

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

J.G., *et al.*,

Plaintiffs,

-against-

RICHARD MILLS, *et al.*,

Defendants.

**EXTENSION OF
STIPULATION AND
ORDER OF
SETTLEMENT**

04 CV 5415 (ARR)
(SMG)

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This Stipulation and Order of Settlement Extension (the "Extension Stipulation") is made and entered into pursuant to Section IX of the Stipulation and Order of Settlement ordered by Judgment dated April 29, 2011 and signed February 14, 2011 ("Stipulation of Settlement") by plaintiffs and defendants Chancellor of the New York City School District, New York City Board of Education, and New York City Department of Education ("DOE defendants") (collectively, the "Parties").

WHEREAS:

A. On December 14, 2004, the above-captioned lawsuit was filed in the United States District Court for the Eastern District of New York, alleging, among other things, that DOE defendants violated federal and state law by depriving plaintiffs of educational services to which they alleged they are entitled while in certain court-ordered settings and upon their return from court-ordered settings;

B. On February 14, 2011, DOE defendants and counsel for the plaintiff class entered into a Stipulation of Settlement, which was approved and signed by the Court on April 29, 2011;

C. Under Section IX of the Stipulation of Settlement, plaintiffs' counsel may move this Court for an order extending the term of the Stipulation of Settlement and the jurisdiction of the Court over the Stipulation of Settlement;

D. Plaintiffs contend that DOE defendants have failed to substantially comply with various terms of the Stipulation of Settlement and advised DOE defendants that plaintiffs intend to seek an extension of the Stipulation of Settlement pursuant to Section IX thereof;

E. DOE defendants deny that they have failed to substantially comply with the Stipulation of Settlement;

F. Counsel for plaintiffs and counsel for DOE defendants have engaged in good faith discussions and have reached agreement regarding extending the Stipulation of Settlement as set forth below, which will obviate the need for plaintiffs to move to extend the Stipulation of Settlement on this basis;

G. Plaintiffs' counsel, having made a thorough investigation of the facts, believe that the proposed settlement extension is fair, reasonable and adequate and in the best interests of plaintiffs.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the parties to this Extension Stipulation, through their respective counsel, that the Stipulation of Settlement be extended, upon and subject to the following terms and conditions:

1. Except as set forth in this document, all provisions in the Stipulation of Settlement remain in force and effect.

2. With respect to paragraph 49(b) of the Stipulation of Settlement and all references to paragraph 49(b) within the Stipulation of Settlement:

a. The parties redefine the third monitoring period from the oversight of

the Fall Semester of the 2012-2013 school year to the Fall Semester of the 2013-2014 school year. The third monitoring report shall reflect the results of an audit based on data generated between October 1, 2013 and January 31, 2014. The second and third monitoring periods will therefore not be "consecutive" as required by paragraph 48.

- b. The third monitoring report shall be created in the same manner specified in paragraphs 48 and 49, and will reflect the results of audits based on data generated during the Fall Semester of the 2013-2014 school year.
- c. DOE defendants shall provide the third monitoring report to plaintiffs' counsel no later than July 31, 2014.

3. In accordance with the redefinition of the third monitoring report's dates, the Termination Date of the Stipulation of Settlement, as defined in paragraph 53 of the Stipulation of Settlement and as it is used in paragraph 54 will now be one hundred twenty (120) calendar days following the revised deadline for the third monitoring report, unless plaintiffs move pursuant to paragraphs 58 and 59 of the Stipulation of Settlement.

4. The terms of this Extension Stipulation shall be under the authority of the Court pursuant to Section IX (paragraphs 58 and 59) of the Stipulation of Settlement.

5. Nothing in this Extension Stipulation shall be construed to limit in any way plaintiffs' right to seek further extension of the Court's jurisdiction pursuant to Section IX of the Stipulation of Settlement or move for enforcement, contempt or for further relief based upon DOE's alleged non-compliance with any and all terms of the Stipulation of Settlement or the Extension Stipulation. Nothing in this Extension Stipulation shall be construed to limit in

any way the DOE defendants' opposition, defenses and/or challenge to any motion plaintiffs may make to further extend the Court's jurisdiction or move for enforcement, contempt or further relief.

6. The parties agree that during the 2013-2014 school year they will meet at least twice informally, and that DOE will update plaintiffs' counsel on the DOE's activities in re-enrolling and educating youth returning to DOE schools and school programs from court-ordered settings and Passages Academy.

7. The parties agree that the DOE will provide the following information to counsel for the Plaintiff class for the 2012-2013 school year no later than forty-five (45) days after this Extension Stipulation is entered as an order of the Court:

a. Students Returning from OCFS to DOE:

i. The number of students who re-enrolled in a DOE public school¹ after returning from either OCFS or an OCFS-contract agency (collectively "OCFS"), provided the student was discharged from Passages Academy with a Code 10²; and with respect to such students

1. The number who had individualized education programs while enrolled³ at Passages Academy;
2. The number for whom individualized education

¹ As used herein, a "DOE public school" does not include any District 79 program.

² Code 10 is an internal DOE code used to denote a student "Discharged to a Non-voluntary/Court Ordered Placement."

³ This data generated in response to this request reflects the number of students who had active IEPs upon their enrollment at Passages Academy. The parties acknowledge that Passages implements a special education plan or "SEP" as the special educational program for a student with a disability enrolled at Passages for more than ten (10) school days and that the program on the SEP may differ from that on the student's last IEP.

programs were created within thirty (30) days of re-enrollment at a DOE public school;

3. The number for whom 407 reports were issued for the student's unexcused absence for 10 consecutive school days immediately upon return to a DOE public school register;
4. The number who were enrolled directly in District 75; and
5. The number who were enrolled in District 75 on the school day before they were enrolled in Passages as detention students.

b. Students Enrolled in Passages Academy:

- i. The cumulative number of students enrolled at Passages Academy (both detention and placement combined); and with respect to such students:

1. The number who had individualized education programs while enrolled in Passages Academy.

c. Close to Home:

- i. The number of students who went from OCFS or an OCFS-contract agency to a Passages Academy Close to Home placement and then to a DOE public school; and with respect to such students:

1. The number who had individualized education

- programs while enrolled at Passages Academy as detention students;
2. The number for whom individualized education programs were created within thirty (30) days of re-enrollment at a DOE public school;
 3. The number for whom 407 reports were issued for the student's unexcused absence for 10 consecutive school days immediately upon return to a DOE public school register;
 4. The number of students who were enrolled in District 75 following their enrollment at the Passages Academy Close to Home Placement; and
 5. The number of students who were enrolled in District 75 on the school day before they were enrolled in Passages Academy while in detention before going to OCFS or an OCFS-contract agency.
- ii. The number of students in placement who remained at Passages Academy for their Close to Home educational placement and then went to a DOE public school; and for such students:
1. The number who had individualized education programs while enrolled at Passages Academy as detention students;

2. The number for whom 407 reports were issued for the student's unexcused absence for 10 consecutive school days immediately upon return to a DOE public school register;
 3. The number who were enrolled in District 75 following their enrollment at the Passages Academy Close to Home Placement; and
 4. The number who were enrolled in District 75 on the school day before they were enrolled in Passages Academy.
- d. DOE's GED, Restart and Phoenix Academy programs
- i. The number of students who enrolled in the DOE's GED, Phoenix Academy or Restart programs after returning to the DOE from placement at OCFS or an OCFS contract agency.
 - ii. The number of students who went from OCFS or an OCFS-contract agency to a Passages Academy Close to Home placement and then enrolled in a DOE GED, Phoenix Academy or Restart program.
 - iii. The number of students who were enrolled in a DOE public school, then enrolled at Passages Academy (detention and placement) and subsequently enrolled in a DOE GED, Phoenix Academy or Restart program.
8. This Extension Stipulation contains the sole terms with respect to this

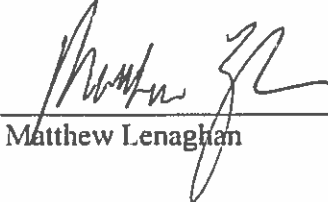
extension of the Stipulation of Settlement and can only be changed by subsequent written agreement of the Parties or by order of the Court entered following application by plaintiffs or DOE defendants.

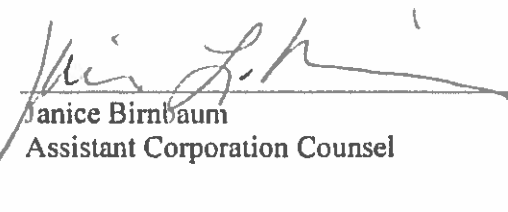
9. The parties agree that the information provided in response to Paragraphs 7(a)(2), and 7(c)(i)(2) is confidential and will not be shared with third parties.. The parties further agree that any other information, data and/or documents provided pursuant to paragraph 7 of this stipulation (the "Information") cannot be the sole basis for any motion for contempt, further relief or any other purpose in this litigation and that any such motion cannot be made until after the expiration of 150 days after the date the provision of such Information is due. The parties also agree that any information, data and/or documents provided under this Extension Stipulation is inadmissible in any other proceeding or action.

Dated: New York, New York
November 6, 2013

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SO ORDERED:

The Hon. Steven M. Gold
U.S.M.J.