

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSE P., et al.

v.

THOMAS SOBOL, et al.,

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

v.

STIPULATION

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

79 Civ. 270
79 Civ. 560
79 Civ. 2562
(Nickerson, J.)

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DYRCIA S., et al.

v.

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

-----x

It is hereby stipulated by the undersigned parties as follows:

GENERAL PROVISIONS

1. This stipulation has resulted from the decision of the Court, dated June 26, 1990, referring plaintiffs' contempt motion to Magistrate Caden. Plaintiffs requested that the proceedings before Magistrate Caden be divided into "emergency" issues and other issues. This stipulation deals solely with "emergency" issues. This stipulation does not limit directly or by implication the right of the

plaintiffs to seek other or further relief with respect to issues not covered in this stipulation; nor the right of City defendants to assert any objections or defenses with respect to such issues. With regard to issues covered in this stipulation, plaintiffs will not seek further class relief prior to January 16, 1991, so long as City defendants are complying with the provisions of this stipulation.

2. Nothing contained in this stipulation shall be read or interpreted to limit in any way the responsibilities and obligations undertaken by or required of City defendants in previous stipulations and orders entered in this action. Nothing set forth herein shall be read or interpreted to expand or impose additional obligations on City defendants except for those obligations explicitly set forth in this stipulation.

I. EVALUATION AND PLACEMENT

3. City defendants shall use per session activity (overtime work) by all of their appropriate employees to the maximum extent possible and necessary to achieve the goal of eliminating all evaluation waiting lists by December 31, 1990. This means that all relevant employees will be offered as many hours of per session work as they are willing to undertake. Per session shall be used in this way for all types of evaluations. Evaluations as used in this stipulation shall mean complete evaluations as well as components or pieces of evaluations.

4. Except as limited by paragraph 8, below, City defendants shall use per session to the maximum extent possible until September, 1990 and then beginning October 15, 1990 and continuing until all evaluations for which per session can be used are being

completed on a timely basis. City defendants will take all steps necessary to allow per session to start promptly and continue without interruption, including but not limited to, posting necessary notices as soon as possible. Sufficient clerical assistance will be provided to achieve the goal that clinicians need not do clerical work.

5. City defendants shall use their full existing contractual capacity to do monolingual and bilingual evaluations of all types to the maximum extent possible and necessary to achieve the goal of eliminating all evaluation waiting lists by the end of 1990. In addition, City defendants shall develop and use additional contracting capacity as needed to assist in the elimination of the evaluation waiting lists.

6. Use of contracting out to the maximum possible extent shall begin immediately for all types of evaluations a) for which contractors are currently being used; b) for evaluations of hard-of-hearing and visually impaired students; and c) for students available to be evaluated as part of City defendants' summer evaluation program. For all other types of evaluations, City defendants shall make maximum reasonable efforts to assure that all necessary contract work begins within the first week of school in September 1990. Maximum use of contractual capacity shall continue until the goal of eliminating all relevant evaluation waiting lists is achieved, subject to the limitation of paragraph 8 below. City defendants shall take all steps necessary to insure that all bills received from contractors and RSA and other providers providing special education assessments and related or other mandated services are paid on a timely basis. No plan or policy which directly or indirectly prohibits the continuation or initiation of contracted

services shall apply to contracts for special education assessments or related or other mandated services.

7. City defendants shall hire and continue to hire all available bilingual SBST clinicians, including bilingual social workers, to the extent required by the August, 1988 stipulation.

8. At any time beginning January 15, 1991 City defendants shall have the right, in their sole discretion, to end their obligation under this stipulation to continue maximum per session and contracting out for evaluations by giving to counsel for plaintiffs 30 days written notice that City defendants intend to end that obligation. This provision does not affect City defendants' obligations with respect to per session and contracting out under any other documents or provisions of law. During the month of January, the parties will meet as reasonably necessary to discuss the extent to which the per session and contracting program is working appropriately and to consider alternative methods either party may suggest.

9. Beginning immediately, City defendants shall waive all fees for all applications for all special education related jobs. This policy may be reevaluated as part of the procedures set forth in paragraph 8, above.

10. Beginning immediately, City defendants shall place in the appropriate section of each Sunday's New York Times a prominent advertisement announcing the availability of all openings for jobs relevant to special education. The ad will be limited to special education related openings and will include information about all relevant scholarship, loan forgiveness, or other special incentive

programs. Beginning October 1, 1990 City defendants may reduce the placement of the ad required by this paragraph to a frequency they reasonably believe is sufficient to provide effective notice to possible candidates for relevant jobs.

11. City defendants shall take all steps needed to provide to students by the beginning of school in September, 1990, all specialized equipment or materials which the Office of Contractual and Related Services knows are required by their individualized education programs (IEPs).

12. City defendants shall promptly offer scholarships or loan forgiveness awards in the amounts authorized by the existing scholarship and loan forgiveness programs to all eligible and qualified candidates known to their Office of Contractual and Related Services prior to September 10, 1990, who wish to study to become, or commence service as, speech therapists, occupational therapists, or physical therapists.

13. City defendants acknowledge their ongoing obligation to fill hard-to-staff special education positions of all kinds, both monolingual and bilingual. In furtherance of this effort, City defendants shall make maximum reasonable efforts to hire as soon as possible, but no later than October 1, 1990, one additional professional staff person to be employed by City defendants for the purposes of coordinating City defendants' recruitment efforts (including the necessary recruitment of monolingual professionals) and recruiting persons for hard-to-staff special education positions of all types.

II. BILINGUAL ISSUES

14. City defendants acknowledge their ongoing obligations pursuant to paragraphs 1, 3, 23 and 31(e) of the August 1988 Stipulation to use maximum reasonable efforts to hire all needed bilingual special education personnel, including but not limited to bilingual special education teachers, educational evaluators, psychologists, social workers and speech improvement teachers. In furtherance of their efforts to hire these needed professionals, City defendants hereby agree to undertake the following measures:

- (a) Hire as soon as possible, but no later than October 1, 1990, three additional staffpersons (in addition to the person described in paragraph 13 above) to be employed by City defendants' Office of Recruitment to assist exclusively in the implementation of City defendants' recruitment programs. One new clerical employee will be assigned to assist with City defendants' scholarship and loan forgiveness programs regarding bilingual and other hard-to-staff special education personnel. One new clerical and one new professional employee will be assigned to assist with City defendants' Special Education Professional In Training program ("SEPIT"), and Psychologist In Training program ("PIT");
- (b) Notify no later than August 31, 1990 each of the districts and high school regions and the Citywide programs (where relevant) regarding (i) their

allocation of bilingual School Based Support Team members based on the hiring goals set forth in paragraph 1 of the August 1988 Stipulation; (ii) their allocation of bilingual special education teachers based on the hiring goals set forth in paragraph 23(b) of the August 1988 Stipulation; and (iii) City defendants' policy that the bilingual professionals allocated to each district, region and program should be recruited and hired by the districts, high school regions and Citywide programs.

15. City defendants acknowledge their ongoing obligations pursuant to paragraphs 24 and 48(i) of the August 1988 Stipulation regarding the placement, provision of services to and reporting of LEP children in alternate placements. In furtherance of their obligations pursuant to these paragraphs, City defendants hereby agree to undertake the following measures:

- (a) Determine and report to plaintiffs by October 15, 1990, on a district-by-district basis the status of all LEP children in or awaiting alternate placements as of October 1, 1990, including but not limited to whether the LEP child is being assisted by a bilingual paraprofessional fluent in his or her language and whether other LEP children fluent in the child's language are in the same alternate placement class;

- (b) Determine and report to plaintiffs by October 15, 1990 the number of qualified bilingual paraprofessionals needed to establish and maintain a pool sufficient to ensure that all LEP children placed in alternate placements will receive the services of a paraprofessional fluent in the child's primary language as of the date of the alternate placement (the "alternate placement paraprofessional pool");
- (c) Create no later than October 15, 1990 the pool required by paragraph 24(c) of the August 1988 Stipulation; and
- (d) Notify by September 10, 1990 each of the districts and high school regions and the Citywide programs of the availability of a pool of bilingual paraprofessionals to assist LEP children placed in alternate placements in the districts as of the first day of the placement, established pursuant to paragraph 24(b) of the August 1988 Stipulation and paragraph 15(c), above.

16. City defendants acknowledge the need to coordinate the design, implementation, provision, reporting and monitoring of all bilingual special education prevention, evaluation, placement, instructional and related services ("bilingual special education services"). In furtherance of their efforts to coordinate these bilingual special education services, City defendants agree to establish the position of and appoint a qualified person as the

Bilingual Coordinator. City defendants will appoint the Bilingual Coordinator as soon as possible, but no later than October 1, 1990.

The Bilingual Coordinator shall be responsible for the following tasks:

- (a) Requesting of and receiving from the various programs and offices of the Division of Special Education and each of the districts and high school regions reports regarding the design, implementation, provision and monitoring of bilingual special education services;
- (b) Evaluating the effectiveness with which the offices and programs of the Division of Special Education and the districts and high school regions provide bilingual special education services, and also evaluating the appropriateness of the services provided;
- (c) Intervening with the appropriate persons in the offices and programs of the Division of Special Education and the districts and high school regions to correct any problems revealed by the reports received from or the evaluation made of these offices, programs, districts and regions regarding the design, implementation, provision, reporting and monitoring of bilingual special education services; and
- (d) Performing all other tasks necessary for the appropriate coordination of the design,

implementation, provision, reporting and monitoring of bilingual special education services.

III. HHVI

17. City defendants represent that the Monitoring Report of December 22, 1989 annexed hereto as Exhibit A accurately reflects the status of issues involving the Hearing Handicapped/Visually Impaired CSE ("HHVI") as discussed in that document as of that date.

18. City defendants represent that the document annexed hereto as Exhibit B accurately reflects the waiting list for assessment services at HHVI as of June 30, 1990.

19. The Superintendent for Citywide Services will supervise the operations of HHVI effective immediately. City defendants will insure the implementation, no later than August 31, 1990, of an effective HHVI staffing and recruitment plan, including a scholarship/loan forgiveness program for hard to staff positions, and no later than September 17, 1990, of an accurate, up-to-date HHVI tracking and data reporting system for assessment and placement. City defendants will also insure that the Regionalization Plan annexed hereto as Exhibit C ("Action Proposal Toward Compliance for Students Requiring HHVI/CSE Services" dated July 27, 1990) shall be implemented in the manner, with the equipment, and no later than the dates set forth in Exhibit C, except to the extent that any provisions of Exhibit C are inconsistent with this Stipulation.

20. City defendants will appoint a qualified chairperson and a qualified assistant to the chairperson of HHVI by September 30, 1990. City defendants will make maximum reasonable efforts to fill

the following positions by January 15, 1991: (a) all current HHVI clerical positions, (b) all current clinical staff positions, i.e., 16 full CSE teams (consisting of a psychologist, education evaluator and social worker), 11 speech and language evaluators and 10 audiologists, and (c) all consulting otologists, ophthalmologists and peripatologists. All these positions shall be filled with persons meeting qualifications described for each position in Exhibit C. Included in these positions shall be sufficient bilingual staff necessary to meet the needs of LEP students referred to HHVI.

21. City defendants will ensure that the main HHVI site at 400 First Avenue is, and will remain, appropriately staffed and equipped before opening any satellites and at all times thereafter. City defendants will further insure that each new satellite is appropriately staffed at the time it opens.

22. City defendants will authorize and implement HHVI per session assessment services to be undertaken, effective immediately, to the maximum extent of staffing availability. No later than September 30, 1990, City defendants will utilize all existing contracting capacity to contract to the maximum extent possible with all available qualified outside individuals or agencies to undertake evaluations for HHVI. City defendants shall also issue a secondary Request for Proposal ("RFP") by September 30, 1990, to the extent allowed by current contractual obligations and applicable state law and regulations, in order to obtain maximum additional contractual capacity for assessments needed by students referred to HHVI. The RFP shall include capacity for assessments by state supported schools described in Education Law Sec. 4201. Such per session and contracting

activities will continue at maximum capacity until all relevant waiting list backlogs are eliminated, subject to ¶ 8.

23. City defendants shall make maximum reasonable efforts to fill by no later than June 30, 1991, the following positions, distributed in the manner set forth in Exhibit D ("Staffing Requirements for Satellite Model") with persons meeting the qualifications described for each position in Exhibit C: 16 audiologists, 20 speech and language evaluators, one psychiatrist, one physician, five clinician coordinators, three HHVI clinical supervisors, and 41 clerical support staff. Included in these positions shall be sufficient, qualified bilingual staff necessary to meet the needs of LEP students referred to HHVI.

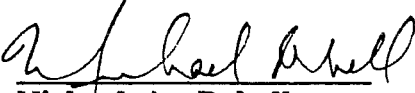
24. On January 15, 1991, City defendants shall submit to plaintiffs a report setting forth the number of CSE teams and the number of consulting otologists, ophthalmologists, peripatologists, and other staff, together with per session and contracting activities, that will achieve the goal of eliminating all HHVI backlogs by June 30, 1991 and evaluating in a timely and appropriate manner the projected number of new referrals beyond June 30, 1991. Such report may also propose modifications in the number of clinicians and other personnel set forth in paragraph 23. Unless plaintiffs object in writing to any aspects of the plan within 15 days of its receipt, City defendants shall implement the plan and shall make maximum reasonable efforts to hire all necessary staff immediately. If plaintiffs so object, they may submit any open issues to the Court and City defendants may not implement the plan for another 15 days.

25. City defendants shall report to plaintiffs quarterly, commencing on October 15, 1990, concerning the status of HHVI staffing, recruitment, tracking and data gathering systems, wait list backlogs and implementation of the Regionalization Plan. The reports shall continue to be submitted at least until January 15, 1992.

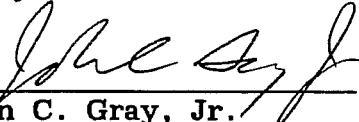
26. This stipulation and accompanying exhibits shall be deemed to constitute the reorganization plan required by paragraph 31.c of the August 1988 Stipulation.

Dated: August 6, 1990

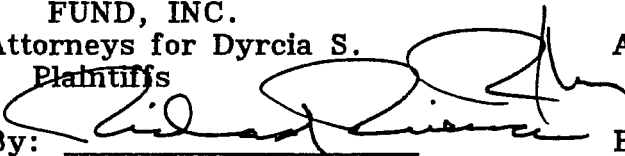
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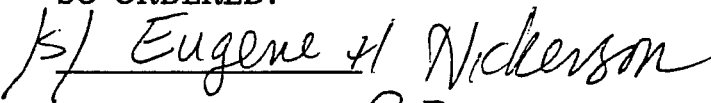
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SO ORDERED:


8-10-90

