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8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF ARIZONA

10	ZOE M., a minor, by her mother and next	)	No.
11	friend Anne M., ANNE M., ARIANNA	)	
12	W., a minor, by her mother and next	)	
13	friend Vanessa W., VANESSA W.,	)	
14	SETH R., a minor, by his mother and	)	COMPLAINT
15	next friend Michelle R. and MICHELLE	)	
16	R., on behalf of themselves and all others	)	CLASS ACTION
17	similarly situated,	)	
18		)	
19	Plaintiffs,	)	
20		)	
21	v.	)	
22		)	
23	LINDA J. BLESSING, Interim Director	)	
24	of the Arizona Department of Economic	)	
25	Security, in her official capacity, and the	)	
26	ARIZONA DEPARTMENT OF	)	
27	ECONOMIC SECURITY,	)	
28		)	
	Defendants.	)	
		)	

PRELIMINARY STATEMENT

1. This class action lawsuit is brought to compel Defendants to provide crucial early intervention services to infants and toddlers who have developmental delays, as required by Part C of the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C.

1 §§1431, et seq. ("Part C"). Early intervention services are designed to meet the unique  
2 physical, cognitive, communication, social, emotional or adaptive needs of children who  
3 qualify for this program and typically include services such as vision or audiology  
4 services, occupational or physical therapy, social work services, and psychological  
5 services. The program is administered by Defendant Arizona Department of Economic  
6 Security (DES) through the Arizona Early Intervention Program ("AzEIP").  
7

8 2. It has long been recognized that "(E)arly experiences determine whether a child's  
9 developing brain architecture provides a strong or weak foundation for all future learning,  
10 behavior and health<sup>1</sup>.... The period between birth and three years is a time of rapid  
11 cognitive, linguistic, social, emotional and motor development.<sup>2</sup> Children who are not  
12 ready to learn when they enter kindergarten are more likely to struggle in elementary  
13 school, and are more likely to become teen parents, engage in criminal activities, and  
14 suffer from depression.<sup>3</sup> For these reasons, early intervention services are essential  
15 building blocks for the future success of infants and toddlers with disabilities.  
16

17 3. Defendants unlawfully reduced and/or eliminated early intervention services – and  
18 correspondingly failed to afford Plaintiffs their rights to due process – in response to the  
19 State of Arizona's current budget deficit. These reductions and/or eliminations were  
20 made in complete disregard of the needs of individual infants and toddlers with  
21

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22 <sup>1</sup>Center on the Developing Child at Harvard University. "A Science-Based Framework for  
23 Early Childhood Policy: Using Evidence to Improve Outcomes in Learning, Behavior, and  
24 Health for Vulnerable Children," p. 3. 2007. 14 Apr. 2009  
<http://www.developingchild.harvard.edu>

25 *Id.*, at p. 6.

26 <sup>3</sup>Stebbins, Helene, and Barbara H. Langford. "A Guide to Calculating the Cost of Quality Early  
27 Care and Education," p. 7. The Finance Project. May 2006. 14 Apr. 2009  
<<http://www.financeproject.org/publications/costguide.pdf>>.

1 developmental delays, including both those who continue to be, and those who may  
2 become, eligible for Part C services. This constitutes a violation of Plaintiffs' rights under  
3 Part C of the IDEA, the Due Process Clause of the United States Constitution and  
4 Arizona state law. Plaintiffs seek declaratory relief, in addition to preliminary relief in  
5 the form of enforcement of Plaintiffs' pendency ("stay put") rights under 20 U.S. C. §  
6 1439(b). Plaintiffs also seek compensatory early intervention services to make up for the  
7 services they have lost and may continue to lose.  
8

9 4. Exhaustion of administrative remedies is not required in this case. The class-wide  
10 relief needed to remedy Defendants' systemic failure to provide early intervention  
11 services cannot be addressed through individual proceedings. Hence, exhaustion of  
12 administrative remedies would be futile and is not required.  
13

#### **JURISDICTION AND VENUE**

14 5. This Court has jurisdiction pursuant to the following statutes:

15 A. 20 U.S.C. §1439(a)(1) which permits the filing of a civil action in federal  
16 court for violations of Part C of the IDEA;

17 B. 28 U.S.C. §1343(a)(4), which gives district courts jurisdiction over actions  
18 to secure civil rights extended by the United States government; and  
19

20 C. 28 U.S.C. § 1331, which gives district courts original jurisdiction over civil  
21 actions arising under the Constitution, laws or treaties of the United States.

22 6. Plaintiffs' claims for declaratory relief, and also preliminary relief pending the  
23 resolution of this matter, are authorized by 28 U.S.C. §§ 2201 and 2202.

24 7. Plaintiffs' claims for preliminary relief in the form of enforcement of their rights to  
25 services pending the resolution of this matter (hereinafter "pendency") are statutorily  
26 authorized by 20 U.S.C. § 1439(b).  
27

1 8. The district court has supplementary jurisdiction of Plaintiffs' state law claims, as  
2 they are so related to the claims in this action, over which the court has original  
3 jurisdiction, that they form part of the same case or controversy. 28 U.S.C. § 1367.

4 9. Venue for this action lies in this District pursuant to 28 U.S.C. § 1391(b), as a  
5 substantial number of the events or omissions giving rise to Plaintiffs' claims occurred  
6 here and both Plaintiffs and Defendants may be found here.

7  
8 **PARTIES**

9 10. Zoe M. is a 23 month old girl. She was born on 05/13/2007 and resides in Tucson,  
10 Arizona. She has the primary diagnosis of a 50% or greater developmental delay in the  
11 area of communication. She brings this action through her mother and natural guardian,  
12 Anne M.

13 11. Plaintiff Anne M. is Zoe's mother. Anne M. lives in Tucson, Arizona and seeks to  
14 represent herself.

15 12. Arianna W. is a 28 month old girl. She was born on 11/26/2006, and resides in  
16 Tucson, Arizona. She has the primary diagnosis of a heart defect. She brings this action  
17 through her mother and natural guardian, Vanessa W.

18 13. Plaintiff Vanessa W. is Arianna's mother. Vanessa W. lives in Tucson, Arizona  
19 and seeks to represent herself.

20 14. Seth R. is a 20 month old boy. He was born on 08/11/2007 and resides in Peoria,  
21 Arizona. He has a primary diagnosis of prematurity and chronic lung disease. He brings  
22 this action through his mother and natural guardian, Michelle R.

23 15. Plaintiff Michelle R. is Seth's mother. Michelle R. lives in Peoria, Arizona and  
24 seeks to represent herself.

25 16. Plaintiffs described in paragraphs ¶¶10-15 bring this action on behalf of  
26  
27

1 themselves and all other similarly situated infants and toddlers under the age of three in  
2 Arizona.

3 17. Plaintiffs' parents and natural guardians live in Arizona and seek to represent the  
4 families of minor class members.

5 18. Defendant DES is Arizona's "Lead Agency" within the meaning of Part C. As the  
6 Lead Agency, Defendant DES is charged with the general administration, supervision and  
7 monitoring of Part C programs and activities. DES is thereby responsible for ensuring,  
8 inter alia, that all Arizona children with developmental delays under the age of three are  
9 identified, located, evaluated and provided with free, appropriate early intervention  
10 services and that their families receive the supports and services required to enhance their  
11 children's development.  
12

13 19. Defendant Linda J. Blessing, Interim Director of DES, is the executive officer  
14 charged with overseeing the operations of DES. As such, she is responsible for ensuring  
15 that DES fulfills its responsibilities to eligible children under Part C of the IDEA. She is  
16 sued in her official capacity only.  
17

#### 18 **CLASS ALLEGATIONS**

19 20. Named Plaintiffs bring this lawsuit on their own behalf and behalf of all similarly  
20 situated individuals, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2).

21 The class named Plaintiffs seek to represent is composed of:

22 All Arizona children, under the age of three, who have developmental  
23 delays, or who have diagnosed physical or mental conditions that have a  
24 high probability of resulting in developmental delays, as defined by Part C  
25 of the Individuals with Disabilities Education Act, who are being denied  
26 their rights to early intervention services; the parents and guardians of those  
27 children; and future members of the class.  
28



1 infants and toddlers. A.R.S. §§ 8-651 and 8-652. These statutes charge Defendant DES,  
2 as Arizona's Lead Agency, with administering the program for providing EI services to  
3 children with disabilities who are under the age of three. DES accomplishes this through  
4 AzEIP.

5 24. Children under the age of three who have a developmental delay in one or more of  
6 five areas (cognitive, physical, social/emotional, communication, and adaptive or self  
7 help) qualify for a program of EI services to meet their needs.

8 25. The range of EI services is very broad, including but not limited to, vision and  
9 hearing services, health services, medical services for diagnostic or evaluation purposes,  
10 physical therapy, occupational therapy, nutrition services, psychological services, special  
11 instruction, transportation and assistive technology devices and services. Unique to the  
12 Part C system is "service coordination," which requires that a "service coordinator" work  
13 with the family to coordinate services across agency lines and be the "single point of  
14 contact" in helping the family obtain the services and assistance they need. 34 C.F.R.  
15 §303.23.  
16

17 26. Part C also provides specific services for families to help them enhance their  
18 child's development. One example is "family training, counseling and home visits"  
19 provided by, as appropriate, social workers, psychologists, and other qualified personnel.  
20 34 C.F.R. §303.12(d)(3).  
21

22 27. In adopting Part C, Congress found "an urgent and substantial need to:

- 23 A. Enhance the development of infants and toddlers with disabilities, to  
24 minimize their potential for developmental delay and to recognize the  
25 significant brain development that occurs during a child's first 3 years of  
26 life;  
27

- 1 B. Reduce the educational costs to society...by minimizing the need for special  
2 education and related services after infants and toddlers with disabilities  
3 reach school age;
- 4 C. Maximize the potential for individuals with disabilities to live  
5 independently in society;
- 6 D. Enhance the capacity of families to meet the special needs of their infants  
7 and toddlers with disabilities; and
- 8 E. Enhance the capacity of State and local agencies and service providers to  
9 identify, evaluate, and meet the needs of all children, particularly minority,  
10 low income, inner city, and rural children, and infants and toddlers in foster  
11 care.”  
12

13 20 U.S.C. § 1431(a).

14 28. Part C also directs each state to operate a "comprehensive child find system" to  
15 locate, evaluate, and serve all children under the age of three who are eligible for EI  
16 services. 34 C.F.R. §§303.165, 303.321.

17 29. A child suspected of needing Part C EI services is referred to AzeIP, which  
18 assembles a multi-disciplinary team to complete an evaluation and assessment and  
19 determine eligibility. If the child is determined to be eligible, the family, the service  
20 coordinator and persons involved in the assessment process meet to develop an  
21 Individualized Family Services Plan (“IFSP”) within 45 days from the date of the referral.

22 30. The IFSP explains what EI services the child will receive, which are provided  
23 whenever possible in a "natural environment." Services are provided by state agencies or  
24 private providers. IFSP's must be reviewed every six months to ensure the child’s needs  
25 are being met and an IFSP meeting is convened at least annually.  
26  
27

1 31. When a family and AzEIP do not agree on the type or amount of EI services the  
2 child should receive, or whether the services are being provided in the "natural  
3 environment," Part C and state law establish a mediation and impartial hearing system by  
4 which the dispute can be resolved. Hearing officers must "[h]ave knowledge about the  
5 provisions [of Part C] and the needs of, and services available for, eligible children and  
6 their families." 34 C.F.R. §§303.420, 300.421(a)(1).  
7  
8

9 32. Part C requires that before any change, reduction or termination of services in a  
10 child's IFSP, a family must be given written notice of the proposed change and an  
11 opportunity to contest the proposal through the EI mediation or hearing system. The child  
12 has the right to continue to receive EI services pending the outcome of the hearing  
13 process. 20 U.S.C. § 1439.  
14  
15

## 16 **II. Statement of Facts**

17 33. On January 31, 2009, the state of Arizona legislature enacted Senate Bill 1001  
18 ("SB 1001"), which attempts to address a \$1.6 billion shortfall in state revenues. As a  
19 result of this bill, the budgets of many state agencies, including Defendant DES, have  
20 been cut.  
21  
22

23 34. Defendants subsequently eliminated or reduced funding for numerous programs,  
24 including AzEIP. This left approximately 3,090 vulnerable infants and toddlers<sup>4</sup> either  
25

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26 <sup>4</sup>The number of infants and toddlers who are eligible to receive and/or are receiving  
27 services from AzEIP is approximate and always changing, as recipients continually "age out" of  
the program as new ones enter it. Upon information and belief, approximately 10, 670 children

1 without legally-mandated early intervention services or with significantly reduced  
2 services, putting them at risk for on-going developmental delays.

3  
4 35. On or about February 17, 2009, Defendant DES published its “Fiscal Year 2009  
5 Budget Reductions” on its website (see attached Exhibit 1). This publication provided the  
6 following information, in pertinent part:

- 7  
8 • “Reductions to (AzEIP) could lead to non-compliance with (DES’) corrective action plan with the federal Department of Education.”
- 9  
10 • “The appropriation for AzEIP established in fiscal year 2009<sup>5</sup> will be  
11 eliminated, requiring that the program rely on its \$9.9 million federal  
12 grant....As a result, the program will not be able to screen all referred infants  
13 and toddlers for developmental delays and 850 children will either  
14 experience a reduction or lose access to therapy and other services.”  
15  
16

17 Exhibit 1, pages 3 and 4.

18  
19 36. In addition to the approximately 850 infants and toddlers referenced in Exhibit 1, an  
20 additional 2,240 children are slated to lose EI services.

21  
22 37. Some AzEIP-enrolled families<sup>6</sup> received letters stating that early intervention

23 \_\_\_\_\_  
24 were served by AzEIP between 10/01/07 and 09/30/08.

25 <sup>5</sup>The appropriation was \$1,608,800.

26 <sup>6</sup>These families received EI services from Defendant DES’ Division of Developmental  
27 Disabilities (DDD).

1 services would cease on March 20, 2009 (see letter from Barbara Brent, Assistant  
2 Director, DES' Division of Developmental Disabilities, dated March 3, 2009, attached as  
3 Exhibit 2). Although these letters informed families of a right to request "administrative  
4 review", they did not contain information regarding all due process and other procedures  
5 available to the families under Part C, as required by 20 U.S.C. § 1439. The letters also  
6 specifically stated that Part C services would not continue during the pendency of  
7 administrative review proceedings.  
8  
9

10 38. Other AzEIP-enrolled families<sup>7</sup> received letters stating that AzEIP would be  
11 making "adjustments" in light of limited "available resources" and services to each family  
12 would be prioritized (see letter from Molly Bright, Executive Director, AzEIP, dated  
13 February 25, 2009, attached as Exhibit 3). Although these letters do not detail specific  
14 changes to services, they indicate that upcoming changes in individual EI services (as set  
15 forth in each child's IFSP) will be based on the available resources post-state budget cuts,  
16 as opposed to the unique and individualized needs of the child.  
17  
18

19 39. Upon information and belief, still other AzEIP-enrolled families did not receive  
20 any written notice and were informed verbally by AzEIP service providers that services  
21 would be reduced and/or eliminated. These families received none of the due process  
22 rights they were entitled to under Part C.  
23  
24

25 40. Defendants' reduction and/or elimination of Part C services were predicated solely  
26

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27 <sup>7</sup>These families received EI services from Defendant DES, but not through DDD.  
28

1 by the state’s budget crisis and did not take into account the unique developmental needs  
2 of each eligible child, as set forth in each child’s IFSP.<sup>8</sup>

3  
4 41. In response to Defendants’ budget cuts, which affected many of Defendants’  
5 programs, a private association of service providers and some individual plaintiffs filed a  
6 complaint in Maricopa County Superior Court challenging their validity<sup>9</sup> That lawsuit is  
7 not filed as a class action, does not allege a claim under the IDEA and none of the named  
8 plaintiffs are children who are entitled to Part C services.

9  
10 42. However, a preliminary injunction was imposed in that lawsuit which ordered  
11 Defendants to restore services to certain of its beneficiaries, including the restoration of  
12 early intervention services to approximately 2,240 infants and toddlers, pending trial on  
13 the merits.

14  
15  
16 43. Although services have been temporarily restored to those 2,240 children, they will  
17 not be entitled to compensatory services and other relief under Part C, as that lawsuit does  
18 not allege a claim under the IDEA.

19  
20 44. Likewise, if the preliminary injunction imposed in the other case is lifted, those  
21 2,240 children will again be denied services, without recourse under Part C.

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22  
23 <sup>8</sup>In *Cedar Rapids Community School District v. Garrett F.*, 526 U.S. 66, 119 S.Ct. 992  
24 (1999), the court held that a school district that received federal IDEA funds must pay for  
25 services “related” to a student’s educational services, despite the district’s argument that the cost  
was prohibitive.

26 <sup>9</sup>*Arizona Association of Providers for Persons with Disabilities v. State of Arizona, et al.*,  
27 Superior Court of Maricopa County, No. CV2009-006509.

1 45. The preliminary injunction did not restore services to the 850 children referenced in  
2 Defendant DES' Fiscal Year 2009 Budget Reductions publication (see Exhibit 1).

3  
4 46. Upon information and belief, some class members may not have had their EI  
5 services restored.

6  
7 47. Class members are suffering potentially lasting harm because they are not receiving  
8 all of the services or protections afforded by Part C and the implementing Arizona state  
9 laws, and, as a result, are expected to regress or lose the skills they have obtained through  
10 EI services.

11  
12 48. Defendants failure to provide Plaintiffs with some or all of the information  
13 Plaintiffs need to effectively challenge the reductions and/or elimination of EI services has  
14 denied Plaintiffs their rights to due process under the U.S. Constitution, by failing to  
15 provide them with adequate notice and opportunity for an impartial hearing

16  
17 49. It would be futile to require Plaintiffs to exhaust administrative remedies by first  
18 filing for administrative review, as:  
19

20 A. Defendants have adopted a systemic policy of reducing and/or eliminating EI  
21 services that is contrary to the law; and  
22

23 B. Plaintiffs have raised claims under the Due Process Clause of the U.S.  
24 Constitution, which Defendant DES does not have authority to  
25 administratively review;  
26  
27

1 C. As a result, DES' administrative process cannot adequately remedy the  
2 problem;<sup>10</sup>and  
3

4 D. Upon information and belief, there are not enough DES hearing officers  
5 available to handle the number of due process hearing requests in a timely  
6 manner.  
7

8 50. The State of Arizona, through Defendants, has a current contract with the U.S.  
9 Department of Education for a grant of federal Part C funds. The contract expires on  
10 December 31, 2009. In that contract, Defendants assure the U.S. Department of Education  
11 that, throughout the period of the grant award, they will "operate consistent with all  
12 requirements" of Part C of the IDEA.  
13

14 51. However, federal IDEA funds received by the state may only be used to  
15 supplement, but not supplant, state funding of EI services. 20 U.S.C. § 1437(b)(5)(B).  
16

17 52. Upon information and belief, the State of Arizona, through Defendants, is not in  
18 compliance with its obligations under Part C and is currently subject to a corrective action  
19 plan imposed by the U.S. Department of Education. | |  
20

21 **Plaintiff Zoe M.**  
22

23 53. Zoe M. is 23 months old. She was born on 05/13/2007 and resides in Tucson,  
24

25 \_\_\_\_\_  
26 <sup>10</sup>Administrative hearing officers do not generally have the authority to set new agency  
27 policies or alter existing policies. In the instant matter, they do not have the authority to order  
28 Defendants to restore funding for EI services or institute class-wide relief.

1 Arizona. She has a primary diagnosis of a 50% or more delay in the area of  
2 communication. Zoe M. required oxygen at birth because she was not breathing.  
3 Presently, Zoe does not always eat a sufficient amount and does not speak any words that  
4 are intelligible by anyone but her family. She brings this action through her mother and  
5 natural guardian, Anne M. on behalf of herself and all other similarly situated infants and  
6 toddlers under the age of three in Arizona.  
7  
8

9 54. Plaintiff Anne M. is Zoe's mother. Anne M. resides in Tucson, Arizona and seeks  
10 to represent herself and the families of minor class members.  
11

12 55. On December 15, 2008, Zoe was evaluated and found eligible for AzeIP.  
13

14 56. On January 7, 2009, Anne M. approved and signed the current IFSP.  
15

16 57. Zoe's current IFSP includes speech therapy, developmental special instruction, and  
17 service coordination.  
18

19 58. Zoe's IFSP provides for one hour of speech therapy twice per month, one hour of  
20 developmental special instruction three times per month and one hour of service  
21 coordination three times per month.  
22

23 59. Anne M. receives instructions for Zoe's activities to occur throughout the day,  
24 all with the primary goal of making progress in meeting developmental milestones.  
25

26 60. The therapies have been highly effective: Zoe now has a larger vocabulary, speaks  
27 more clearly and has also learned American Sign Language as another way to  
28

1 communicate

2  
3 61. Despite Zoe's entitlement to receive these services, Anne M. was informed by her  
4 speech therapist in March that Zoe's speech therapy appointments would be reduced to  
5 one time per month.

6  
7 62. During the first week of March 2009, Anne M. was informed by Megan Wilson of  
8 the Blake Foundation, an EI service provider, that because of the state budget cuts, Zoe  
9 would only receive her EI services once per month, regardless of what her IFSP  
10 prescribed.

11  
12 63. Defendants' cessation of services was done with total disregard for Zoe's individual  
13 and unique needs and violated her IFSP.

14  
15 64. Anne M. never received a letter from AzEIP confirming these EI service  
16 reductions. However, other parents have received a letter dated February 25, 2009, from  
17 Molly Bright, Director of AzEIP (see Exhibit 3).

18  
19 65. Anne M. has not requested an Administrative Review of this decision from DES.

20  
21 66. As a result of the State's reduction of necessary services, Zoe is at risk of suffering  
22 significant regression and losing the skills she and her providers and family have worked  
23 so hard for her to gain.

24  
25 67. Although her services have been temporarily restored because of Anne M.'s  
26 advocacy on Zoe's and her own behalf, it is not assured that services will continue to be

1 provided.

2 **Plaintiff Arianna W.**

3  
4 68. Arianna W. is 28 months old. She was born on 11/26/2006 and resides in Tucson,  
5 Arizona. She has a primary diagnosis of a heart defect. She also suffers related health  
6 problems, including a compromised immune system, lung disease, failure to thrive and  
7 musculoskeletal problems. Arianna required heart surgery at five months old. Arianna's  
8 health issues have affected her developmental progress. Presently, Arianna requires  
9 oxygen when she is sick and is several months behind her peers in language skills. She  
10 brings this action through her mother and natural guardian, Vanessa W. on behalf of  
11 herself and all other similarly situated infants and toddlers under the age of three in  
12 Arizona.

13  
14  
15  
16 69. Plaintiff Vanessa W. is Arianna's mother. Vanessa W. lives in Tucson, Arizona and  
17 seeks to represent herself and the families of minor class members.

18  
19 70. In March of 2007, Arianna was referred to AzEIP for early intervention services.

20 71. On March 15, 2007, Arianna was evaluated and found eligible for AzEIP.

21  
22 72. On April 6, 2009, Vanessa W. approved and signed the current IFSP.

23 73. Arianna's current IFSP includes physical therapy, occupational therapy, speech  
24 therapy, a nutritionist, and service coordination.

25  
26 74. Pursuant to her IFSP, Arianna is entitled to physical therapy as needed, one hour of  
27

1 occupational therapy one time per month, one hour of speech therapy one time per month,  
2 one hour of nutrition services one time per month and one hour of service coordination  
3 one time per month.  
4

5 75. Vanessa W. receives instructions for Arianna's activities to occur throughout the  
6 day, all with the primary goal of making progress in meeting developmental milestones.  
7

8 76. The therapies have been highly effective: Arianna has successfully avoided the use  
9 of a feeding tube and is now able to use American Sign Language to communicate.  
10

11 77. Despite Arianna's entitlement to receive these services, Vanessa W. was informed  
12 by her service coordinator in February that Arianna's EI services would be discontinued.  
13

14 78. On or about March 4, 2009, Vanessa W. received a letter from DES-DDD Assistant  
15 Director Barb Brent, stating that Arianna's services "will stop and will not be provided  
16 after March 20, 2009" (see Exhibit 2).  
17

18 79. Defendants' cessation of services was done with total disregard for Arianna's  
19 individual and unique needs and violated her IFSP.  
20

21 80. Vanessa W. did not request Administrative Review of this decision from DES.  
22

23 81. As a result of the State's cessation of necessary services, Arianna is at risk of  
24 suffering significant regression and losing the skills she and her providers and family have  
25 worked so hard to gain. Although her services have been temporarily restored pursuant to  
26 a preliminary injunction imposed in another lawsuit (see ¶s 42, 44, 45), they will once  
27

1 again be at risk if that injunction is either lifted or does not become permanent.

2 **Plaintiff Seth R.**

3  
4 82. Seth.R. is 20 months old. He was born on 08/11/2007 and resides in Peoria,  
5 Arizona. He has a primary diagnosis of prematurity and chronic lung disease. Seth R. was  
6 on a ventilator for six weeks following his birth and was on oxygen for approximately  
7 eight months. Seth's health issues have affected his developmental progress. Presently,  
8 Seth cannot sit up straight, walks on his toes which results in falls and injuries, and  
9 presently does not speak any words. He brings this action through his mother and natural  
10 guardian, Michelle.R. on behalf of himself and all other similarly situated infants and  
11 toddlers under the age of three in Arizona.  
12  
13

14  
15 83. Plaintiff Michelle R. is Seth's mother. Michelle R. resides in Peoria, Arizona and  
16 seeks to represent herself and the families of minor class members.  
17

18 84. In November 2007, Seth was evaluated and found eligible for AzEIP. In  
19 consultation with Seth's mother, an IFSP was developed and Seth commenced receiving EI  
20 services.  
21

22 85. On November 20, 2008, Michelle R. approved and signed Seth's current  
23 IFSP.  
24

25 86. Seth's current IFSP includes physical, occupational and speech therapies, and  
26 developmental special instruction, and service coordination (see Seth's IFSP, attached as  
27

1 Exhibit 4) .

2 87. Pursuant to his IFSP, Seth is entitled to receive physical therapy one hour every  
3 other week, occupational therapy one hour each week, speech therapy one hour once each  
4 month and developmental special instruction one hour each week.  
5

6 88. Michelle R. receives instructions for Seth's activities to occur throughout the day,  
7 all with the primary goal of making progress in meeting developmental milestones.  
8

9 89. The therapies have been highly effective and Seth is no longer on oxygen, has  
10 learned to walk, eats finger foods and babbles.  
11

12 90. Despite Seth's entitlement to receive these services, Michelle R. was informed by  
13 her developmental specialist in late February that her son's services would stop on March  
14 1, 2009.  
15

16 91. On or about March 4, 2009, Michelle R. received a letter from DES-DDD  
17 Assistant Director Barb Brent, stating that Seth's services "will stop and will not be  
18 provided after March 13, 2009" (see letter from Barbara Brent, Assistant Director, DES'  
19 Division of Developmental Disabilities, dated March 3, 2009, attached as Exhibit 5).  
20  
21

22 92. Defendants' cessation of services was done with total disregard for Seth's  
23 individual and unique needs and violated his IFSP.  
24

25 93. On or about March 6, 2009, Michelle R. requested administrative review of this  
26 decision from DES, by means of a due process hearing.  
27

1 94. As a result of the State's cessation of necessary services, Seth is at risk of suffering  
2 significant regression and losing the skills he and his providers and family have worked so  
3 hard to gain. Although his services have been temporarily restored pursuant to a  
4 preliminary injunction imposed in another lawsuit (see ¶s 42, 44, 45), they will once again  
5 be at risk if that injunction is either lifted or does not become permanent.  
6

7  
8 **CAUSES OF ACTION**

9 Count I - Denial of Early Intervention Services and Other Part C Protections  
10

11 95. Part C of the IDEA requires Defendants to develop and implement a statewide,  
12 comprehensive, coordinated, multi-disciplinary, interagency system that provides early  
13 intervention services for infants and toddlers with disabilities and their families. 20 U.S.C.  
14 § 1431(b)(1).  
15

16 96. Part C also requires Defendants to ensure that eligible children have IFSPs and that  
17 eligible children and their families received the services listed on the IFSPs, which are  
18 based upon evaluations and developed in conjunction with their families. 20 U.S.C. §  
19 1436.  
20

21 97. Defendants are required by Part C to provide Plaintiffs and their families with a  
22 series of procedural safeguards, including but not limited to written prior notice, access to  
23 mediation and an impartial hearing system, maintenance of the child's IFSP pending  
24 resolution of the dispute and, when no birth or adoptive parent is available, a surrogate  
25 parent.  
26  
27

1 98. Defendant DES, as the Lead Agency, and Defendant Blessing have the primary  
2 responsibility for assisting the State of Arizona to comply with these and other Part C  
3 mandates.  
4

5 99. Defendants have unlawfully reduced and/or eliminated Plaintiffs' early intervention  
6 services in disregard of their IFSPs and their unique developmental needs, thereby denying  
7 Plaintiffs their substantive rights under Part C. 20 U.S.C. §1431, et seq.  
8

9 100. This reduction and/or elimination of services is wholly and completely related to  
10 monetary concerns and is not related to Plaintiffs' unique needs.  
11

12 101. Defendants have unlawfully reduced and/or eliminated Plaintiffs' early intervention  
13 services without following the procedures set out in Part C for review and modification of  
14 IFSPs, thereby denying Plaintiffs their procedural rights under Part C. 20 U.S.C. §1431, et  
15 seq.  
16

17 102. Defendants have unlawfully reduced and/or eliminated Plaintiffs' early intervention  
18 services without affording Plaintiffs the procedural protections and safeguards they are  
19 entitled to by law, thereby denying Plaintiffs their substantive and procedural rights under  
20 Part C. 20 U.S.C. §1431, et seq.  
21

22 103. By reducing and/or eliminating the expenditure of state funds on infants and  
23 toddlers with disabilities and their families under Part C, Defendants have violated Part  
24 C's prohibition against using federal funds to supplant state and local funds for this  
25 purpose. 20 U.S.C. § 1437(b)(5)(B).  
26  
27



1 result, Plaintiffs have not been receiving the early intervention services to which they are  
2 entitled in violation of Part C.

3  
4 Count IV – Denial of Early Intervention Services Under Arizona Law

5 110. Arizona law requires Defendant DES to serve as the Lead Agency for the  
6 coordination of a comprehensive system of early intervention programs and services to  
7 infants and toddlers with or at risk of developmental delays and to enter into one or more  
8 intergovernmental agreements with other state agencies to develop and implement this  
9 system in accordance with Part C. A.R.S. § 8-652.

10  
11  
12 111. Arizona law guarantees to Plaintiffs all of the rights provided under Part C. A.R.S.  
13 § 8-652.

14  
15 112. Defendants’ unlawful reduction and/or elimination of Plaintiffs’ early intervention  
16 services violates the guarantees afforded by Arizona law, as set forth above in Counts I  
17 through III.

18  
19 Count V - Denial of Constitutional Due Process (Defendant Blessing only)

20 113. Defendant Linda J. Blessing’s reduction and/or elimination of Part C early  
21 intervention services to Plaintiffs without adequate notice and opportunity for an impartial  
22 hearing constitutes a failure to provide due process of law and therefore violates the Due  
23 Process Clause of the United States Constitution. This claim is raised pursuant to 42  
24 U.S.C. §1983, which authorizes the filing of a civil action for deprivation of rights secured  
25  
26  
27

1 by the United States Constitution. This constitutional claim is brought separately and  
2 distinctly from the IDEA claim and cannot be remedied by hearing officers under the  
3 IDEA hearing system, as they are without authority to even review such a claim.  
4

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs, individually and on behalf of the class, respectfully  
7  
8 request that this Court grant the following relief:

- 9 1. Assume jurisdiction of this case;
- 10  
11 2. Certify that this action is maintainable as a class action pursuant to Fed. R. Civ. P.  
12 23(a) and 23 (b)(2);
- 13  
14 3. Issue a declaratory judgment in favor of Plaintiffs that Defendants have violated  
15 their rights under the IDEA and Arizona law, as set forth in this Complaint;
- 16  
17 4. Issue a declaratory judgment in favor of Plaintiffs that Defendant Blessing has  
18 violated their rights under the Due Process Clause of the U.S. Constitution; as set  
19 forth in this Complaint;
- 20  
21 5. Issue preliminary relief, pursuant to 20 U.S.C. § 1439(b), in the form of an order  
22 with respect to Plaintiffs, requiring that during the pendency of this action,  
23 Defendants shall continue to provide Plaintiffs with appropriate early intervention  
24 services, or, for Plaintiffs who are applying for initial services, those early  
25 intervention services they are entitled to under Part C;  
26  
27  
28

1 6. Issue permanent relief that requires Defendants to provide Plaintiffs early  
2 intervention services under Part C of the IDEA, as set forth in their unique IFSPs  
3 and otherwise comply with Part C;  
4

5 7. Award appropriate compensatory early intervention services to Plaintiffs;

6  
7 8. Order Defendants to:

8 A. Send notice to class members' parents, surrogate parents or guardians  
9 informing them that they may be entitled to an award of compensatory  
10 services, and setting-out a process for making compensatory service  
11 determinations; and,  
12

13 B. Provide the compensatory services determined appropriate through the above  
14 process.  
15

16 9. Award Plaintiffs reasonable attorneys' fees and costs; and,  
17

18 10. Award such other and further relief as may be just and proper.  
19

20 RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of April, 2009.  
21

22 By: s/ JoAnn Sheperd

23 JoAnn Sheperd (Bar No. 009843)  
24 J.J. Rico (Bar No. 021292)  
25 Jennifer L. Nye (Bar No. 019230)  
26 Arizona Center for Disability Law  
27 100 N. Stone Ave., Ste. 305  
28 Tucson, AZ 85701

1 (520) 327-9547

2 *Attorneys for Plaintiffs*

3  
4  
5 **CERTIFICATE OF FILING AND SERVICE**

6 Pursuant to the Case Management/Electronic Case Filing Administrative Policies  
7 and Procedures Manual ("CM/DCF Manual") of the United States District Court for the  
8 District of Arizona, I hereby certify that on the 15th day of April, 2009, my office  
9 electronically transmitted the foregoing Complaint to the U.S. District Court clerk's office  
10 for filing.

11 Pursuant to Section D(2) of the CM/ECF Manual, we have mailed a courtesy copy  
12 of the Complaint to the Honorable Judge designated at the time of filing.

13  
14 s/JoAnn Sheperd

15 JoAnn Sheperd

16 J.J. Rico

17 Jennifer L. Nye

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