

**IN THE SUPERIOR COURT OF THE STATE OF NEW COLUMBIA  
IN AND FOR NEW COLUMBIA COUNTY**

<b>Chris Moss</b>	)	
	)	
<b>Plaintiff</b>	)	<b>Civil Case No.: CV01-192008</b>
	)	
v.	)	
	)	
<b>The New Columbia Public School District</b>	)	
<b>and;</b>	)	
<b>Dr. Terry Preece, as an agent/employee</b>	)	
<b>of the NCPSD</b>	)	

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**Case Summary<sup>1</sup>**

Chris Moss lives at 2300 14th Street in Metro City, in the state of New Columbia, and is a senior at New Columbia Senior High School. New Columbia Senior High School is a public school within the New Columbia Public School District. Chris has been enrolled in New Columbia public schools since entering kindergarten at the age of five. Chris has progressed from grade to grade and has always at least minimally passed all classes. Chris has never been tested for any learning disabilities, and the standardized test scores indicate Chris is an average student. Chris is scheduled to graduate on time and receive a high school diploma at the end of the school year.

Chris' basic skills in reading, writing and arithmetic are extremely weak. The basic skills Chris possesses are so poor that Chris finds it difficult to function adequately in society. Chris has difficulty reading simple books, the newspaper, a menu in a restaurant, writing a simple letter or making sure correct change is given by a store clerk.

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<sup>1</sup> The foregoing summary of the case is provided solely for the convenience of the participants in the Mock Trial Tournament. This overview itself does not constitute evidence and may not be introduced at trial or used as impeachment.

Chris has applied for several jobs during the past year and a half and has been unsuccessful in finding and holding a job. Chris has had difficulty in filling out job applications due to poor reading and writing skills. Prospective employers feel Chris cannot handle minimal responsibilities in a job. Chris has also been looking for a full-time job to begin after graduation and has not been able to find one. Chris believes the inability to find employment is directly related to a lack of basic academic skills.

### **Claims and Defenses**

Chris is suing the New Columbia Public School District and Dr. Terry Preece for educational malpractice, which is classified as a tort. Educational malpractice is not widely recognized, but is emerging as a new cause of action in many jurisdictions. Chris claims the school district, and Dr. Preece as the implementer of the district's educational policies, have negligently failed in their statutory duty, under New Columbia Education Code Sections 2097, 2098, 2099, and, 2101, to educate Chris in the basic academic skills. Chris claims the defendants have a statutory duty to educate students and to meet the individual needs of students in the school district and that they have failed to do so in this case. Since Chris has not acquired the basic skills necessary to succeed in society, Chris is unable to find employment and will be unable to provide for basic needs in the future.

The defendants claim they have met their duty, which they describe as providing educational opportunities for students enrolled in the schools. Chris had the opportunity to attend school and was exposed to the same educational opportunities as other students who were able to learn and master basic academic skills and more. In addition, the defendants assert that there is no proof that the schools or their agents are responsible for Chris' failure to learn, as there are many outside factors that contribute to a student's inability to learn.

### **Relief Requested**

Chris is asking the court to make a finding of educational malpractice and grant injunctive relief. The school district should be ordered to develop a program and policies that meet the needs of individual students so all students graduate from senior high school with at least the ability to perform basic academic skills. In addition, the plaintiff is requesting the sum of \$20,000 to pay for an individual tutor, who would help bring Chris' academic skills up to par, plus attorney fees and court costs.

The defendants are asking the court to find there was no educational malpractice on the part of the defendants and to deny the injunctive or monetary relief sought by the plaintiff.

### **Witnesses**

#### **Plaintiff Witnesses**

1. Chris Moss, Plaintiff
2. Dr. Gerry Stein, Education Testing Specialist
3. Sydney Payne, Office Manager, Bowers & Jenkins law firm

#### **Defense Witnesses**

1. Dr. Terry Preece, School Superintendent
2. Leslie Brown, teacher, New Columbia Senior High School
3. Alex Lloyd, student, New Columbia Senior High School

### **Stipulations**

The parties stipulate to the authenticity and admissibility of all of the official exhibits.

### Brief History on Education Reform and the Tort of Educational Malpractice

The first reported cases of educational malpractice hailed from Louisiana (in 1973), California (in 1976) and New York (in 1979). However, the idea of educators being held responsible for education of their students did not take hold of the courts until 1980. Between 1980 and 2001, there was a barrage of cases dealing with the tort of educational malpractice, also referred to as “failure to teach” or “failure to educate” torts. Parents and students sought relief from school systems which they viewed as inadequate in their ability to properly educate.

A monumental event in the educational movement came in January 2002, when President George W. Bush signed into law the *No Child Left Behind Act of 2001*. The new law was an open acknowledgement and acceptance of the need for vast educational reform. It was enacted to improve the performance of students in lower performing schools and provide safeguards to ensure educational accountability. The Act also required states to implement measures for schools to assess student performance.

Although there is much debate on as to the success of the No Child Left Behind Act, it is undeniable that the issue of educational accountability is of major importance.

### Mock Pretrial Motion

This section of the mock trial packet contains materials and procedures for the preparation of a pretrial motion on an important issue. The judge's ruling on the pretrial motion will have a direct bearing on the admissibility of certain pieces of evidence and the possible outcome of the trial. All pretrial information can be used in each side's case in chief. The pretrial motion is designed to help students learn about the legal process and legal reasoning. Students will learn how to draw analogies, distinguish a variety of factual situations and analyze and debate constitutional issues. In the case at hand, the parties will be arguing the following issue: What duty does a school have to educate and assess its students, particularly when certifying them as high school graduates?

Plaintiff may consider the following in preparation for their pretrial motion presentation:

1. What should schools realistically be required to do to advance student learning?
2. What responsibility does a school have to inform students of their educational progress or lack of progress?
3. Courts routinely set a standard of care for physicians and surgeons. Should the court set similar standards for educational institutions and their representatives?
4. Will a failure to allow this case to proceed result in permitting the defendants to maintain deficient standards?

The defense may consider the following in preparation for their pretrial motion presentation:

1. Can schools be required to make students learn, or don't the students bear a major portion of the responsibility for learning?

2. How can educational damage to students be measured, proved, and remedied by courts?
3. Wouldn't allowing this case to proceed open a floodgate for cases by other dissatisfied students?
4. How can students show that schools cause their educational deficiencies?

## LEGAL AUTHORITIES

### I. Statutes

#### New Columbia Educ. Code Section 2097: Proficiency Standards for Students

Each school district shall develop proficiency standards which shall include, but need not be limited to, reading comprehension, writing and computation skills in the English language, necessary for success in school and life experience, and shall be such as will enable individual achievement to be ascertained and evaluated. The standards shall be directly related to the district's instructional program.

#### New Columbia Educ. Code Section 2098: Analysis of Individual Needs and Potential

The competent educator shall use or promote the use of appropriate diagnostic techniques to analyze the needs and potential of individuals. Among the techniques to be considered are personal observation, analysis of individual performance and achievement, and specific performance testing.

The competent educator shall use the results of evaluations for planning and program modification, and share the results of evaluation with affected parties.

#### New Columbia Educ. Code Section 2099: Instructional Procedures

Each competent educator shall create an atmosphere that encourages learning, use procedures appropriate to the designated task, and encourage expression of ideas, opinions and feelings.

Each competent educator shall create interest through the use of appropriate materials and consider the individual interests and abilities of students.

### New Columbia Educ. Code Section 2100: Administrative Duties

Each competent school administrator shall support the process of learning by providing appropriate and reasonable materials and equipment and by making reasonable assignments of tasks.

Each competent school administrator shall enforce the statutory requirements to the best of their ability.

## II. Case Law\*

### Jane Smith v. Charlotte School District, 65 A.2d 54 (NC, 1988)

Student sued the school district for failing to educate her in the basic academic skills. She graduated from high school with the inability to fill out a job application or do simple mathematical computations. Statutes in the state required school districts to provide analysis of students' individual needs and to develop learning programs which meet these needs. In addition, the state provided for certification of teachers and viewed them as professionals.

The court made a finding of educational malpractice based on the school district's failure to meet the requirements of the statutes. The court stated "... public educators are professionals. They hold themselves out as possessing certain skill and knowledge with some minimum degree of competence. In addition, like other professionals, they must often make educated judgments in applying their knowledge to specific individual needs. As professionals, they owe a professional duty of care to children who receive their services and a standard of care based

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\* These are cases which may be used in the mock trial. It should be assumed they are not from New Columbia and not binding on this Court.



upon customary conduct is appropriate. There can be no question that negligent conduct on the part of a public educator may damage a child by inflicting psychological damage and emotional distress. Moreover, since public educators purport to teach, it follows that some causal relationship may exist between the conduct of a teacher and the failure of a child to learn. Thus, it is possible to maintain a viable tort action against such professionals for educational malpractice."

**John W. v Broad School District**, 54 Cal. App.3d 822 (CA, 1988)

The student sued the school district for failing to educate him because he graduated from high school reading and writing on only a sixth grade level. The court would not entertain any action for educational malpractice, stating "the achievement of literacy in the schools, or its failure, is influenced by a host of factors which affect the pupil subjectively, from outside the formal teaching process and beyond the control of its ministers. These may be physical, neurological, emotional, cultural or environmental. They may be present but not perceived. School authorities may not be able to recognize them nor can schools be held responsible for the failure of parents or the students themselves."

**Affidavit of Chris Moss**

**Plaintiff**

1. My name is Chris Moss. I am eighteen (18) years old and a senior at New Columbia Senior High School. I live at 2300 14th Street, apartment number 2, in Metro City, New Columbia. I live with my mother and younger brother in a one bedroom apartment. My mother has always worked full-time for an office cleaning company in order to support us.
2. When I was younger, I would stay with a neighbor, Mrs. Jones, after I came home from school until my mother returned from work. Mrs. Jones has seven children of her own, so it was no big deal for her to have me over at her house. When I turned eleven my mother let me stay by myself. I didn't need anyone looking after me. Lots of nights my mother doesn't get home until late. She tries to put in a lot of overtime because we need the money.
3. I've always gone to public schools in New Columbia. I don't particularly mind going to school. My attendance at school was very good in elementary school. I did miss some school in junior high and high school, like all kids do, but it didn't have any impact on my grades. I still passed all my classes.
4. Sometimes the assignments don't make much sense to me. Once when I asked for help the teacher was too busy. I don't like to ask my mother for help. She's usually tired when she comes home from work and doesn't have the energy to look at my schoolwork.
5. Most of my classes have been pretty boring. My teachers don't seem very competent. Usually they just lecture to us. They keep giving us a lot of information, but don't really get us involved or check to see if we understand.

Sometimes they'll have a student read something from the book and then ask us questions about it. Even though I can't read, that never bothered me. If I got called on to read, I would just say, "I'd rather not." I could always answer the questions when someone else read the paragraph. Before an exam the teachers usually hold a review session. This would be really helpful because I could memorize exactly what they wanted me to know the night before the test and then forget it right away. I even memorized key words so I would know what answers to put where. I never understood the written material but the review sessions helped me pass the tests.

6. I heard there was a new reading program being offered at the high school a couple of years ago, but I figured there was no point in going. It was early in the morning and I don't like to get up too early. Also, I had trouble reading, so what was the point in going to school and sitting in a room with a lot of other students and trying to read a book? I spoke to a couple of friends about the program and it sounded dumb and boring.
7. In math class I learned how to add, subtract, multiply and divide, but I never had to use the skills in real situations. I didn't learn any practical skills like giving change or balancing a checkbook. In lots of math classes we were allowed to use calculators, so I didn't even have to memorize basic math facts.
8. I know I'm not the brightest student in school, but I do try to do my work. I enjoyed my social studies class with Leslie Brown last year, especially the mock trial. I learned a lot in her class.
9. My mother always looked at my report card and since I have always passed all my classes, she was pretty happy with the way I was performing in school. I

wasn't planning to go on to college, but I thought I would get a job, save some money and then get a place of my own. It always feels crowded in our apartment and I would like some space to call my own.

10. I started looking for a part-time job last year. Before that I had to watch my younger brother and couldn't work after school. I went to some of the fast-food stores, the supermarkets, department stores, and other neighborhood stores to see about a job. I thought I could work in one of those places because I have friends with jobs there. The first place I went I had a lot of trouble filling out the job application. I couldn't read all the questions they asked and ended up answering the questions wrong. I felt like a real dummy. After that, when I was applying to other places, I tried to take the application home with me so I could have a friend help me fill it out and then send it back.
11. I did get hired by Hamburger King last year. I worked there for about a month. For some reason, while I was working there the new computer cash registers kept going out. We had to figure out the amount of change each person should get from their purchase. I couldn't figure out the right amount of change. People would get impatient while I was trying to figure it out. A couple of people took advantage of me and demanded more money than they were supposed to get. I ended up being short a number of nights. The manager caught me giving too much money back and got really angry and fired me. I can't blame him for firing me. I know the store can't afford to lose money all the time.
12. A couple of employers I talked to seemed to really like me. They said if I could improve my reading and writing skills they would hire me. I really wanted the job at Bowers and Jenkins and tried hard to do well on the application. It

seems to me since I always tried in school and passed all my classes I should be able to get a job. I went to school most of the time and did my homework sometimes. No one does their homework all the time. There are too many other things to do like parties, movies, and football games.

13. My mother is really upset. She had no idea I couldn't read. My grades in school were always okay (mostly Cs) so she figured I must have been doing fine. The school should have made sure I could read and write before they passed me on from grade to grade. Now I don't even have the skills needed to get a lousy job. How am I going to be able to support myself later on? I can't count on my mother to support me forever.

This I swear under penalty of perjury.

**Chris Moss**

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Chris Moss

**Affidavit of Dr. Gerry Stein**

**Education Specialist**

**Witness for the Plaintiff**

1. My name is Dr. Gerry Stein. I have a B.A. degree in elementary education, a Masters degree in supervision in education, and a Doctorate in education, specializing in curriculum development. I was a teacher for 10 years, a principal for four years and superintendent for curriculum development for two years in Lake City, New Columbia. I moved to Metro City two years ago and applied for a similar job, but Dr. Preece didn't hire me for the position, so I have been doing private consultation with individuals and school districts since that time. The plaintiff is paying me \$1,000 for my testimony.
2. I spent about four hours interviewing and testing Chris' basic skills. Although the test scores indicate Chris is below grade level at this time, Chris is intelligent and could have learned if Chris was taught properly in school. A curriculum must meet the needs of all the students and help them reach their potential.
3. I also spent a great deal of time reviewing written policies and procedures of the school district and have found them lacking. The district is not meeting the needs of individual students and their families and is not following all of its policies. The district has a policy in regard to attendance. If a student is out, the parent is supposed to be called in the morning to find out why the student is not in school. The student is supposed to return to school with a note from the parent or a doctor. When Chris' attendance started to decline in junior high school, the school should have checked the situation out. No one from the school contacted

Chris' mother to find out why Chris was missing school. There is no record of anyone calling Chris' mother to find out the reasons for Chris' nonattendance.

4. In addition, when Chris missed the eighth grade standardized tests, the school should have arranged for Chris to make them up. If the school district believes in giving standardized tests as one means of evaluating students, then the schools should be sure all students take the tests. Perhaps if the school had given Chris the test in eighth grade they might have noticed Chris' reading ability had dropped.
5. Although Chris passed all classes, it should have been clear that the basic academic skills needed to be successful were beyond Chris' ability. Evaluation techniques should be supportive of the goals the school district is trying to accomplish. Since all students should graduate from high school with a proficiency in the English language, any evaluation program that does not pick up a student lacking these skills is not meeting its purpose. Several teachers in the school district informed me they had been instructed by the principal of the school to pass students who had questionable grades. They were told the students needed to be moved on so they could get an education. Students don't get much of an education if they don't have a foundation to build on.
6. New Columbia School District needs to change its curriculum and policies. It should develop a curriculum that has input from teachers, parents and students. If everyone participates in the planning of the curriculum, it is more likely to meet the needs of the students and the parties will have a larger stake in making sure it will work. Individual evaluations should be done for each student, and based on the evaluation, an individual learning plan should be developed that meets the

needs and learning styles of the individual students. The student's progress in that individual plan should be examined regularly and any problems or progresses should be provided to both parents and students. The current evaluation system in the New Columbia schools consists of standardized tests in fifth and eighth grades and report cards issued four times a year. As far as I can tell, there is no mechanism in place to make sure all students are given the standardized tests. Also, there is no guarantee that students or parents pay attention to the report cards. Follow-up should be done with parents whose children are in trouble in school.

7. I have been told that the current reading program is a class before school where the teachers read a book with the students. To my knowledge, there is no accounting for the varying reading levels of the students or a proper mechanism to measure the students reading progress.
8. The reading program should be redesigned to include these elements: (1) developmental reading - systematic, sequential instruction that begins in the preschool years and continues through high school; (2) functional reading - practice using reading to solve problems in widely diverse school and other life areas; (3) independent/recreational reading - time and materials to foster lifetime reading habits ; and (4) corrective/remedial reading - help for children who need it for either poor skills, habits or attitudes.
9. There is no good reason Chris could not learn. Chris is an intelligent, personable and verbal student and has the capability to learn. The school system just failed to educate Chris and should be held accountable.



BOWERS & JENKINS  
6430 Placida Boulevard  
Suite 300  
Metro City, New Columbia, 019881

JOB APPLICATION

PART I: Personal Information

FULL NAME: Chris Moss		
ADDRESS: 2300 14 <sup>th</sup> Street		
CITY: Metro City	STATE: New Columbia	ZIP: 01920
SOC. SEC#: 105-85-9738	DATE OF BIRTH: 03/20/82	
TELEPHONE: 546-1082	POSITION DESIRED: Mail Clerk	

List highest educational level you have attained and list all schools that you have attended:

Highest Educational Level Attained: 12<sup>th</sup> Grade

Schools Attended: New Columbia Hi School  
New Columbia Jr. Hi School  
New Columbia Grade School

What was your grade point average at each of the schools you listed?

C-  
C  
C+  
 

List your previous four jobs:

Hamburger King, Cashier

What special skills do you possess?

What days and what hours are you available to work?

Mon too Fri  
9 too 5

How did you find out about his position?

Newspaper

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PART II: Skills Evaluation

Alphabetize the following by last name:

James Ingram, Sally Rodant, Graham Chapman, Loretta Rodriguez, Trevor Roe,  
Dwayne McIntosh, Terrell Ford, Justin Brooks, Alexander Mars, Marc Elias,  
Garland Chapman, Corey Lawton, Regina Howell, Mike Montana, Yvonne  
Alexander

James Ingram	Dwayne McIntosh	Garland Chapman
Sally Rodant	Terrell Ford	Corey Lawton
Graham Chapman	Justin Brooks	Regina Howell
Brenda Rodriguez	Alexander Mars	Mike Montana
Trevor Roe	Marc Elias	Yvonne Alexander

Organize the following zip codes numerically:

02210, 14211, 20001, 92069, 01224, 10012, 13323, 14321, 13598, 48201, 96065,  
22201, 20036, 12350, 14222, 22301

02210	13323	14222	48201
01224	14321	20001	92069
14211	13598	22201	96065
10012	12350	22301	

Please solve the following problem.

Imagine that you are responsible for placing a postage stamp on each piece of mail that goes out of the mail room. You receive: three letters from Mr. Hundleby's office, four from Mr. Thompson, seventeen from Mr. Jarreau, six from Ms. Harrison, and one from Mrs. Jones.

Before you have stamped these letters, Mr. Jarreau rushes into the mail room to say that he did not want to send four of his letters and takes these letters back to his office.

**How many stamps do you need?**

28

31

30

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