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U.S. DISTRICT COURT, D.N.Y.

★ JUL - 8 1982 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TIME AND
X PM

JOSE P., et al.,
Plaintiffs,
-against-

79 C. 270 (EHN)

GORDON M. AMBACH, et al.,
Defendants.

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UNITED CEREBRAL PALSY OF NEW YORK,
INC., et al.,

Plaintiffs,

79 C. 560 (EHN)

-against-

BOARD OF EDUCATION, et al.,
Defendants.

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DYRCIA S., et al.,

Plaintiffs,

79 C. 2562 (EHN)

-against-

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

Defendants.

ORDER

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WHEREAS the City defendants have failed to achieve compliance with the Court's judgment in that a substantial number of handicapped students have not been provided with a

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... special education placement and a substantial number of students have not been provided with a timely evaluation;

NOW upon the judgments entered on December 14, 1979, and February 27, 1980, as modified by the January and April Plans submitted pursuant thereto, it is

ORDERED that parents of handicapped students who have requested special education services and have not received a placement recommendation within sixty days of referral for evaluation shall be permitted to enroll their children in appropriate programs conducted at non-public schools approved by the New York State Commissioner of Education pursuant to New York State Education Law Article 89, at public expense as of the date of the initiation of services, in accordance with the procedures and provisions set forth in the existing contracts between City defendants and such approved non-public schools and with section 4405.3(b) of the New York Education Law, provided that the State Education Department and the Board of Education shall determine that the placement was appropriate for the needs of the child and provided that the school in which the child is enrolled:

- (1) is currently approved for contracting by the New York City Board of Education;
- (2) does not require parents to pay any tuition, deposit, fees, or other financial consideration as a pre-condition to enrollment;
- (3) accepts for enrollment pursuant to this

order of student.

- (a) who have been evaluated and diagnosed as handicapped,
 - (b) for whom it offers an appropriate program, and
 - (c) whom it is approved to serve; and
- (4) does not discriminate in admission on account of race, religion, creed, or ethnic or national origin;

and it is further

ORDERED that parents of handicapped students who have been recommended for a resource room placement by a school based support team/committee on the handicapped, or by an independent evaluation agency pursuant to this Order when the school based support team/committee on the handicapped has not invited the parent to a meeting and not made a program recommendation within five work days after receipt of evaluation materials from the evaluation agency, and who have not been provided with resource room service within sixty days of such referral shall be entitled to services at public expense as of the date of the initiation of services, provided that the State Education Department shall determine that the placement was appropriate for the needs of the individual child based on the following criteria:

- (1) the existence of clinical materials documenting the student's handicapping condition and educational needs;

(2) a Phase I IEP from a COI, SBST, or a temporary service plan prepared by the service provider consistent with the aforesaid clinical materials;

(3) appropriate proof that service is being provided by a qualified person holding state certification in one of the following areas:

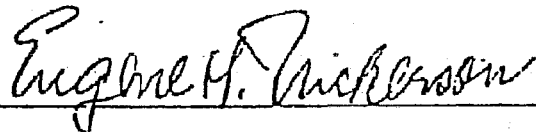
- (a) teacher of special education; or
- (b) teacher of the learning disabled; or
- (c) teacher of reading (applicable only to students diagnosed as learning disabled only for reading problems);
- (d) teacher of the mentally retarded (applicable only to students who have been classified as mildly retarded); or
- (e) teacher of the emotionally handicapped (applicable only to students who have been diagnosed as emotionally handicapped);

and it is further

ORDERED that parents of handicapped students who have been referred for evaluation and who have not been evaluated within thirty days may obtain an independent evaluation as set forth on page 66 of City defendants' January Plan and page A-169 of the Appendix to the January Plan without prior approval of an impartial hearing officer or the chief administrator of the office of student support services; and it is further

ORDERED that parents of students shall promptly provide transportation for all students recommended for placement in non-public schools or who otherwise meet the criteria for placement set forth in this order; and it is further

ORDERED that district committees on the handicapped or local school-based support teams shall be required to notify all parents of handicapped students who have not received timely evaluation or appropriate placement of their rights pursuant to this order by sending such parents a notice substantially in the applicable form of the notice attached hereto as Exhibit 1 or Exhibit 2 on the 60th day after the date of referral.



U.S.D.J.

Dated: Brooklyn, New York

July 2, 1982