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Jose P. v. Sobol

Dear Counsel:

Paragraph "32" of the August 3, 1988 stipulation and order in this consolidated action identifies sixteen outstanding issues as to which plaintiffs allege systemic non-compliance with the December 1979 Jose P. judgment but which are unaddressed in the stipulation. The second sentence of paragraph "32" states that the City defendants deny some of

plaintiffs' allegations of non-compliance and dispute that some of the sixteen issues identified in paragraph "32" are matters which may be raised in this action.

As you know, since 1988, during the period that the parties have considered the Phase II issues, the City defendants have implemented policies and practices which address many of the paragraph "32" issues. Although City defendants do not concede either a legal or a paragraph "32" obligation to do so, for the next three years, that is, until July 1995, we intend to continue the policies and practices identified in the succeeding paragraphs. During this three year period, we will convene semi annual meetings, one in July and the other in January, to answer plaintiffs' questions regarding appropriate facets of these issues. If possible, the two meetings each year will be limited to one day in duration. If, over the next three years, because of pedagogical, administrative, managerial, legal mandates or other considerations, City defendants decide to discontinue or modify substantially any of the practices or policies described in this letter, plaintiffs will be given thirty days notice of City defendants' intention to do so. I will discuss below the thirteen relevant paragraph 32 issues.

PHASE II ISSUES

1. SOPM. Issue 32 (1) is "revisions of the SOPM, to the extent not resolved through the procedure described in paragraphs 7-9 and 15, such issues to include service CSE organization, outreach services, classroom observation, and any modification of the SOPM necessary to reflect changes brought about by this stipulation."

As you know, work on a completely revised SOPM is underway. The proposed revised SOPM will consist of no less than five loose leaf volumes or sections. These five volumes will correspond to five different areas of special education procedures: referral, multidisciplinary assessment, review/recommendation, placement, and triennial and requested reviews. Each volume will have an introductory section. Bilingual documents will be cross referenced. Each volume will be regularly updated, and appropriate substitute pages for each volume will be circulated.

Subcommittees have now been established, and are meeting regularly to review, revise, draft, and suggest deletion of items. After any volume of the SOPM has been developed in draft form, City defendants will present the draft volume to the plaintiffs, for a period of thirty working days, for review and final comments. It is the goal of DSE to complete the SOPM by January 31, 1993.

2. High School Programs. Issue 32 (2) is "high school programs for special education students." Since 1990, City defendants have issued procedures and policies to assure equitable admissions to high school programs for special education students; developed and disseminated course of study outlines and long term and short term goals and objectives for academic and vocational programs offered to high school students; issued Special Circular 8, dated September 13, 1990, and other memoranda to improve articulation procedures; and provided staff development and training to insure that all special education high school students, whether LEP

or English speaking, have access to and do receive appropriate instruction in the courses which have been developed.

3. Interdistrict Transfers. Issue 32 (3) is "interdistrict transfers and other issues related to the decentralization of instructional and related services to the extent not resolved by the new model developed pursuant to paragraph 4 [of the 1988 stipulation]". Discussions subsequent to the execution of the 1988 stipulation have limited issue "3" to interdistrict placements, or placements of students requiring special education in districts other than their home districts.

Chancellor Fernandez on December 26, 1991, issued a Memorandum on the subject of the placement of students requiring special education. The Memorandum directs field personnel to make every effort first to attempt to place students in their home zoned schools before resorting to other placement options either within or without the students' districts of residence. The Memorandum also directs that if it is determined by the District and/or Regional Placement Officer that neither an appropriate program nor a seat within an appropriate program is available in the student's district of residence, nor can be made available by creating a class, an inter-district placement must be made promptly to ensure that these students are appropriately served. It is understood that pursuant to the memorandum, districts will not be permitted to refuse unreasonably to place children who reside in other districts. In addition, the Memorandum provides that if any disputes arise regarding out of district placements, then CSE chairpersons must

refer the disputes to their clinical administrators. If the dispute cannot be resolved at that level, it will be referred to the DSE for appropriate action. If an impasse develops regarding an interdistrict transfer issue, the issue will be referred to the Office of Monitoring and School Improvement.

City defendants will also implement a procedure to insure that all students in regional programs placed out of their home district will be offered an option each spring to return to an appropriate placement in their home district and, wherever possible, in their neighborhood schools for the following school year. Students in city-wide programs placed out of district shall be offered the opportunity each spring to return to an appropriate placement as close as possible to their homes, if an appropriate placement can reasonably be made available. If students choose to return to their home districts, they shall not have any rights to return to their former out of district placements greater than those enjoyed by any other student in the school system.

City defendants will report to plaintiffs on or about October 1, 1992, on the implementation of home district return procedures, efforts taken to ensure that each community district is making maximum reasonable efforts to ensure that no children with handicapping conditions are placed out of district, and other monitoring activities regarding interdistrict transfers and placements.

4. Attendance. Issue 32(5) is "attendance issues involving special education students." As you know, City defendants have drafted regulations governing attendance procedures for special

education students and have carefully considered the suggestions which plaintiffs have made. In that connection, City defendants will provide training for all attendance teachers and attendance family assistants on the revised regulations within thirty days of their issuance. Further, beginning September 1, 1992, City defendants will make sure that every district and high school attendance plan includes appropriate annual plans for attendance services to LEP and monolingual special education students.

By prior agreement with plaintiffs, City defendants are currently engaging in an in-depth statistical and field study examining data relating to the attendance rate of special education students in district, high school and Citywide programs. The entire study, including research on national trends in attendance and eligibility for attendance follow-up procedures ("407 eligibility") has been completed, and plaintiffs will be provided with a copy of the study in July 1992. City defendants will then meet with plaintiffs to discuss the results of the attendance study, and to determine if there are further appropriate steps to be taken with respect to issue 32(5).

5. Hard to Staff. Issue 32 (6) is that of "hard-to-staff positions to the extent not resolved by the recruitment strategies and incentives contained in paragraph 21". As you know, we are implementing a pilot project intended to aggressively identify and address the staffing needs of "hard to staff" community school districts, i.e., those districts which regularly experience difficulty in recruiting and/or retaining special education staff. The Division of Human Resources ("DHR") is presently coordinating a pilot project for

implementation by September, 1992 in District 12, designed to enhance that district's ability to attract and to retain special education teachers and related service providers. In addition to coordinating the resources and efforts of the local school district and those of the New York City Public School System's central administration, the pilot project will harness the collaborative efforts of other members of the community, such as parents, students, colleges and universities, and other government agencies.

At least three different initiatives are planned to strengthen recruitment efforts in District 12, including hosting special recruitment activities, such as career fairs at sites within the school district; conducting school tours with school district officials and school staff, as well as with local parents, in order to familiarize potential recruits with the schools in the district and to highlight successful and innovative programs existing in the district; and increasing involvement with colleges and universities by encouraging the establishment of new or additional student internships, as well as providing graduate and undergraduate course work, in sites within the school district.

DHR's Office of Staffing will continue to regard assignments to District 12, as well as to other hard to staff school districts, a high staffing priority. In addition, those who have participated in and/or completed the various special education recruitment incentive programs offered by the New York City Public School System will continue to be assigned to hard to staff school districts on a priority basis.

Finally, the pilot project will utilize a three pronged strategy for improving staff retention in the selected school district. First, the project will focus on concerns relating to local school environment, such as security and accessibility, which may fuel a perception that the district is an undesirable place to work. The CSD will work with the New York City Police Department to increase police presence in the vicinity of the school and its staff parking areas, and work with the New York City Department of Transportation to designate additional space for school parking.

Second, the CSD, with the cooperation of the Division of Special Education and the United Federation of Teachers, will facilitate additional staff development and training opportunities for teachers newly assigned to the district, and will implement mentoring programs.

Third, the project will strengthen and develop self-development and individualized teacher support opportunities for new school staff by fostering close, ongoing contacts with experienced teachers and clinical supervisors, and encouraging universities to establish graduate programs located in the district in which local special education teachers and clinicians can participate.

City defendants will report to plaintiffs on the status of the pilot project prior to the beginning of the 1992-93 school year. At that meeting City defendants will specifically address, among other things, plaintiffs' concern that at least two elementary schools and one intermediate school with high vacancy or turnover rates be included in the projects. City defendants will also discuss at that

time their plans for extending the pilot to at least one additional community school district. Thereafter, City defendants will report to plaintiffs at human resources meetings on the status of the pilot project. City defendants will also continue to discuss with plaintiffs specially focused recruitment and support efforts, in addition to the pilot project plan for hard to staff schools.

It is not yet known how much time will be necessary to determine whether the pilot project's various strategies have yielded meaningful and successful results. City defendants are, however, committed to extending to other hard to staff school districts those strategies which prove to be effective in encouraging recruitment and retention.

6. Sub/para coverage. Issue 32 (7) is denominated "substitute and paraprofessional coverage". With respect to paraprofessional coverage, effective May 6, 1991, City defendants established a central paraprofessional registry unit intended to coordinate the assignment of substitute paraprofessionals in order to provide coverage for regularly assigned paraprofessionals in special education assignments who are absent. This unit, under normal conditions provides same day coverage for 99-100% of the absences called in to it, and has been filling vacancies within three to five days of notification. The unit is currently assembling a roster of all paraprofessionals in the school system by name, place of assignment and specific abilities.

During the fall semester of the 1992-93 school year, the Office of Research, Evaluation and Assessment (OREA) will conduct

an in-depth statistical and field study to identify and evaluate the absence rate of special education teachers in district, high school and Citywide programs and the extent and types of coverages provided when such special education teachers are absent. Presently OREA is identifying a 10% stratified random sample of schools, including elementary and middle schools in at least 10 community districts, high schools in each region, and Citywide sites, from which data will be collected and interviews conducted.

During the period from October to December, 1992, each of the 105 schools in the sample will be asked to collect actual data regarding teachers' absences and the coverages provided. The data will cover both general and special education teachers, monolingual and bilingual; it will deal with the duration of each absence and specifics as to how and when coverage is provided, including the specific qualifications of coverage staff.

Another feature of the study will be an evaluation of the results of in-person and written interviews of those administrators in each of the sample schools who are charged with providing substitute coverage and a representative sampling of special education teachers, general education teachers, parents, and students, if appropriate. The results of the second portion of the study will serve to verify the results of the data collection.

After all data has been collected and analyzed, OREA will issue and make available to plaintiffs a written report describing the methodology and results of the study. The report will be completed on or about June 1993. City defendants will meet with plaintiffs to

discuss the results of the substitute teacher study within two months from completion of the report, and to determine if there are further appropriate steps to be taken with respect to this issue.

City defendants have already implemented the following steps and measures to assure appropriate substitute teacher coverage in both resource rooms and self-contained classrooms. On January 31, 1992, the Division of Human Resources issued Personnel Memorandum 27 regarding substitute coverage for resource room teachers. It requires first day coverage whenever the principal has advance notice of an anticipated absence of five or more days and substitute coverage by the fifth consecutive day of unforeseen absence. Principals and community superintendents have also been provided with a list of available special education substitute teachers, and each district and high school superintendency has been directed to establish a procedure to follow in order to provide necessary coverage for absent resource room teachers.

In addition, on April 1, 1992 the Office of Monitoring and School Improvement distributed a memorandum to districts reminding them of their responsibilities to preserve the integrity of the educational program when staff members are absent. The memorandum states that OMSI will review school coverage procedures for absent personnel in special education programs in accordance with written protocols. Concurrently, monitoring guidelines for reviewing coverage procedures were updated and disseminated to the field.

Effective September, 1992, City defendants will take steps to assure that whenever a bilingual special education teacher is

absent, appropriate substitute teacher coverage will be made available. In the first instance, a bilingual special education teacher who speaks the appropriate language will be sought. Thereafter a certified bilingual teacher will be sought. If a bilingual teacher is unavailable then a monolingual certified special education teacher will provide coverage along with an appropriate bilingual paraprofessional. If a monolingual certified special education teacher is unavailable, then a certified monolingual teacher will provide coverage along with an appropriate bilingual paraprofessional. Substitute coverage will be made available throughout the period of absence.

7. Accessibility of CSE sites. Issue 32 (8) is "renegotiation of provisions of the Stipulation of December 13, 1984 and Side letter dated December 13, 1984, which are inconsistent with Local Law 58, current Fire Department Regulations or other applicable laws and regulations, as well as all open issues concerning the accessibility of CSE sites". Construction of the Phase I ABR sites required by the December 13, 1984 stipulation has been completed, and no issue remains regarding consistency with applicable laws and regulations. Thus, plaintiffs have narrowed this issue to that of accessibility of CSE sites in districts where CSE activities are split between accessible and non-accessible locations. In these so called "split" CSE sites, most CSE activities are presently conducted in offices which are not physically accessible, but any CSE activities which require the participation of physically challenged persons are conducted in separate, physically accessible space.

City defendants intend to make at least one CSE site in each district fully accessible during the 1992-93 academic year, if possible by December 31, 1992. At least one administrator and one full review team would be located at the site to conduct reviews and to meet with parents. In addition, a placement officer is to be assigned to meet with parents at the site. City defendants will make maximum reasonable efforts to ensure that the CSE in CSD 15 will be located in an accessible site by November 1, 1992.

8. Homeless Students. Issue "9" of paragraph 32 is identified as "special education needs of homeless students." As you know it is Board of Education (BOE) policy for BOE personnel assigned to the shelters and hotels to meet each child and the child's parents within 24 hours of their arrival and provide them with information as to their rights regarding school attendance. During this meeting on-site personnel (1) determine, to the extent possible, whether the children are currently entitled to special education, their program type, and current site placement, (2) inform parents of their educational and due process rights while they are homeless, and (3) ascertain the parents' wishes concerning school placement. Whenever possible, this meeting is conducted in the parents' dominant language. Further, in order to determine whether the children have been referred for special education services when the information cannot be provided by the parent, the BOE on-site staff calls the current school for program information. For high school students, when a change of school is requested, the office of High School Admissions calls the current school for program information.

When a homeless child with an educationally disabling condition is transferred from one district or high school region to another, his or her parents may request the site of assessment or placement. Children whose parents wish them to attend school or complete an assessment in the district or high school region where they formerly resided are provided transportation to enable them to do so. Transit tokens are kept at the sites to enable parents and children to travel to and from CSE meetings, evaluation, site visits, and, until busing begins, for attendance at school.

Whenever a child is unable to travel on public transportation due to his/her physical condition, BOE staff makes other appropriate transportation arrangements.

It is Board of Education policy for appropriate transportation to be provided for students from kindergarten through twelfth grade. When there is no space available in the kindergarten classes in the school nearest the shelter or hotel, children are sent to other schools in the district.

When a family of a child with an educationally disabling condition is being moved, within 3 days, the DPO in the new service district contacts the previous DPO and requests prompt delivery of the child's IEP and other educational records and discusses the child's placement needs over the telephone. For high school students, the Office of High School Admissions is immediately notified of any request for change of school and expedites the placement and transfer of records to the new school.

To the maximum extent possible, placements in the new service district are arranged within three days. The DPO in the new service district contracts Office of Pupil Transportation (OPT) within 24 hours of receiving consent from the parent for the new placement and arranges for transportation within 5 days.

To facilitate continuity of educational services for children who continue to attend their current schools, BOE on-site staff, within 24 hours, contact the CSE in the district where the child is attending school and inform the DPO of the parents' decision regarding their child's school placement, provide the DPO with the child's new address, and the name and telephone number of both the District Coordinator and the on-site family assistant, and request the DPO to arrange for transportation from OPT within 5 days. For high school students, the on-site family assistant contacts the STH (Students in Temporary Housing) person in the high school to ensure that the student's transportation needs are met and to enable a referral to be made to the Assistant Principal - Pupil Personnel Services. The AP-Pupil Personnel Services in turn refers the student to a guidance counselor for case management.

Clerical outreach workers at CSEs notify BOE on-site workers by telephone of any applicable CSE meetings, and BOE on-site workers then notify families as promptly as possible and assist them in making arrangements to attend such meetings.

Attendance teachers, on-site staff, and other appropriate BOE personnel monitor the attendance of students with disabling

conditions daily, and promptly follow up on students with disabling conditions who are not attending school for immediate intervention.

Working closely with parents, Board of Education employees are assigned to monitor each school district, meet with district coordinators, and correct problems as they arise. The responsibilities of coordinators include visiting each shelter or hotel to train on-site staff in proper procedures. Representatives of the various units of the Board responsible for providing special education to homeless children meet to ensure full communication with each other regarding the issues which arise.

As you know, Board of Education staff are in the process of developing revised regulations, policies and procedures regarding the rights of homeless students and parents including those students with special education needs. City defendants will meet with plaintiffs within thirty (30) days of issuance of draft revised regulations, policies and procedures, prior to their implementation, to discuss the draft(s) and to determine if there are further appropriate steps to be taken with respect to issue 32(9).

9. Summer School Programs. "Eligibility for summer school programs" is issue 32(11). Students in SIE I, II, III, V(b), VI, VII(a), IX, X, XI(b), XII and MIS VIII(a) programs as well as students in residential and non public day programs with the equivalent of a 3:1 staffing ratio, are automatically eligible for summer school programs, and will be continue to be assigned summer school placements. In addition, at the annual review of the IEP's for all students recommended for, or placed in, MIS IV, MIS V, SIE

VII-B, and SIE XI-A programs, particular consideration is given to the possible appropriateness of 12-month programming, and parents are specifically informed of the 12-month program option.

10. Residential Placement. Issue 32 (13) relates to the state residential placement system. Of the total of approximately 126,000 students who receive special education, as of January 31, 1992, 323 were residentially placed in and out of state. Subject to an appropriate order of confidentiality, City defendants will provide plaintiffs on or about December 31, 1992 the following information, received by the CBST, relating to residential placement of eligible students for the period from January 1, 1992 through December 31, 1992:

- a) Information identifying student, including the date of birth, and IEP requirement for services, including recommended bilingual services.
- b) Date of initial referral or referral for program change, whichever is appropriate.
- c) Date service initiated in residential program.
- d) Total number of workdays between referral date and date service initiated.
- e) Status of cases outstanding as of December 31, 1992.
- f) A descriptive summary of the status of each case referred to the Emergency Interim Placement System (EIS), including, in addition to the above information, a description of the student's handicapping condition and need for residential services, date of referral to

the EIP system, the number of schools to which the student was referred by RPS and EIP systems, date that each of the procedures in the EIP procedures was accomplished, the schools which expressed interest in considering the student, identification of any factors, known to City defendants, which caused delays in the processing of the case.

- g) Cases which have been closed, along with the reason for closure.

Plaintiffs and City defendants will confer on or about July 31, 1992, after data for the period January 1 through June 30, 1992 has been compiled, to determine if the study may be concluded at that time or if any changes in data collection strategies are appropriate.

11. Revised Parent Guide. Issue 32 (14) is identified as "a revised parent guide". On December 31, 1991, plaintiffs received, for their information and review, a preliminary draft of a booklet entitled "Special Education: New York City - A Parent's Booklet". DSE is continuing to revise that draft and is also developing a separate booklet for parents of students with limited mobility. City defendants will provide plaintiffs with a revised draft of the Guide, including the booklet for parents of limited mobility students, in September, 1992. Final copies of both booklets will be distributed when consensus is achieved among those groups, including the plaintiffs who are reviewing the September draft.

12. Placement. Issue 32(15) is described as placement procedures for Citywide and High School. With respect to High School placement procedures, see section 2 above. With respect to Citywide, by January, 1993, the Citywide placement office, and each district placement officer, will have access to current Citywide placement information from an on-line computer system. Such information will include current information on seats available in each program, and class profiles. This computer system will also provide current information on timeliness for placement in Citywide programs.

13. Limited Mobility. Plaintiffs have identified two limited mobility issues in connection with paragraph 32 (16): provision of health coordinators to sites which enroll limited mobility students and issuance of a handbook for parents of limited mobility students. City defendants now allocate health coordinators to all sites which serve limited mobility students. District sites with from 20 to 30 limited mobility students have one full time health coordinator assigned. District sites with over 30 limited mobility students have two health coordinators assigned. Schools in the districts with fewer than 20 limited mobility students are served by itinerant health coordinators. Sites in the districts having 5-9 students are allocated a coordinator on a 25% time basis, and sites with 10-19 students are assigned a coordinator on a 50% time basis. Effective September, 1992 City defendants will initiate a process to establish and maintain a pool of trained personnel who can cover long term absences and fill promptly vacant health co-ordinator positions. Measures taken in this regard will include providing state funded training to all candidates for the

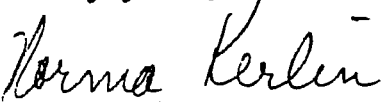
position of health coordinator who respond to a Fall, 1992 posting. Each candidate who successfully completes training will become part of the pool.

As set forth in section "10" above, City defendants will issue a handbook for parents of limited mobility students.

The above paragraphs constitute City defendants' present policies and practices with respect to issues 32(1), (2), (3), (5), (6), (7), (8), (9), (11), (13), (14), (15) and (16).

It is understood that nothing in this letter constitutes or indicates a waiver of any rights or positions under paragraphs 32 and 33 of the August 3, 1988 Stipulation and Order by either City defendants or the plaintiffs. We will, of course, continue our efforts to conclude the Phase II process as expeditiously as possible.

Sincerely yours,


Norma Kerlin
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