UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AB, an infant, by her aunt and legal guardian, CD; EF; GH, an infant, by her father and natural guardian IJ; KL; and CATHY CONLEY,

Plaintiffs,

- against -

RHINEBECK CENTRAL SCHOOL DISTRICT, and THOMAS MAWHINNEY,

Defendants.

03 Civ. 3241 (SCR) (GAY)

----------X

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

- against -

RHINEBECK CENTRAL SCHOOL DISTRICT,

Defendant.

----------X

MEMORANDUM OF LAW IN SUPPORT
OF THE UNITED STATES OF AMERICA'S MOTION TO INTERVENE

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Plaintiffs,	:	
- against -	:	
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UNITED STATES OF AMERICA,	:	
Plaintiff-Intervenor,	:	
- against -	:	
RHINEBECK CENTRAL SCHOOL DISTRICT,	:	
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MEMORANDUM OF LAW IN SUPPORT
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PRELIMINARY STATEMENT

The United States of America (the "Government") respectfully submits this memorandum of law in support of its motion pursuant to Rule 24(c) of the Federal Rules of Civil Procedure for leave to intervene in the action entitled AB, et al. v. Rhinebeck Central School District, et al., 03 Civ. 3241 (SCR) (GAY). The Government seeks to intervene in this action to support the sexual harassment claims asserted by four current and former students of Rhinebeck High School, in Rhinebeck, New York (the "High School") against the Rhinebeck Central School District ("School District") under Title IX of the Education Amendments of 1972. As discussed

below, the Government meets the standards both for intervention as of right pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure and for permissive intervention pursuant to Rule 24(b). Accordingly, the Government's motion to intervene should be granted.

PROCEDURAL BACKGROUND

On May 9, 2003, Plaintiffs AB, EF, GH, and KL, among others, filed a complaint in this Court against the District and Thomas Mawhinney, then the Principal of the High School, alleging, among other things, that the District and Mawhinney violated and were continuing to violate Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-88, as a result of Mawhinney's sexual harassment of AB, EF, GH, and KL, and the District's deliberate indifference to that harassment. On August 29, 2003, plaintiffs amended their complaint.

To date, the District has taken the depositions of four of the plaintiffs and seven faculty and staff members at the High School. The next depositions in the case are scheduled to take place on April 21 and 23, 2004. The depositions of the responsible District officials, including Mawhinney, and the District Superintendents who presided over the District during the majority of Mawhinney's tenure as Principal, have not yet been scheduled. There is currently no deadline for the conclusion of discovery, although the Court has scheduled a conference with the parties regarding discovery for May 4, 2004.

FACTUAL BACKGROUND

As alleged in the complaint and amended complaint, over a ten year period from 1993 through 2003, Mawhinney subjected plaintiffs AB, EF, GH, and KL and many other female students at the High School to unwelcome sexual harassment that constituted discrimination on the basis of sex. Plaintiffs allege that the sexual harassment to which they and many other female students at the

High School were subjected was severe, pervasive and objectively offensive. Plaintiffs allege that Mawhinney's behavior with respect to them and many other female students at the High School created a hostile educational environment.

Plaintiffs also allege that District officials with authority to rectify the situation received actual notice of incidents in which Mawhinney sexually harassed the student-plaintiffs and many other female students at the High School and were deliberately indifferent to the students' complaints. Plaintiffs allege that the District's deliberate indifference prevented the plaintiffs and other female students at the High School from enjoying the educational benefits and opportunities provided by the District.

ARGUMENT

THE GOVERNMENT'S MOTION TO INTERVENE SHOULD BE GRANTED

A. The Government Meets the Standards for Intervention as of Right Under Rule 24(a)(2)

Rule 24 provides for intervention as of right "when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." Fed. R. Civ. P. 24(a)(2). Rule 24 has been interpreted broadly to entitle the United States to intervene "in the maintenance of its statutory authority and the performance of its public duties[.]" SEC v. Realty and Improvement Co., 310 U.S. 434, 460 (1940).

District courts within this Circuit consistently apply a four-part test to motions for intervention under Rule 24(a)(2). See, e.g., Wilder v. Bernstein, No. 78 Civ. 957 (RJW), 1994 WL

30480, at * 1 (S.D.N.Y. Jan. 28, 1994); Washington Elec. Coop., Inc. v. Massachusetts Mun. Wholesale Elec. Co., 922 F.2d 92, 96 (2d Cir. 1990). Under this test, the applicant must show that:

> (1) the application has been made in a timely manner, (2) the applicant has a legally protectable interest in the subject of the action, (3) disposition of the action without intervention may impair or impede the applicant's ability to protect its interest, and (4) the existing parties will not adequately represent the applicant's interest in the action.

Id.

The Government plainly satisfies this test. First, the Government's application to intervene has been made in a timely manner. The plaintiffs' original complaint in this action was filed on May 9, 2003, less than ten months ago. Upon learning of the complaint, the Government promptly commenced an investigation to determine whether intervention was warranted. The Government has already obtained relevant documents from the parties during the course of its investigation and does not presently anticipate the need for further document requests upon intervention. Although some depositions have already been taken in this action, the depositions of the key District witnesses, including former Principal Mawhinney and the former District Superintendents, have not yet been taken. Furthermore, provided that the transcripts of the depositions and other discovery already completed in this action are made equally available to the Government, the Government does not presently anticipate the need to re-take any of the depositions that have already been taken by the parties. Accordingly, the Government's application is timely made and none of the original parties would be prejudiced by the Government's intervention at this stage of the case. See, e.g., Kirby v. Coastal Sales Assocs. Inc., 199 F.R.D. 111, 117 (S.D.N.Y. 2001) (permitting intervention during discovery where there would be no need for "extensive additional discovery"); Wilder, 1994 WL 30480, at * 3 (even 7-year delay not excessive where no

prejudice shown); Abandolo v. GGR Holbrook Medford, Inc., 285 B.R. 101,109-110 (E.D.N.Y. Bankr. 2002) (United States's motion to intervene timely although lawsuit had been in progress for 10 years, where intervention would not unnecessarily delay proceedings and United States would be prejudiced by inability to intervene).

Second, the Government has a "legally protectable" interest in the subject of the action. Wilder, 1994 WL 30480, at * 1. Plainly, the Government has a compelling and protectable interest in the proper enforcement of Title IX, in ensuring that the recipients of federal funds (including the District) do not discriminate on the basis of sex, and in ensuring that federal funds are not given to entities that fail to comply with federal anti-discrimination laws.

Third, "the disposition of the action without intervention may impair or impede the [Government's] ability to protect its interest." Wilder, 1994 WL 30480, at * 1. An adverse judgement in this case could impair the Government's ability to enforce Title IX with respect to teacher-on-student sexual harassment, particularly in cases in which a school district's response to allegations of sexual harassment proves inadequate to stop the harassment from continuing. Further, the disposition of this action without intervention could impair or impede the Government's interest in preventing further discrimination by the District because the private plaintiffs could agree to settle this action for money damages alone without seeking the type of institutional changes by the District that the Government considers necessary to ensure that students are protected from unlawful discrimination and harassment in the future.

For the same reason, "the existing parties will not adequately represent the [Government's] interest in the action." Wilder, 1994 WL 30480, at * 1. In this case, the plaintiffs have not brought their claims as a class action on behalf of all High School students. Rather, they

seek individual relief on behalf of four present and former High School students. Cf. Cook v. Colgate Univ., 992 F.2d 17, 19 (2d Cir. 1993) (in absence of class action, students' Title IX request for injunctive relief rendered moot upon graduation of last of student plaintiffs). In contrast, the Government's interest here extends beyond seeking redress for the individual student plaintiffs. Rather, the Government's interest extends to ensuring that the District implements institutional change that protects all High School students from unlawful discrimination and harassment, now and in the future. While the Government's interests are not adverse to the those of the individual plaintiffs, they are certainly not the same. See Sierra Club v. Robertson, 960 F.2d 83, 86 (8th Cir. 1992) (recognizing that governmental entities have interests that are different from private parties and holding that intervention is appropriate "where the interests of proposed intervenor and current party, while not adverse, are disparate, even though both sought the same legal goal"); Mille Lacs Band of Chippewa Indians v. State of Minnesota, 989 F.2d 994, 1001 (8th Cir. 1993) (describing burden of showing inadequate representation as "minimal"). Accordingly, the Government's motion for intervention as a matter of right under Rule 24(a)(2) should be granted.

B. The Government Also Meets the Standards for Permissive Intervention Under Rule 24(b)

In the event that the Court finds that the Government does not meet the requirements for intervention as of right, the Court should nevertheless exercise its discretion under Rule 24(b) to permit the Government to intervene. Rule 24(b) provides that "[w]hen a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state government officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may

be permitted to intervene in the action." Fed. R. Civ. P. 24(b). In exercising its discretion whether to allow permissive intervention, a court "shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Id. "Ultimately, the degree of discretion granted to a trial court in considering permissive intervention is extremely deferential." Equal Opportunity Employment Comm'n v. The Hispanic Society, No. 71 Civ. 2877 (RLC), 2003 WL 21767772, at * 1-2 (S.D.N.Y. July 30, 2003).

The Court should exercise its discretion and permit intervention. Plaintiffs in this action are asserting claims under Title IX, a federal statute administered and enforced by the federal Government. In its complaint-in-intervention, the Government also asserts a claim under Title IX on the basis of the same factual record giving rise to plaintiffs' claims. Furthermore, defendants' defenses will likewise rely on Title IX and the case law governing that statute; indeed, defendants will presumably assert the same defenses to the Government's claims as they are asserting against those of the private plaintiffs. Thus, the Government's complaint raises facts and legal issues in common with the parties to the original case. Finally, for all the reasons explained above, intervention by the Government in this action at this time would not unduly delay or prejudice any of the parties to the original action. Accordingly, intervention should be permitted. See, e.g., Kirby, 199 F.R.D. at 119 (granting permissive intervention where no undue delay and intervenor's claims were similar to those of original party); Abandolo, 285 B.R. at 110-11 (finding Government met standard for permissive intervention where common questions of fact existed between Government's claims and claims of original parties and intervention would not unduly delay or hinder action).

CONCLUSION

For the foregoing reasons, the Government's motion for intervention under Rule 24 of the Federal Rules of Civil Procedure should be granted.

Dated: New York, New York
March 18, 2004

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, HEIDI A. WENDEL, Assistant United States Attorney for the Southern District of New York, hereby certify that on March 18, 2004, I caused a copy of the attached Memorandum of Law in Support of the United States of America's Motion to Intervene to be served by regular first-class mail upon the following:

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