 herein and should have taken steps to correct said circumstances.  
22 Having failed to do so, said defendant is thereby violating the  
23 constitutional and above-listed civil rights of plaintiffs.

24 46. Defendant DR. JOHN DERBY, as Principal of the  
25 Phoenix Indian High School, and defendant CHARLES SMITH, as  
26 Assistant Principal of the Phoenix Indian High School, are  
27 responsible for insuring that students at the Phoenix Indian  
28 High School are afforded the procedural and other protections  
29 to which they are entitled during disciplinary actions for  
30 alleged violations of school regulations for which said students  
31 may be subjected to suspension or expulsion. In such cacacities,  
32 said defendants knew or should have known of the circumstances

1 alleged herein and should have taken steps to correct such  
2 circumstances. Having failed to do so, said defendants are  
3 thereby violating the constitutional and above-listed civil  
4 rights of plaintiffs.

5       47. Defendants DELMAR NEJO and GRAM THOMAS, as employees  
6 at the school and agents of the other defendants herein, are  
7 responsible for properly implementing the procedural and other  
8 rights to which students at the school are entitled during  
9 disciplinary actions for alleged violations of school regulations  
10 for which said students may be subjected to suspension or  
11 expulsion. In such capacities, said defendants knew or should  
12 have known of the circumstances alleged herein and should have  
13 taken steps to correct such circumstances. Having failed to  
14 do so, said defendants are thereby violating the constitutional  
15 and above-listed civil rights of plaintiffs.

16       48. As a proximate result of the policies, practices,  
17 acts, and omissions of defendants complained of herein,  
18 plaintiffs have suffered and will continue to suffer serious  
19 physical, psychological, and emotional injuries.

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1 the First and Fifth Amendments to the United States Constitution.

2 SIXTH CLAIM

3 55. Defendants' policies, practices, acts and omissions  
4 complained of herein deny plaintiffs' rights to a public  
5 education as guaranteed to members of the Papago Nation, by  
6 25 C.F.R. §35 et seq., and the Fifth Amendment to the United  
7 States Constitution.

8 NO ADEQUATE REMEDY AT LAW

9 56. As a proximate result of the defendants' policies,  
10 practices, acts and omissions complained of herein, and the  
11 circumstances described herein to which plaintiffs are subjected,  
12 plaintiffs have suffered, do suffer, and will continue to suffer  
13 immediate and irreparable injury. Plaintiffs have no plain,  
14 adequate, or complete remedy at law to redress the wrongs  
15 described herein. Plaintiffs will continue to be irreparably  
16 injured by the policies, practices, acts and omissions of the  
17 defendants unless this Court grants the injunctive relief which  
18 plaintiffs seek.

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1 (5) violate plaintiffs' rights under Arizona law.

2 E. Issue preliminary and permanent injunctions restraining  
3 and prohibiting defendants from proceeding with any disciplinary  
4 actions against plaintiffs and the class they represent unless  
5 and until defendants have afforded them the procedural and other  
6 protections to which they are entitled under 25 C.F.R. §35.4  
7 and the Bureau of Indian Affairs Education Manual; Public Law  
8 94-142 and the regulations promulgated thereunder at 45 C.F.R.  
9 §121a; Section 504 and the regulations promulgated thereunder at  
10 45 C.F.R. §84; and the Fifth Amendment to the United States  
11 Constitution.

12 F. Issue preliminary and permanent injunctions restraining  
13 and prohibiting defendants, their agents and employees from  
14 taking any harassing, intimidating, or retaliatory actions  
15 against plaintiffs for their challenge to their suspensions or  
16 expulsions by defendants or for initiating this litigation.

17 G. Issue a judgment assessing general and special damages  
18 against the defendants for injuries suffered by the named  
19 plaintiffs as a proximate result of the policies, practices,  
20 acts and omissions complained of herein, in an amount to be  
21 established by the proof.

22 H. Issue a judgment on behalf of the named plaintiffs  
23 assessing punitive damages against the defendants for the  
24 policies, practices, acts and omissions complained of herein,  
25 in the amount of \$50,000 against each of the defendants.

26 I. Retain jurisdiction over defendants and each of  
27 them until such time as the Court is satisfied that their  
28 unlawful policies, practices, acts and omissions complained  
29 of herein no longer exist and will not recur.

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1 J. Award plaintiffs the cost of this proceeding, attorneys'  
2 fees, and such other and further relief as to this Court seems  
3 just and proper.

4 Dated this day of , 1981.

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7 MARY JO O'NEILL  
Attorney for Plaintiffs  
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