

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOSE P., et al.,

Plaintiffs,

- against -

RICHARD MILLS, et al.,

Defendants.

-----X
DYRCIA S., et al.,

Plaintiffs,

- against -

THE BOARD OF EDUCATION OF THE
CITY SCHOOL DISTRICT OF THE
CITY OF NEW YORK, et al.,

Defendants.

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96 Civ. 1834 (EHN)/(SMG)

79 Civ. 2562 (EHN)/(SMG)

STIPULATION AND ORDER

WHEREAS, the Chancellor of the New York City Board of Education (the Chancellor and the New York City Board of Education will be referred to hereinafter collectively as "City Defendants") issued on October 14, 1999 Chancellor's Regulation A-501 to implement a system-wide promotion policy to establish clearly defined standards for promotion for each grade from grade three to twelve (the "Chancellor's Regulation"); and

WHEREAS, City defendants issued in November, 1999 Guidelines for Determining Promotion Criteria for Students with Disabilities Receiving Special Education Services (the "Guidelines"); and

WHEREAS, the Jose P. plaintiffs and the Dyrcia S. plaintiffs ("Plaintiffs"), by Notice of Motion dated December 30, 1999 (the "Motion") moved the Court for an Order (1) enjoining City defendants from retaining special education students under the Guidelines unless, (a) Individualized Education Program ("IEP") teams establish the promotion criteria applicable to the student, determine the strategies and interventions to be implemented during the academic year to move toward promotion students at risk of retention and decide whether to promote or retain special education students, (b) special education students have had a reasonable opportunity to comply with the new standards established pursuant to IEPs appropriately developed to meet the students individual needs, and have received the special education instruction and support services required by those IEPs; and (2) enjoining City Defendants to (a) develop and implement a plan, satisfactory to the Court (i) to properly determine the annual goals and promotion criteria to be included in all special education students' IEPs and the interventions necessary to move toward

promotion students at risk of retention; and (ii) to provide all such students appropriate special education instruction and supports they need to meet their IEP goals and progress within the general education curriculum, and (b) provide all IEP team members and special education and general education teachers and service providers the guidance, professional development and technical assistance necessary to establish appropriate promotion criteria, make appropriate promotion/retention determinations and provide each student the appropriate special education instruction and supports they need to meet their IEP goals and progress within the general education curriculum; and

WHEREAS, Defendants denied and continue to deny each and every allegation of wrongdoing set forth in the Motion and further assert that (i) the allegations and claims set forth in the Motion are not properly considered as part of the Jose P. litigation, and thus the Court has no jurisdiction to entertain the Motion, and (ii) that City Defendants' policy and practices, including but not limited to those set forth in the Guidelines and in the Chancellor's Regulation are legal and consistent with all applicable provisions of all Federal and State laws; and

WHEREAS, the parties wish to settle Plaintiffs' Motion;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by Plaintiffs and City defendants, through their undersigned counsel, as follows:

1. As of School Year 2000-2001, for each special education student (except for those students whose IEPs indicate that they are exempt from participation in State and Citywide assessments), City defendants' IEP Manual will continue to require that the appropriate special education provider (the special education teacher, if there is one) to indicate on each special education student's IEP Progress Report (which is issued at the same time as each Report Card), the following information:

(a) whether or not the student is anticipated to meet the annual goals set forth in the student's IEP;

(b) whether or not the student is anticipated to meet the promotion criteria set forth on page 9 of the student's IEP;

(c) for those students who are not anticipated to meet either their annual goals and/or the applicable promotion criteria, whether the special education provider, upon consultation with the student's other special education providers (if any), will request that the student's IEP team be reconvened to consider, inter alia, the following questions:

(i) Did the student receive the special education services indicated on his/her IEP?

(ii) Are the services currently indicated on the student's IEP appropriate to meet the student's special education needs?

(iii) Given the student's disability, are the annual goals and short term objectives indicated on the student's IEP appropriate?

(iv) Given the student's disability, are the promotion criteria indicated on page 9 of the student's IEP appropriate?

(v) What additional or different special education supports and/or services, if any are required to address the student's needs that result from the student's disability so as to enable the student to meet his/her annual goals?

2. As of School Year 2000-2001, City defendants' IEP Manual will continue to provide that the parents of special education students whose IEP Progress Reports indicate that the student is not anticipated to meet either the applicable IEP goals and/or the applicable promotion criteria will receive in the early fall prior to the Fall Parent Teacher Conference, together with a copy of the student's Report Card and a copy of the student's IEP Progress Report, notice of the following information, rights and opportunities:

(a) the opportunity at the Fall Parent Teacher Conference for a student in a general education class who is receiving special education services to meet with such student's general education teacher and the student's appropriate student's special education provider (not necessarily at the same time) or, if the student is in a special class with the special education teacher(s) to discuss the student's Report Card, IEP Progress Report and special education services;

(b) the opportunity, for the students identified in paragraph 2(a) above, if the appropriate special education provider is not available to meet with the parent at the Fall Parent Teacher Conference, to request (by checking off a box on a notice provided to the parent by the student's teacher) that such provider contact the parent to discuss the issues that would have been discussed at the Parent Teacher Conference;

(c) the opportunity, if the parent cannot attend the Fall Parent teacher conference, to contact the student's teacher and special education provider to discuss the student's Report Card, IEP Progress Report and special education services;

(d) if the student is retained, the right to appeal the determination to retain the student, according to the procedures described in the applicable rule or regulation, if any, that exists at the time (currently, the Chancellor's Regulation).

(e) the right to request that the student's IEP Team be reconvened to discuss the student's special education needs and services, including but not limited to the questions set forth in paragraph 1(c)(i)-(v), above; and

(f) the right to be provided the student's IEP and IEP Progress Report in one of the "Jose P. languages", as that term is defined in paragraph 3, below.

3. Plaintiffs' counsel have reviewed the notice referred to in paragraph 2, above, and have determined that it comports with the terms of this Stipulation. City defendants will translate the notice described in paragraph 2, above, into those major languages into which the parents' rights letter is translated pursuant to City defendants' current practice of identifying major languages (hereinafter referred to as the "Jose P." languages) and direct the districts to send the translated letter pursuant to paragraph 2, above, to those parents whose preferred language is one of the Jose P. languages.

4. As of School Year 2000-2001, the Guidelines will continue to provide that not later than January 31 of each year the parents of special education students who are determined to be at risk of not meeting the promotion criteria set forth in

the student's IEP will receive the letter described on page 5 of the Guidelines ("Parent Partnership and Notification of Possibility of Retention").

5. As of School Year 2000-2001, City defendants will issue a memorandum to all District Superintendents and all school Principals informing them that each Spring, before reaching a determination (i) whether to require a special education student who is at risk of not meeting the applicable promotion criteria on his/her IEP to attend summer school; and (ii) whether to promote or retain the student, the Principal or his or her designee responsible for making the determination must

(a) review the student's Report Card and Progress Reports;

(b) consult the student's special education providers and their supervisors regarding the student's special education needs and services and the IEP goals and promotion criteria set forth on the student's IEP; and

(c) for any student for whom a request was made to reconvene his/her IEP Team where the IEP Team has not yet reconvened, consult the student's IEP Team members, individually or in a group, in the principal's discretion, regarding the issues that will be addressed at the reconvened meeting.

6. As of School Year 2000-2001, City defendants will continue to provide a memorandum to the field that requires that in June the parents of special education students who are required to attend Summer school or have been determined as of that date to be subject to retention because of their failure to meet the applicable promotion criteria, notice to the parent informing the parent of the determination to retain the student and that the parent may request that the student's IEP Team be reconvened to discuss the student's special education needs and services, including but not limited to the questions set forth in paragraph 1(c)(i)-(v), above. City defendants will continue to provide in August of each year notice of retention to the parents of special education students who have been retained.

7. As of September, 2000, City defendants will provide the parents of special education students who have been retained notice of the date that the student's IEP Team will be reconvened in September (unless a prior request to reconvene had been made, in which case the applicable timelines should be followed).

8. City defendants will encourage and provide technical assistance to the districts to translate the letters and notices referred to in paragraphs 4, 6-7, above, into the

Jose P. languages and will encourage the districts to distribute the translated letters and notices to parents whose preferred language is one of the Jose P. languages.

9. Plaintiffs' counsel have reviewed the revised IEP Manual and agree that it fully incorporates the relevant terms of this Stipulation set forth in paragraphs 1-8 above. Plaintiffs also agree that the revised IEP Manual fully incorporates the following guidance and instruction to IEP Team members and special education providers on the procedures to be followed with respect to

(a) completion of the IEP Progress Report, including the information described in paragraph 1, above, and access to the IEP Progress Report to the student's classroom teacher;

(b) the provision of the information, notices and opportunities to parents of special education students described in paragraphs 2-8, above;

(c) the issues to be considered by the IEP Team, including but not limited to the questions identified in paragraph 1(c), above, whenever a request is made to reconvene an IEP Team for a special education student who has been determined to be (i) at risk of not meeting the applicable IEP goals or promotion criteria; (ii) subject to mandatory attendance at summer school

because of the student's failure to meet during the school year the applicable promotion criteria; and/or (iii) subject to retention; and

(d) the requirement to reconvene IEP Teams on a timely basis for requests to reconvene for students who are at risk of not meeting the applicable promotion criteria, so that the Principal may consult the IEP Team prior to reaching a determination as to whether to promote or retain the student.

10. As school year 2000-2001, subject to the provisions of paragraphs 12-16 below, City defendants will implement the procedures described in the revised IEP Manual and the notices and memoranda to the field that are set forth in paragraphs 1-9, above.

11. This Stipulation settles all of the claims raised by Plaintiffs in their December 30, 1999 Notice of Motion and the papers filed by Plaintiffs in support of the motion. Accordingly, Plaintiffs agree, subject to the provisions of paragraphs 12-16, below, to withdraw their Motion its entirety and to forego any and all claims with respect to the Chancellor's Regulation or the Guidelines that were raised in Plaintiffs' Motion or any other facial challenges that could have been brought. This Stipulation, however, shall not be made a part of the Consent Judgment entered in this case.

12. Nothing in this Stipulation can be interpreted to restrict the individual parents' due process rights under the Individuals with Disabilities Education Act, Title 20 U.S.C. Sections 1400, et.seq.

13. The parties will abide by the terms of this Stipulation, which may be enforced by this Court, unless and until City defendants provide Plaintiffs prior written notice of not less than 45 days that City defendants will not continue to abide by the terms of this Stipulation, at which point the terms of this Stipulation will expire. City defendants may terminate this Stipulation pursuant to this paragraph in their sole discretion and Plaintiffs may not challenge the exercise of such discretion.

14. So long as City Defendants have not sent the notice described in paragraph 13, above, Plaintiff's agree not to bring further challenges to the facial legality of City defendants' promotion policy with respect to students with disabilities as reflected in the Guidelines and the Chancellor's Regulation. Plaintiffs specifically reserve their right, nevertheless, to challenge at any time City defendants' application of their promotion policy, the Guidelines or the Chancellors Regulation or City defendants' failure to implement any aspect of the Guidelines or the Chancellor's Regulation with

respect to any given individual or group of special education students. Notwithstanding any of the provisions in this paragraph or in any other paragraph in this Stipulation, Plaintiffs also specifically reserve their right to challenge City defendants' failure (i) to translate as may be required by applicable law any letters or notices distributed to parents of students with disabilities; or (ii) to distribute the translated notices referred to in this paragraph 14(i) as may be required by applicable law.

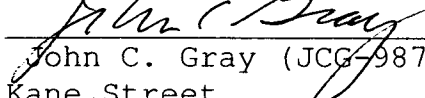
15. In the event that City defendants notify plaintiffs pursuant to paragraph 13, above, that City defendants will not continue to abide by the terms of this Stipulation, Plaintiffs may raise in the appropriate forum any and all of the claims set forth in their Motion and accompanying papers; but cannot seek to enforce the terms of this Stipulation, the terms of which will have expired.

16. Notwithstanding anything to the contrary in this Stipulation, upon prior written notice to Plaintiffs of not less than 30 days, City defendants may make changes to the IEP Manual or any other document or make any other change to its policy or practices regarding the promotion or retention of special education students, if such changes are required by applicable law or regulation at that time, notwithstanding the fact that

such changes may conflict with the terms of this Stipulation. If Plaintiffs disagree that City defendants' proposed changes, in fact, are required by applicable law or regulation, Plaintiffs may challenge the proposed changes without triggering the terms of Paragraphs 13 or 15, above. Similarly, if Plaintiffs agree or a court with competent jurisdiction determines that City defendants' proposed changes are required by applicable law, the changes may be made without triggering the terms of Paragraphs 13 or 15, above, and the parties will continue to abide by the terms of this Stipulation. Nothing in this paragraph, however, can be deemed to restrict City defendants' right (i) to make changes in their sole discretion not inconsistent with the terms of this Stipulation to the IEP Manual or other documents or City defendants' policy or practice with respect to promotion or retention of special education students; and/or (ii) to terminate this Stipulation in its sole discretion pursuant to paragraph 13, above.

Dated: November 9, 2000

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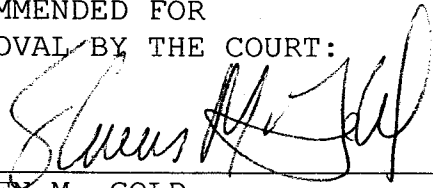
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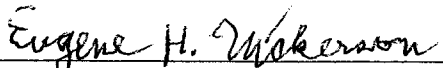
RECOMMENDED FOR
APPROVAL BY THE COURT:



STEVEN M. GOLD
United States Magistrate Judge

Dated: 29th November, 2000

SO ORDERED:



EUGENE H. NICKERSON
United States District Judge

Dated: 11/29, 2000

by depositing same enclosed in a first class post-paid wrapper,
properly addressed as above, in an official depository under the
exclusive care and custody of the United States Postal Office
within the State of New York.


Lillian Rosado

Sworn to before me this
10th day of November, 2000


Notary Public

LINDA SIMONE
NOTARY PUBLIC, State of New York
Reg. No. 01SI6033213
Qualified in Nassau County
Commission Expires November 15, 2001