

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSE P., ET AL.,

Plaintiffs,

- against -

RICHARD P. MILLS, ET AL.,

96 Civ.1834 (EHN) (SMG)
79 Civ. 560 (EHN) (SMG)
79 Civ. 2562 (EHN) (SMG)

Defendants.

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UNITED CEREBRAL PALSY OF NEW YORK CITY,
INC., ET AL.,

Plaintiffs,

- against -

STIPULATION

THE BOARD OF EDUCATION OF THE CITY
SCHOOL DISTRICT OF THE CITY OF NEW YORK,
ET AL.,

Defendants.

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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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WHEREAS, City Defendants (hereinafter "City Defendants") seek to change the procedures and staffing for evaluating students who may require special education and related services and for developing individualized education

plans ("IEPs") for students who require special education and related services; and

WHEREAS, City Defendants assert that such changes will facilitate City Defendants' ability to ensure that students receive timely and appropriate evaluations and placements; and WHEREAS, Plaintiffs in the above-captioned actions (hereinafter, "Plaintiffs") assert that the proposed changes by City Defendants may fail to ensure that students receive timely and appropriate evaluations and placements; and

WHEREAS, the parties disagree over the appropriate standard and criteria pursuant to which this case may be terminated;

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned as follows:

1. Plaintiffs agree that notwithstanding any contrary provision of the Judgment or any other order or stipulation in this case, including but not limited to paragraph 1 of the parties' stipulation so ordered on August 3, 1988, the position of Educational Evaluator is hereby eliminated.

2. City defendants shall create, no later than September 1, 2003, at least 960 full time equivalent new special education teacher positions. One position will be created and funded in each of 960 schools selected by the Chancellor, in addition to whatever special education teacher positions already

existed in each such school (including unfilled vacant positions) in order to meet instructional requirements for those schools. In those 960 schools, a special education teacher shall be regularly programmed to perform at least the following functions: a) prepare for IEP meetings for children initially referred for special education (including, but not limited to, conducting classroom observations), attend such IEP meetings and provide other assistance to the IEP teams, as appropriate; b) provide coverage so that a student's special education teacher can attend IEP meetings for requested reevaluation and triennial evaluations; and c) provide special education instructional services to students, on a part-time basis. Such teachers shall also be available, time permitting, for assignment by the principals to provide prevention and intervention services to students.

3. City Defendants may cancel the obligations under paragraph 2 above, at the end of each school year effective for the following school year with reasonable notice to Plaintiffs' counsel. In the event that City Defendants do cancel the requirements of paragraph 2, above, they shall inform Plaintiffs of how affected schools will perform all of the functions described in paragraph 2, above. Nothing in this paragraph shall limit Plaintiffs' ability to seek any remedy in a motion

alleging noncompliance with timely evaluation and placement of children with disabilities.

4. City Defendants shall provide to Plaintiffs the information currently provided in the 5003 Report in non-final form by the fifth day of each calendar month (or the next business day), reporting data for the immediately preceding calendar month. Plaintiffs agree that the data provided pursuant to this Paragraph 4 is preliminary, non-final data offered for the purpose of settlement and will not seek to use it in any proceeding, without limitation. City Defendants' obligations under this Paragraph 4 shall expire on July 5, 2004.

5. City Defendants shall provide to Plaintiffs the information currently provided in the reports listed in the Appendix, attached hereto and incorporated by reference, in a final form on or before the dates indicated for the 2003-2004 school year and at approximately the same time in each succeeding school year. Such reporting replaces any other statistical reporting required under any provision of the Judgment or any other order or stipulation in this case.

6. Beginning in October 2003, City Defendants will provide an opportunity for counsel for Plaintiffs to have a full discussion of each month's reports with responsible employees of City Defendants. City defendants agree to share their analysis of reasons for any noncompliance revealed by the month's reports

and appropriate remedies. Such discussions shall be held on or about the fifteenth of each month. Such discussions and non-final data required by this Stipulation shall be for settlement purposes and shall not be disclosed by Plaintiffs or used in any proceeding, without limitation. City Defendants' obligations under this paragraph 6 shall expire on August 31, 2004.

7. City Defendants must take all actions reasonably necessary to provide on a timely basis, appropriate evaluations to students referred for special education evaluations and free appropriate public education with appropriate related services in the least restrictive environment pursuant to applicable law, (hereinafter referred to collectively as "evaluations and FAPE"). Nothing in the preceding sentence shall be construed to expand City Defendants' obligations under applicable law. If the reports and analyses to be provided to Plaintiffs pursuant to paragraphs 4 through 6, above, demonstrate a failure to provide timely and appropriate evaluations and FAPE in the City School District of the City of New York, City Defendants will take the reasonable and necessary steps to correct and address such failure. Plaintiffs hereby agree not to bring prior to January 1, 2004, any enforcement actions regarding any alleged failure by City Defendants to provide timely and appropriate evaluations and FAPE. The requirements of this paragraph 7 shall hereby supersede and replace the "substantial compliance" and

"disengagement" provisions set forth in paragraphs 49 through 52 of the Stipulation so-ordered in this case on August 3, 1988. Nothing in this paragraph shall be interpreted to relieve City Defendants of any other obligations that may exist under the Judgment or orders of this case, except as otherwise specifically set forth in this paragraph and in paragraphs 1 and 5, above.

8. City Defendants and Plaintiffs will meet regularly and attempt in good faith to agree upon the benchmarks, criteria or other standards that will be used, if met, to effect termination of this case. The parties will endeavor to complete this process by December 31, 2003, and will submit any agreements reached to the Court for its consideration and approval. In the event that the parties do not reach agreement with respect to these benchmarks, criteria or standards, the Court will determine the appropriate criteria and standards to apply to any motion brought by City Defendants for disengagement.

9. In the event that the Court refuses to approve or modifies this Stipulation or any part of it or in the event of such refusal or modification upon appeal or remand, the Stipulation shall be without further force and effect unless all parties hereto promptly agree to proceed with the Stipulation as and if modified by the Court.

10. The parties agree that pursuant to 28 U.S.C. §636 they consent to have Magistrate Judge Steven M. Gold (a) "so order" this Stipulation and any stipulations developed pursuant to this Stipulation; and (b) hear and decide any motion arising under this Stipulation or alleging that City Defendants have not complied with their obligations under this Stipulation, as if Magistrate Judge Gold were the District Court Judge to whom the case has been assigned. The parties hereto agree to execute and file any written consent required by the District Court or the District Court Clerk to confer jurisdiction upon Magistrate Judge Gold to hear and decide any such motion. The parties further consent that any appeal from an order of Magistrate Judge Gold determining such motion shall be to the United States Court of Appeals for the Second Circuit in the same manner as an appeal from an order of a District Court Judge.

Dated: New York, New York
October 21, 2003

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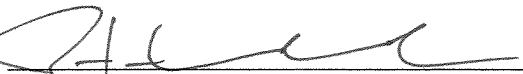
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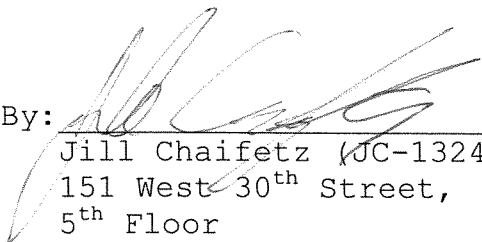
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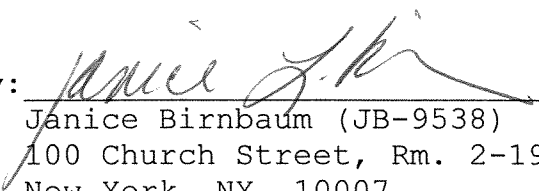
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So Ordered

 10/23/03
Hon. Steven M. Gold
United States Magistrate Judge

REPORT SCHEDULE SCHOOL YEAR 2003/2004

Preliminary and Final

<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>
<u>REPORT MONTH</u>	<u>DSEB 5003 PRELIMINARY DISTRIBUTION DATE</u>	<u>DSEB 5003 FINAL, *** ESL and LRE/MRE MATRIX REPORTS****</u>	<u>JOSE P. PACKAGE DELIVERY DATE*</u>
September 2003	10/7/03	10/24/03	11/26/03
October 2003	11/7/03	11/21/03	12/29/03**
November 2003	12/5/03	12/19/03	1/23/04
December 2003	1/8/04	1/23/04	2/26/04**
January 2004	2/5/04	2/25/04	3/26/04
February 2004	3/4/04	3/19/04	4/23/04
March 2004	4/6/04	4/23/04	5/28/04b
April 2004	5/6/04	5/21/04	6/25/04
May 2004	6/5/04	6/18/04	7/23/04
June 2004	7/7/04	7/16/04	8/20/04**

* Jose P. Package consists of the following reports: Jose P. Summary, Jose P. Narrative, Cascade and Related Service Final Reports

** The Jose P. Package will contain additional data for the following report months:

October, 2003 will contain data on Out of District, Related Service Underserved and SETS Reports

December, 2003 will contain data on Related Service Underserved Report

March, 2004 will contain data on Out of District and Related Service Underserved Reports

June, 2004 will contain data on Related Service Underserved

*** DSEB 5003 Final Report will be provided to plaintiffs on or about the dates indicated in Column C

**** ESL dseb3144.r1 and LE/MRE matrix dseb5049.mo and ytd.

***** ODDS Report (Over-representation) for School Year 2002-2003 will be provided to plaintiffs on January 15, 2004.