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Lawsuit claims Albany schools violated federal law

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ALBANY - A class action lawsuit filed Monday accuses the Albany school system of failing to provide children in the city's poorly performing schools with the educational choices required by the federal No Child Left Behind Act.

Signed a year ago by President George W. Bush, the No Child Left Behind Act gives children in failing schools the right to transfer to nonfailing public schools or receive free educational services, such as tutoring.

Also a defendant in the suit is the New York City Department of Education. Like Albany, the New York City school district has failed to adequately notify parents of their rights under No Child Left Behind, said Charlie King, the attorney handling the suit.

"Thousands of parents are in the dark about what they can do," King said during a news conference in front of Livingston Middle School.

Parents in New York City and Albany have been intentionally misinformed and misled about No Child Left Behind, according to the lawsuit, which was filed in state Supreme Court.

The lawsuit is the first in the United States to be filed by parents under No Child Left Behind, according to King.

Three Albany schools - Arbor Hill Elementary, Hackett Middle School and Philip Livingston Middle School - are listed on the state Department of Education's roster of poorly performing schools.

Charlene Wilson, the Albany plaintiff, said she was not aware of the choices available to her grandson, Anthony Gilmore, 5, a kindergarten student at Arbor Hill. She said she would have transferred the boy to a different school had she known she could. But she is reluctant to withdraw him from school now that he is settled in, and is asking for tutoring. "I was disappointed to learn that the two middle schools he can [eventually] go to are failing schools," she said.

Parents did receive adequate notification of the choices available to them, said Albany School Superintendent Lonnie Palmer. A letter was sent home to parents of students in Arbor Hill, Hackett and Livingston, and the information was also publicized in the school system's newsletter.

"We mailed the letter home to every parent," Palmer said. "We feel we've done everything we're supposed to do."

But King said the publicity was inadequate, and Wilson said she and other parents never received it.

Palmer blamed the lawsuit on "some conservative elements in the community who have a large war chest right now."

But King said politics has nothing to do with the lawsuit. "Education for children who are trapped in failing schools is not a conservative or liberal issue," said King, who was Democrat Andrew Cuomo's pick for lieutenant governor before Cuomo dropped out of last year's gubernatorial race.

Right now, Wilson is the only plaintiff in Albany. There are two plaintiffs in New York City, and the suit will soon be amended to include more plaintiffs from throughout the state, King said.

The plaintiffs are seeking proper parental notification of their rights under No Child Left Behind, and asking that parents who wish to transfer to better schools or obtain tutoring be allowed to do so. "We want these three things immediately," he said.

King is an attorney with Crowe, Deegan, Dickson & Benrubi, based in the Nassau County city of Glen Cove.

A survey released last week by Albany's Brighter Choice Charter School found that more than 70 percent of the parents questioned were unaware of their rights under No Child Left Behind.

At the time, Palmer said he wished the federal money used to fund the survey had been directed toward resources, such as new teachers, rather than a survey with a political agenda. "We have doubts about how the survey was conducted," he said.

Last summer, the federal government estimated that 3.5 million children attending 8,600 low-performing public schools across the country had the right to choose another public school or free tutoring under the law. While exact figures are unavailable, school choice advocates said only a small fraction of eligible students have exercised those options,

which were envisioned as key elements of the law.

"I've seen no state or local school district make a declaration that they are not going to provide choice or supplemental services," said Eugene Hickok, deputy secretary of education, who added that he did not know the specifics of the New York case. "But I have seen less-than-energetic implementation of the law."

Under the federal law, schools that receive federal Title I funds and fail to show improvement for two consecutive years - including the years before the new law was enacted - must offer

students the option of transferring to better performing schools. If a school fails to improve for three years, local school districts must offer tutoring or other supplemental services.

Paul Houston, executive director of the American Association of School Administrators, said many school superintendents are still unsure of their obligations under the new law. "There is a lot of confusion, a lot of frustration and a lot of a sense of not knowing what it is they are supposed to do," he said.

David Chai, a spokesman for New York City Board of Education, said the

school system last summer sent parents nearly 300,000 letters in eight languages informing them of their right to transfers and another 250,000 letters informing parents of the availability of tutoring. Still, he said, only 1,500 students requested transfers, while another 20,000 are now receiving tutoring.

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