UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOSE P., et al.,

Plaintiffs,

-against-

THOMAS SOBOL, et al.,

Defendants.

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

Plaintiffs,

-against-

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

Defendants.

DYRCIA S., et al.,

Plaintiffs,

-against-

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

Defendants.

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

STIPULATION

The plaintiffs and city defendants hereby stipulate as follows:

I. A. STAFFING REQUIREMENTS

1. City defendants commit to funding and hiring qualified personnel sufficient to bring their school-based special education staff, whose responsibilities include the evaluation of students for possible special education placement, up to at least the levels set forth in this paragraph and to maintain such levels. All such positions shall be for full-time personnel, or full-time equivalent personnel and any such personnel assigned on a full-time or part-time basis to a Committee on Special Education ("CSE"), or to any other division or office in the city school district shall not be counted toward city defendants' obligations under this paragraph.

Educational evaluators	-	960 (of whom 320 shall be bilingual)
School psychologists	-	960 (of whom 320 shall be bilingual)
Social workers	-	572 (of whom 286 shall be bilingual)

City defendants shall use maximum reasonable efforts to hire sufficient staff to meet the above-listed levels as soon as possible. In any event, city defendants shall meet the total required staffing levels for social workers (572) by the beginning of the 1988/89 school year, and shall have on staff by the beginning of the 1988/89 school year at least 900 educational evaluators and 725 psychologists. By the

beginning of the 1989/90 school year city defendants shall meet the total required staffing level for educational evaluators (960) and shall have on staff 815 psychologists. The total required staffing level for psychologists (960) shall be met by the beginning of the 1990/91 school year. City defendants shall make maximum reasonable efforts to maintain needed staffing levels for special education teachers.

In regard to the requirement that 286 of the 572 social workers be bilingual, defendants may hire or reallocate, consistent with collective bargaining requirements and agreements, up to 80 bilingual guidance counselors or other personnel to provide preventive services in lieu of hiring up to 80 additional bilingual social workers. While such a reallocation may reduce the number of required bilingual social worker hires, as set out above and in paragraph 22, on a one-to-one basis, it shall not reduce the total number of social worker positions as indicated above.

2. Where, despite maximum reasonable efforts, city defendants are unable to hire sufficient bilingual personnel to fill all bilingual positions set forth in paragraph 1, they shall fill such positions with qualified monolingual personnel.

3. City defendants shall nevertheless continue to be obligated to hire needed bilingual personnel as soon as

qualified bilingual individuals are available, until city defendants have met both the bilingual staffing requirement and the total staffing requirement (monolingual and bilingual) for a particular job category. Nothing herein shall preclude city defendants from replacing monolingual staff with bilingual staff by attrition or in any other manner consistent with collective bargaining agreements and requirements, or with such agreements as have been reached between city defendants and the United Federation of Teachers, so long as the staffing requirements set forth in paragraph 1 are met and maintained.

B. MORATORIUM

4. As long as city defendants are fulfilling their obligations with respect to monolingual staff positions under paragraphs 1 and 2, plaintiffs will not, through September 30, 1991, seek class relief or lodge any other class motion with respect to non-limited English proficient students based on allegations of city defendants' failure either to meet evaluation and placement timelines or to hire monolingual staff in the categories of staff covered in paragraph 1.

5. As long as city defendants are fulfilling their obligations under paragraphs 20 and 23, plaintiffs will not, through September 30, 1994, seek class relief or lodge any

other class motion with respect to limited English proficient ("LEP") students based on allegations of city defendants' failure to either meet evaluation and placement timelines or to hire bilingual staff in the categories of staff covered in paragraph 1.

6. Plaintiffs' right to litigate issues other than timelines and hiring of the school-based staff defined in paragraph 1 will be dealt with elsewhere in this Stipulation.

II. SCHOOL-BASED TEAM MODEL

7. The parties recognize the need to review the manner in which evaluations are completed and placements are made and the methods by which such services can be better coordinated with other pupil personnel services in the schools. Accordingly, city defendants shall develop, in consultation with appropriate groups and individuals, a new school-based model ("SBM") for configuration of the SBST in the context of a plan to coordinate the delivery of all pupil personnel and special education services which presently exist in schools. The model shall coordinate the delivery of preventive, evaluative and related services to students in each public school in the City of New York. The city defendants may also consider in such plan (i) changes in the Standard Operating Procedures Manual ("SOPM"); (ii)

productivity enhancements and incentives; and (iii) pilot programs with respect to the evaluation and placement process.

8. Pursuant to the new model, a full-time school-based team shall be assigned to each public school building in New York City, except for schools with student populations too small to justify a full-time team. (Psychologists shall be assigned to school-based teams prior to September 1990 to the maximum extent feasible, consistent with the number of psychologists on staff pursuant to paragraph 1.) Such schools shall have at least one designated special education professional who is present in the building on a full-time basis and who will be part of the group that delivers special education services in that building, in the manner to be defined under the new model.

9. The plan for the new model shall contain at least the following elements:

a. A description of the methodology for deciding which personnel will be considered part of the team in a school and the methodology for assigning personnel who may be team members in particular schools. Such methodologies shall include bilingual personnel. The plan will take into account the language needs of the children being served and the language capacity of the staff.

b. Guidelines for the coordinated provision by the personnel working in each school of 1) preventive services designed to meet the needs of children who might otherwise be referred for special education, 2) evaluative services for all children who are referred for special education services, 3) consultative services to special education teachers and regular education teachers with mainstreamed children or "at risk" children in their classrooms, and 4) related services as needed by students in the building. Such guidelines shall describe the standards for determining when children shall be referred for special education evaluation.

c. Guidelines assuring that team members have the opportunity to perform a variety of services to students in the school, in addition to evaluation functions.

10. On or about October 15, 1988, city defendants shall consult with plaintiffs' attorneys on the status of planning for the SBM. At that time, city defendants shall provide plaintiffs with all available relevant information concerning planning for the new model, except for confidential or privileged information. In any event, city defendants shall provide a statement of the number of personnel on staff as of October 10, 1988 in each pupil personnel and special education service category.

11. City defendants' plan shall be presented to plaintiffs in draft form by December 15, 1988. Plaintiffs shall provide their comments on the draft SBM plan to city defendants no later than January 15, 1989.

12. No later than February 1, 1989, city defendants will provide plaintiffs plans for training and implementation.

13. City defendants shall issue the SBM plan in final form no later than February 15, 1989. Should the parties agree on the configuration of the school-based teams and on any recommended change in the SOPM or any other aspects of the plan, said agreements shall be reduced to writing and shall be reflected in an amendment to this Stipulation.

14. City defendants will plan to implement the new model in all schools throughout the city school district by September 1, 1989. If implementation of such plan has not commenced by school opening in September 1989, city defendants shall deploy all staff described in paragraph 1 on a full-time SBST basis, as defined in paragraph 8.

15. Should the parties be unable to agree on the configuration of the SBM, on the proposed changes in the SOPM, or any other aspects of the SBM plan, they shall pre-

pare a report in which all parties shall identify those aspects of the plan on which there is agreement and those aspects on which there is disagreement. These areas of impasse shall be submitted to the mediator, appointed pursuant to paragraph 47, for facilitation of a resolution. If the parties are unable to come to an agreement after having met with the mediator, the report shall be submitted to the court no later than March 1, 1989, unless that date is otherwise extended by the parties. The report shall be redrafted if necessary to reflect any agreements achieved as a result of the mediation process, and to identify the precise remaining areas of impasse. The parties shall jointly request expedited consideration by the court of a resolution of the disputed issues in order to permit implementation of the plan to commence by September, 1989.

a. The parties agree to recommend to the Court the following criteria for consideration in resolving any remaining areas of impasse, except for disputes covered by subparagraph (b) below: whether plaintiffs' or city defendants' proposal with respect to the model, or disputed aspect of the model, better ensures the timely evaluation and appropriate placement of special education students and better coordinates the delivery of all special education and related services with the pupil personnel services which presently exist in the schools.

b. If an area of impasse presented to the Court involves either 1) a proposal by city defendants to reduce the combined total of educational evaluators, psychologists and social workers covered by paragraph 1 below the combined total for these positions set forth in paragraph 1 (or to reduce the combined total of bilingual educational evaluators, bilingual psychologists and bilingual social workers covered by paragraph 1 below the combined total of these positions set forth in paragraph 1), or 2) a proposal of city defendants to reallocate the staffing commitments regarding psychologists set forth in paragraph 1 below 960 (of whom 320 shall be bilingual) because of a claim that, despite maximum efforts, a sufficient number of psychologists could not be recruited, the parties agree to recommend to the Court that the applicable standard for resolving the dispute shall be the standards for modification of a judgment under F.R.C.P. 60-b.

c. It is expressly understood that the plan developed by the city defendants pursuant to paragraphs 7-9 may include a proposal to reallocate staff, consistent with collective bargaining agreements and requirements, among the categories of personnel specified in paragraph 1. Plaintiffs may challenge such proposed reallocation, in which event the standard set forth in subparagraph (a) above shall apply.

d. In no event shall the city defendants be required, for the time period covered by paragraph 3, to utilize as members of school-based teams more than the 960 psychologists, 960 educational evaluators and 572 social workers described in paragraph 1.

III. SUPPORT SERVICES

16. City defendants shall make maximum reasonable efforts to provide each SBST the following support services:

a. A clerical/outreach worker on a 50% FTE basis, such workers to be bilingual as appropriate and necessary. Such worker shall be assigned to and work at the direction of the team and not the CSE. Nothing herein shall preclude the clerical outreach worker from doing work for the team at the CSE site.

b. By February 1, 1989, exclusive and convenient access to one telephone instrument and one exclusive telephone line. If, in exceptional cases involving the need for extensive wiring, such telephone instruments and lines are not in place by February 1, 1989, city defendants will report to plaintiffs the reasons for the delay and the projected date for completion of installation.

c. By February 1, 1989, unimpeded and unrestricted access to at least one designated copying machine and paper

sufficient to meet the team's needs, in addition to meeting the needs of any other school personnel who may be granted access to the machine. No team member shall be required to seek permission from other school personnel in order to use such a machine. If, in exceptional cases involving the need for extensive wiring, such copying machines are not in place by February 1, 1989, city defendants will report to plaintiffs the reasons for the delay and the projected date for completion.

d. By February 1, 1989, a desk, chairs and other furnishings reasonably necessary for each team member to carry out his or her functions. The team shall be provided with at least one filing cabinet sufficient to meet its needs, including the need to maintain the confidentiality of student and parent records.

e. Sufficient, suitable testing materials reasonably necessary for each team member to carry out his or her appropriate functions. Testing materials utilized by team members will be replaced at least every three years, or sooner if such materials become worn or no longer appropriate for continued use.

f. By the beginning of the 1988/89 school year, an annual allotment of at least $150.00 for basic supplies for each psychologist, education evaluator and social worker.

g. Such quiet, private, well-lit and well-ventilated space for each team member as is reasonably necessary to carry out testing, meet with parents, complete paperwork and perform other appropriate professional functions, and to store records, supplies and equipment. The parties note that the Board of Education's space allotment for new buildings and renovations is 375 square feet of work space per SBST for these purposes.

h. No later than April 15th of each school year, the principal and the team in each school will meet and jointly file a report with the Chief Administrator of Special Education specifying how the requirements of subparagraphs a through g will be met by the beginning of the next school year. If a school is unable to provide the space as described in the preceding subparagraph, the report will include a joint statement which explains in detail 1) the space which has been provided to each team member and 2) why the space standards described in the preceding subparagraph could not be met. If the principal and the team do not agree on the statement or other aspect of the report, both shall explain their position, either in the same or separate reports.

i. The Chief Administrator or his designee shall review all such reports to determine whether the require-

ments set forth in subparagraphs a through g will be met. In each instance where the Chief Administrator believes that any requirements are not being met in a particular school, he shall attempt to negotiate the matter with the Community Superintendent or other appropriate party. If an acceptable resolution is not achieved by June 15th, the Chief Administrator shall refer the matter to the Chancellor or his designee with a recommendation that specific support or space arrangements be ordered.

j. On October 1st of each year, beginning October 1, 1989, the Chief Administrator shall serve on plaintiffs a report specifying each public school in which the basic space guidelines set forth above will not be met for the current school year, the alternatives which have been accepted by the Chief Administrator, and the number of cases which were submitted to the Chancellor or his designee. City defendants' obligation to submit the report required by this paragraph shall terminate as of October 1991, unless plaintiffs have filed a claim of systemic non-compliance with the requirements set forth in this paragraph by December 31, 1991.

IV. RECRUITMENT OF BILINGUAL PROFESSIONALS

17. City defendants shall implement recruitment programs necessary to hire sufficient bilingual pro-

fessionals to provide LEP children all needed educational, evaluative, preventive, speech, related and other services required by the Judgment and this Stipulation.

18. City defendants shall continue to recruit and hire bilingual professionals who are members of the various ethnic and cultural groups in New York City. This provision should not be construed to require the adoption of quotas for the hiring of members of any ethnic or cultural group.

19. City defendants shall hire bilingual personnel for each professional position in numbers that proportionally reflect the languages spoken by LEP children needing special education services in New York City, except where the parties agree that the number of LEP children in a language category is de minimus.

20. In order to attain the hiring goals stated in paragraphs 1, 17, and 23, city defendants shall immediately undertake the implementation of the following recruitment procedures for bilingual personnel:

a. A loan forgiveness/scholarship program to be developed by defendants in consultation with plaintiffs, the object of which is to encourage the hiring of bilingual persons training to be, or who are: 1) special education teachers; 2) educational evaluators; 3) psychologists; 4)

social workers; or 5) speech therapists/speech teachers. The planning for the program shall commence upon the signing of this Stipulation, with initial grants going to bilingual persons who will have graduated prior to September, 1989. No funds shall be distributed pursuant to this program until the Court has approved this Stipulation.

b. City defendants commit to the expenditure of $2 million per year for three years, commencing August 1, 1988 for loan forgiveness and scholarship grants, and not for any existing or approved programs. If in any one year the funds necessary for scholarships or loan commitments for qualified applicants exceeds the alloted $2 million, additional funds may be drawn upon from those allocated for the succeeding year. If the alloted $2 million are not spent in any one year, the excess funds shall be rolled over into the following year. If at the end of three years the $6 million allocated for recruiting bilingual personnel have not been fully spent, the remaining amounts shall be used to provide loan forgiveness and scholarship grants to bilingual students graduating after June 1991 in any of the positions listed in subparagraph a above.

c. Representatives of plaintiffs and defendants agree to develop cooperatively, together with such experts in the field as the parties deem appropriate, all plans for

the expenditure of loan forgiveness/scholarship funds to recruit bilingual professionals.

21. In order to enable city defendants to conduct an extensive, professional, ongoing recruitment effort; to expedite the development of the loan forgiveness and scholarship programs described above; and to assist institutions of higher education to establish or improve loan forgiveness and scholarship programs for bilingual students or other students to fill hard-to-staff positions, city defendants shall allocate $4.5 million, in addition to current budget allocations, to the Office of Staffing Services of the Division of Personnel. City defendants agree to seek to employ in the Office of Staffing Services personnel who are bilingual in the major languages spoken by LEP special education students and who are familiar with their cultures. These funds shall also provide for the development of meaningful recruitment enhancements, including, but not limited to, those set out below. The representatives for the parties, together with such experts in the field as the parties deem appropriate, will develop cooperatively plans to implement the recruitment efforts discussed in this paragraph to obtain bilingual personnel and personnel for hard-to-staff positions.

a. City defendants shall inform all bilingual applicants at the time they receive a firm employment offer

of the specific community districts or high school region to which they will be assigned.

b. City defendants shall establish a relocation office to assist newly-hired bilingual and hard-to-hire monolingual professionals relocating from outside the City to obtain housing in New York City.

c. As of September 1988, the Chancellor shall provide to bilingual professionals and any other personnel being sought to fill hard-to-staff positions who are relocating to New York City to commence employment with the Board of Education transportation costs to attend prior to the commencement of the semester a staff development program. The purpose of the program will be to assist these personnel in their transition to New York City and the public school system.

d. If the $4.5 million are not spent by June 1991, any excess shall be made available and utilized for the purposes described in this paragraph.

V. OTHER BILINGUAL ISSUES

22. The parties agree that, beyond timeline issues and the need to recruit and hire additional bilingual professionals, they lack sufficient information at this time to resolve many outstanding issues regarding the provision of

appropriate services to LEP children. These issues include, but are not limited to, the interim operation of alternate placements; exceptions to bilingual placements; evaluation and placement of LEP children in junior high school, high school, citywide and home instruction programs; the use of norming and other evaluative techniques for LEP children; provision of related services to LEP children; reports issued by CAP regarding LEP children; and the mainstreaming of LEP children. The parties agree to negotiate these and other bilingual issues, to the extent that information is available, during the same period set out in paragraph 32. The six-month statute of limitations set forth in paragraph 33 shall not apply to these bilingual issues. City defendants will make maximum reasonable efforts to provide to plaintiffs the data and information necessary to negotiate expediously the issues regarding LEP children set forth in this paragraph and in paragraphs 32 and 34. The parties agree to submit any unresolved issue regarding LEP children to the alternate dispute mechanism set forth in paragraph 47 before submitting the matter to the Court, except in emergencies. City defendants agree to consult with persons with expertise in bilingual education inside and outside the Board of Education in developing a new school based model as set out in paragraphs 7-9.

23. Subject to the provisions of paragraphs 1, 2, 3 and 5, city defendants agree to hire additional bilingual

professionals so as to have on staff working full time in special education positions, by the dates specified below, the numbers of bilingual professionals indicated below. City defendants represent that as of June 30, 1988, there were 112 licensed bilingual educational evaluators, 92 licensed bilingual psychologists and 119 licensed bilingual social workers assigned to SBSTs. + 319 bilingual sped teachers

The parties acknowledge the past difficulties encountered by defendants in recruiting bilingual personnel. Therefore, the parties agree to meet in September 1990 to review the success of the recruitment and scholarship/loan forgiveness programs set forth in paragraphs 20 and 21 in obtaining the number of bilingual staff set out below. In addition, the parties agree to consult, together with such experts in the field as the parties deem appropriate, at least every three months concerning the administration and success of these programs. If, at any time, the parties agree that in spite of all recruitment efforts undertaken, bilingual personnel are not available in the numbers set forth below, the parties shall jointly approach the Court to seek modification of the appropriate paragraphs of this Stipulation.

a. September 1, 1989 - 140 educational evaluators, 100 psychologists, 145 social workers and, with respect to

special education teachers, 75 teachers above the number of bilingual special education teachers employed by the Board of Education on a full-time or full-time equivalent basis to provide instruction to LEP students as of the date of this Stipulation; ~~8-3-93~~ 8-3-88 = 319

b. September 1, 1990 - 165 educational evaluators, 130 psychologists, 170 social workers and, with respect to special education teachers, 150 teachers above the number of bilingual special education teachers employed by the Board of Education on a full-time or full-time equivalent basis to provide instruction to LEP students as of the date of this Stipulation;

c. September 1, 1991 - 190 educational evaluators, 175 psychologists, 200 social workers and, with respect to special education teachers, 225 teachers above the number of bilingual special education teachers employed by the Board of Education on a full-time or full-time equivalent basis to provide instruction to LEP students as of the date of this Stipulation;

d. September 1, 1992 - 225 educational evaluators, 230 psychologists, 235 social workers, and, with respect to special education teachers, 275 teachers above the number of bilingual special education teachers employed by the Board of Education on a full-time or full-time equivalent basis to

provide instruction to LEP students as of the date of this Stipulation;

e. September 1, 1993 - 275 educational evaluators, 290 psychologists, 270 social workers, and, with respect to special education teachers, 325 teachers above the number of bilingual special education teachers employed by the Board of Education on a full-time or full-time equivalent basis to provide instruction to LEP students as of the date of this Stipulation; and

f. September 1, 1994 - 320 educational evaluators, 320 psychologists, 286 social workers and, with respect to special education teachers, 350 teachers above the number of bilingual special education teachers employed by the Board of Education on a full-time or full-time equivalent basis to provide instruction to LEP students as of the date of this Stipulation.

24. In order to help resolve some of the issues regarding placement of LEP children in alternate placements, city defendants agree to implement the following measures:

a. All monolingual teachers working with special education students will be provided training by December 31, 1988 to teach English as a second language. Thereafter, all teachers newly commencing services in a special education

program will receive such training within six months of the date of their employment and/or assignment.

b. Committee on Special Education district placement officers shall be instructed that, as of September 1988, students who will be placed in alternate placement classrooms should be appropriately grouped together to expedite the formation of a bilingual special education class by the appropriate language and functional group. LEP students who were placed in alternate placement classrooms prior to September 1988, shall be similarly grouped together as of the date of their annual review. As students are grouped together in alternate placement classrooms, each of those classes shall be designated to be a bilingual special education vacancy according to procedures to be developed expeditiously by the parties.

c. No later than September 1, 1988, city defendants will create a pool of qualified bilingual paraprofessionals sufficient to ensure that all LEP children alternately placed in a class with a monolingual teacher will receive the services of a paraprofessional fluent in his or her primary language as of the date of the alternate placement. The Chancellor shall require any community district that is unable to obtain the services of a bilingual paraprofessional to employ individuals from the

pool. The parties agree that the alternate placement paraprofessional will not replace the monolingual paraprofessional at work in the classroom where it is demonstrated under a review system to be developed expeditiously by the plaintiffs, defendants and other appropriate individuals and groups that such replacement will adversely affect the provision of instructional services to the students in the classroom. Nothing herein is intended to violate any collective bargaining agreements or requirements to which city defendants are obligated.

d. Whenever a student is recommended for placement in a bilingual special education program and an appropriate vacancy in such a program is available elsewhere within the community school district, or in a neighboring community school district, but not in the student's home-zoned school, the parent shall be offered the option of having the child attend the school where the vacancy in the bilingual special education classroom exists. Nothing herein shall preclude city defendants from developing procedures to create additional special education classes to obviate the necessity for inter-district transfers. City defendants agree to develop, in consultations with plaintiffs, instructions to their staff to move LEP students in alternate placement classes or in bilingual classes outside their home districts to bilingual special education classes as close as possible to their homes.

e. Whenever a child is recommended for a bilingual special education program, and is not placed in such a program, defendants shall, pursuant to the Order of July 8, 1982, as modified by paragraph 30, provide the parent of that child with a letter authorizing the child to enroll in an approved non-public school program at Board of Education expense, if a vacancy exists in an approved non-public school program which provides appropriate bilingual special education for the child. The parties shall negotiate appropriate procedures to implement this paragraph by August 8, 1988.

VI. MEDICAL EXAMINATION PROCEDURES

25. The parties have agreed to the following procedures in order to settle their dispute with respect to the medical examination issue. The obligations assumed by the city defendants in this paragraph shall constitute the full extent of their obligations in this area.

a. City defendants shall assure that hearing and vision screenings will be provided for all children referred for special education evaluation. A report on a hearing and vision screening held within the prior twelve months shall be in each student's file before a school-based team or CSE meeting which results in the issuance of a program recommendation takes place.

b. City defendants shall assure that all students diagnosed as orthopedically handicapped, multiply handicapped, or other health impaired, or any other student concerning whom a team member, parent, teacher, principal or medical doctor has recommended a medical evaluation, shall receive an appropriate medical evaluation assessing the child's general physical condition and particular physical handicaps. A copy of a current, appropriate medical evaluation report shall be in each such child's file before a team or CSE meeting which results in a program recommendation takes place.

c. City defendants shall also assure that prescriptions or standing orders for occupational therapy or physical therapy services are provided promptly for all students who may be in need of such services.

d. In order to implement the obligations set forth in suparagraphs a, b and c above, commencing September 1, 1988, city defendants shall assign, without reducing existing health services in the city school district, a health coordinator or other appropriate health professional, on a full-time basis, to each CSE.

e. Plaintiffs may not seek class relief with respect to any issues covered by this paragraph through February 1, 1989. Provided that a full complement of health

coordinators or other appropriate health professionals are hired no later than February 1, 1989, and are maintained in place thereafter, plaintiffs may not seek class relief with respect to any aspect of the medical examination issue through September 30, 1991. Subject to this moratorium, plaintiffs may seek judicial relief in regard to the provision of medical examinations only to enforce the commitments set forth in subparagraphs a, b and c above, and may as part of any such motion seek, inter alia, as a remedy, additional staff and procedures to ensure that no CSE meeting which may result in a final recommendation takes place if the requisite medical evaluation reports are not in the student's file. After February 1, 1989, plaintiffs may also enforce any aspect of subparagraph d.

VII. PLACEMENT PROCESS

26. Effective September 1, 1989, at the conclusion of each CSE meeting which results in the drafting of a program recommendation, the parent attending the meeting will be offered the opportunity to meet with the placement officer or assistant placement officer and at least one other CSE member to discuss specific placement sites.

a. At the meeting with the placement officer, the parent will be provided with:

1) Information concerning the classes in the neighborhood school or in nearby schools if there is no appropriate class in the neighborhood school or if the parent seeks information about additional classes. All such classes shall be appropriate to meet the student's needs and shall currently have vacancies or be projected to have vacancies within the applicable timeline for this student's placement.

2) Information concerning the age ranges and functional levels of students in each of the particular classes being considered.

b. If at all possible, a site will be offered to the parent by the end of the meeting.

c. If no public school placements are currently available or likely to be available in regard to initial evaluations within 65 days of the signing of a parental consent or 75 days from the date of referral, whichever is earlier, and in regard to reevaluations within 65 days of the date of referral, information concerning the parents' right to enroll the child in a non-public school pursuant to the Order of July 8, 1982, as modified by paragraph 30.

d. Parents shall also be informed that they may visit any placement sites under consideration, and that they

will be offered assistance in scheduling appointments for this purpose.

27. If, in an exceptional individual circumstance, a placement officer is not available to meet with a parent at the conclusion of a CSE meeting, the parent will be given the option of meeting with a placement officer and a CSE member at a mutually agreeable future date or the option of receiving the following placement information in the mail:

a. Information concerning the location of classes in the neighborhood school and in nearby schools which appear to be appropriate to meet the student's needs and which currently have vacancies or are projected to have vacancies within the applicable timeline for this student's placement.

b. A particular site offer appropriate for the child's needs, together with an explanation of why this site is suitable.

c. If no public school placements are currently available or likely to be available in regard to initial evaluations within 65 days of the date of the signing of a parental consent or 75 days from the date of referral, whichever is earlier, and in regard to reevaluations within 65 days of referral, information concerning the parents'

right to enroll the child in a non-public school purusant to the Order of July 8, 1982, as modified by paragraph 30.

d. Parents shall also be informed that they may visit any placement sites under consideration, and that they will be offered assistance in scheduling appointments for this purpose.

28. Effective September 1, 1989, placements for MIS I and MIS II classes in the same school a child is currently attending may be recommended by the school-based team resident in that building, without the holding of a CSE meeting. Prior to implementing this school-based placement process, city defendants will, in consultation with the participants in the process described in paragraphs 7-9, develop specific implementation procedures and safeguards for parental and student rights including notice of the right to a CSE review. Plaintiffs may challenge the adequacy of such procedures and safeguards upon their promulgation pursuant to the process set forth in paragraph 47.

29. Notwithstanding any other procedures and safeguards developed pursuant to paragraph 28, the Office of Special Education Monitoring ("Office") shall monitor all school-based MIS I and MIS II placements by a) specifically reviewing the implementation of the school-based MIS I and MIS II placement procedures in each school in which a school

site documentation visit is made; b) comparing the number of placements made in the current school year in all schools undertaking school-based placements with the number made in prior years, and c) analyzing the number of reevaluations and subsequent transfers to other schools and/or placements of students placed in MIS I and MIS II classes by school-based teams in all schools undertaking school-based placements. A report shall be prepared by the Office on or about October 31, 1990 and, as soon as possible after June 30, 1991, but in no event later than October 31, 1991. The parties shall review said report[s] and shall discuss, prior to the commencement of the 1991-1992 school year, whether the school-based placement system should be modified or eliminated. If the parties do not agree, plaintiffs may challenge the continuation of the school-based MIS I and MIS II placement process. The parties agree to recommend to the Court the following standard for consideration in resolving any disputes concerning this issue: whether or not the procedures result in a greater number of appropriate placements than the system it replaced and/or whether the procedures have violated student or parental procedural rights.

30. The procedures concerning unilateral enrollment in approved non-public schools of handicapped students who have not received a timely placement, set forth in the Order of the Court of July 8, 1982, shall be modified as follows:

a. Students shall be eligible to enroll in appropriate programs conducted at approved non-public schools in regard to initial evaluations, on the 65th day after the date of receipt of parental consent or on the 75th day after the date of referral, whichever is earlier, and in regard to reevaluations on the 65th day after referral, if no site is actually offered. If city defendant's central based support team ("CBST") or a CSE, in consultation with the CBST, reasonably determines that no placement is likely to be available for such student by such 65th or 75th day, it may declare such student eligible at an earlier date and so notify the parent.

b. On or before May 15, 1988, and on or before each May 15th thereafter, the Division of Special Education shall promulgate a list of programs, if any, for which it reasonably anticipates that all students projected to be in need of services for such programs in the coming September term will not be able to be served in public school programs. Based on such lists and other current information, the Division of Special Education shall promptly issue or authorize the CBST and the CSE to issue, the type of eligibility letters described in subparagraph (e) below to all students concerning whom it may reasonably be anticipated that appropriate public school programs will not be available by the coming September term. On or before August

15, 1988, and on or before each August 15th thereafter, the Division of Special Education will promulgate updated lists of anticipated shortage areas, if any.

c. Students who will first become eligible for enrollment in school-aged programs by virtue of becoming five years old prior to the ensuing December 31st ("turning five students"), shall be eligible for enrollment in an approved non-public school for the ensuing September if they had been referred for evaluation and placement on or before the preceding March 1st and no program recommendation and site offer was offered to them by June 15, 1988, and each June 15th thereafter. Other turning five students shall be eligible for enrollment in approved non-public school programs on July 15, 1988, and each July 15th thereafter, if they were referred on or before the preceding April 1st and have not received a program recommendation and site offer by that date.

d. On August 15, 1988, and each August 15th thereafter, all students, including, but not limited to, those turning five who had been referred on or before the preceding May 10th and who have not received a program recommendation and site offer for the ensuing September term, shall be eligible to enroll in an approved non-public school for the ensuing school year.

e. On the first date of eligibility for enrollment in an approved non-public school program under subparagraphs a, b, c and d above, city defendants shall issue to the student and parent an eligibility letter which will guarantee reimbursement of tuition at the non-public school's approved rate for the balance of the school year, or, if issued after March 15th, for the balance of the current school year and the ensuing school year. Such eligibility letter shall, if issued on or after June 15th, be effective through the end of the second week of school in the following September if received by the parent prior to the opening day of school, or for a period of at least ten days from the date of receipt of said letter by the parent, if received by the parent on or after the opening day of school, or for a period of ten days from any extension date subsequently authorized. Each such letter shall be accompanied by a copy of the student's Phase I IEP and a list of appropriate non-public schools serving the child's handicapping condition in the geographic area closest to the child's home. If no IEP accompanies the letter, an approved non-public school may prepare a temporary service plan based upon clinical materials documenting the student's handicapping condition and may accept a student for enrollment and provide services pursuant to that plan, pending receipt of an IEP from the CSE.

f. An approved non-public school which enrolls a child during his or her period of eligibility and during the time of guaranteed reimbursement set forth in subparagraph e above, shall be assured that the student's name shall be added to the contract between the Board of Education and appropriate non-public schools , within 15 days of receipt of notification of enrollment by CBST, and that tuition payments for such student, effective as of the date of enrollment, shall be made in accordance with the payment schedule in said contract. Notwithstanding any other procedures for determining the appropriateness of a placement in a non-public school by the State Education Department or the Board of Education, a school will be entitled to payment by city defendants if the city defendants have determined that the school has been approved by the State Education Department to provide services for students with handicapping conditions exhibited by this particular student, and that the school can provide the special education services set forth in the Phase I IEP, or in a temporary service plan which reflects a child's current educational needs, provided that if a CSE prepares an IEP within 10 days of receipt of notification of enrollment by CBST and the school cannot provide special education services as set forth in such IEP, the city defendants shall inform the parent and the non-public school of the child's ineligibi-

lity and city defendants shall have no further obligation to pay tuition for services provided by such school to such student. The parties shall negotiate appropriate procedures to implement this paragraph by August 10, 1988.

g. City defendants, through their Central Based Support Team or other administrative units, will actively assist parents in understanding and effectuating their rights under this paragraph.

h. The city defendants or their designee will create a registry of related service providers to be sent to parents of handicapped students who are not receiving related services in order to facilitate the ability of the parent to obtain these services for his or her child at Board expense. This registry will be created for the 1988/89 school year. This registry will be sent to parents in conjunction with the Related Services Authorization ("RSA") procedures currently in effect, or any modifications thereof. Staff at the Office of Contractual and Related Services will assist parents in the utilization of the RSA procedures.

VIII. ADDITIONAL ISSUES

31a. City defendants will complete all renovations to the level of functional accessibility as defined in

paragraph 4 of the Stipulation of December 13, 1984 (subject to subsequent verification by plaintiffs' expert consultant), by December 31, 1988 in regard to each of the elementary and junior high school sites listed in the existing Architectural Barrier Removal Program ("ABR") as set forth in Exhibit A annexed hereto, and by June 30, 1989 in regard to each of the high school sites on said list, except for Susan Wagner High School, where the renovations will be completed by December 31, 1989. It is further agreed, notwithstanding the foregoing, that all necessary renovations of P.S. 238-K, P.S. 85-Bx, P.S. 318-K, P.S. 324-K and P.S. 384-K shall be completed prior to the opening of school in September 1989 and that all necessary renovations at P.S. 226-K will be completed by June 30, 1989, unless building department approval of the presently contemplated renovation is not obtained, in which case all renovations at P.S. 226-K shall be completed by December 31, 1989. The city defendants further represent that all of the renovations of citywide program sites set forth on the list annexed hereto as Exhibit B shall assure program accessibility to limited mobility students.

b. City defendants agree to establish a task force to review the status of the ABR program and to plan for future needs. The task force shall examine, inter alia, the need for additional ABR sites, if any, or the need, if any,

for other means of assuring compliance with paragraph 39 of the Judgment. The task force shall consist of appropriate Board of Education personnel and representatives of other interested groups and individuals. The task force shall complete its work, issue recommendations and city defendants shall issue an ABR plan to meet the needs set forth above by September 30, 1989. If plaintiffs object to the plan of the city defendants with respect to ABR, they may, within six months of the date of issuance of the plan, seek court relief, provided that they first engage in the mediation process set forth in paragraph 47. In any such proceeding, the parties agree to recommend to the Court that the burden shall be upon plaintiffs to demonstrate that the plan cannot, within a reasonable period of time, assure that city defendants are in compliance with applicable law, including the requirements of paragraph 39 of the Judgment.

c. City defendants agree that, commencing on September 1, 1988, they shall implement the reorganization of the Hard of Hearing/Vision Impaired evaluation and placement unit in a plan to be developed by the parties by August 5, 1988. So long as city defendants implement, no later than September 1, 1989, and maintain thereafter, said reorganization, with full staffing, appropriate space and equipment, plaintiffs will not seek class relief based on allegations of city defendants' failure to meet evaluation

and placement timelines for hard-of-hearing or vision-impaired students through September 1, 1990. Thereafter, plaintiffs shall not seek such relief if city defendants are in substantial compliance as defined in paragraph 49 in regard to the evaluation and placement of such students.

d. City defendants shall hire, no later than October 15, 1988, sufficient staff to eliminate all backlogs in counseling as a related service and shall at that time provide for all reasonably projected needs in this area as of January 31, 1989. It is explicitly understood that 1) necessary personnel shall be recruited and hired in sufficient time to be actually on staff and providing services to students no later than October 15, 1988; and 2) if sufficient guidance counselors are not available on a timely basis to accomplish the goals set forth in this sub-paragraph, social workers or other available professionals qualified to provide counseling services shall be hired.

e. City defendants shall recruit vigorously and continue to hire all available speech improvement teachers, including bilingual speech improvement teachers, until such time as there is no backlog for speech evaluations and all students in need of speech therapy services are receiving prompt, appropriate service. From the date of the signing of this Stipulation through implementation of the new model

described in paragraphs 7-9, all speech improvement teachers, including, but not limited to, bilingual speech improvement teachers, hired by the Division of Special Education, shall provide both speech evaluation and speech therapy services as needed in the locale of their assignment on a coordinated basis.

32. The parties acknowledge that there are certain outstanding issues as to which plaintiffs allege systemic non-compliance with the Judgment that have not been addressed by this Stipulation. City defendants deny some of said allegations, and also dispute that some of the below listed issues are matters that may be raised in this action. These issues, subject to the provisions of paragraph 34, are: 1) revisions of the SOPM, to the extent not resolved through the procedure described in paragraphs 7-9 and 15, such issues to include service CSE organization, outreach services, classroom observation, and any modification of the SOPM necessary to reflect changes brought about by this Stipulation; 2) high school programs for special education students; 3) interdistrict transfers and other issues related to the decentralization of instructional and related services to the extent not resolved by the new model developed pursuant to paragraph 4; 4) instructional supplies and specialized equipment; 5) attendance issues involving special education students; 6) hard-to-staff positions to the

extent not resolved by the recruitment strategies and incentives contained in paragraph 21; 7) substitute teacher and paraprofessional coverage; 8) renegotiation of provisions of the Stipulation of December 13, 1984 and Side letter dated December 13, 1984, which are inconsistent with Local Law 58, current Fire Department regulations, or other applicable laws and regulations, as well as all open issues concerning the accessibility of CSE sites; 9) special education needs of homeless students; 10) the provision of related services to the extent not covered by paragraph 31; 11) eligibility for summer school programs; 12) implementation of the Child Assistance Program ("CAP") to the extent not resolved by paragraph 48; 13) the impact of the new state residential placement system on substantial compliance; 14) a revised parent guide; 15) placement procedures for citywide and high school students; and 16) issues regarding students with limited mobility. Particular attention to the needs of students with limited English proficiency shall be considered in each of the aforesaid issue areas.

In order to address and resolve these systemic compliance issues, the parties agree to meet and negotiate in good faith, on a regular basis commencing on or about September 1, 1988, in order to resolve these issues. The parties shall make a good faith effort to conclude such negotiations by June 30, 1989. It is expressly understood

that these issues shall be negotiated as a group and that city defendants shall be under no obligation to implement any negotiated changes with respect to these issues unless there is agreement with respect to all the above-listed issues. It is further understood that whatever obligations city defendants assume concerning a particular issue as a result of this negotiation process will constitute the full extent of city defendants' obligation with respect to that issue, unless the parties agree otherwise.

33. If the parties cannot agree on the resolution of the issues listed in the paragraph 32, plaintiffs may, within 6 months of the date on which either party declares an impasse, seek relief in court with respect to these issues, provided that they first engage in the mediation process set forth in paragraph 47, unless the parties agree otherwise. Nothing herein shall preclude plaintiffs from seeking emergency relief at any time on any of the issues set forth in paragraph 32.

It is further understood that nothing herein shall preclude plaintiffs from seeking judicial enforcement of compliance with any existing provisions of the Judgment and other Stipulations and Orders in this action, other than those issues listed in paragraph 32 while the processes contemplated by paragraph 32 and by paragraph 34 proceed, sub-

ject to the procedures set forth in paragraph 47 and any applicable moritoria.

34. After the completion of the process set out in paragraphs 32 and 33, the parties agree to attempt to review the Judgment in this action, and all Orders and Stipulations existing at that time, with the goal of consolidating, into one judgment, to the extent reasonably possible, the provisions of the Judgment, Orders and Stipulations which are currently relevant and significant. All parties reserve the prerogative to require that a particular provision of the Judgment, Orders, or Stipulations be maintained without modification, in which case that particular provision shall be so maintained. If, during this review process, plaintiffs identify any issues which they believe to constitute current systemic compliance problems, they shall negotiate those issues in good faith with the defendants; if the parties fail to reach an agreement, plaintiffs may, within 6 months of the date of impasse on all such issues, seek court relief, provided that they first engage in the mediation process as set forth in paragraph 47. It is expressly understood that if the parties complete this process, the only issues concerning which plaintiffs may seek judicial relief thereafter will be compliance with the amended Judgment, subject to the provisions of pararaph 22.

IX. MONITORING

35. The Office of the Director of Special Education Monitoring (the "Office") established pursuant to the Stipulation of Settlement and Discontinuance dated July 9, 1987 in Coalition Against Immediate Decentralization of Special Education v. Board of Education and Special Circular 36 R 1987-88 shall be given the additional tasks of monitoring and enforcement hereunder. These new responsibilities shall be: (i) to oversee implementation of all aspects of this Stipulation; and (ii) to take all appropriate steps, in conjunction with other relevant Board officials, to ensure systemic compliance with all of city defendants' obligations in this action throughout the school system. Such steps will include such field monitoring as may be appropriate to carry out their obligations for ensuring systemic compliance. If the field monitors, in the course of carrying out their functions, observe or otherwise ascertain the existence of a violation of city defendants' obligations in this action with respect to a particular student, they shall take steps to have the violation corrected. The Office shall coordinate its functions with the Division of Special Education's internal compliance staff described in paragraph 46.

36. The Office shall continue to be part of the Office of the Chancellor. The Director of the Office

("Director") shall continue to report directly to the Chancellor through the Chief Executive for Operations.

37. The Director shall have the authority necessary to require compliance with city defendants' obligations in this action. He shall advise the Chancellor, or his designee, of those instances of noncompliance which may warrant the imposition of sanctions or other direct Chancellor intervention.

38. Any investigation of possible instances of non-compliance shall be completed within a period of time which is reasonable in light of the nature of the possible non-compliance. Any steps taken to ensure compliance must be taken within a period of time which is reasonable in light of the nature of the steps to be taken.

39. The Office shall, on an ongoing basis, collect and analyze data about issues covered by the city defendants' obligations in this action and, where appropriate, shall investigate to ensure that there are no systemic compliance problems. If, as a result of this analysis, the Director believes that a systemic compliance problem may exist, he shall cause an investigation to occur. If the investigation reveals that such a problem exists, he shall ensure that the problem is corrected.

40. The Office shall hire by September 1, 1988, or as soon thereafter as possible, sufficient staff to have a total complement of 58 full-time monitors, each of whom will be a professional person with special education teaching or special education supervisory or administrative or clinical experience, in addition to the Director and two professional staff assistants. Such staff shall include one or two individuals capable of conducting data analysis (who need not have special education experience) and an individual who has received training in bilingual special education. The Office shall initially allocate seven of the new hires to be field monitors in the high schools and five of the new hires to be field monitors in Citywide programs. The Office shall assign sufficient staff to assure that CSE's and school-based teams are making maximum reasonable efforts to evaluate and place each of the students on the out-of-compliance tracking lists described in paragraph 49(e).

41. Plaintiffs shall have access to the Office. The focus of such access shall be on the implementation of the requirements of the Stipulation and on systemic compliance with the city defendants' obligations in this action. The Director or his designee shall meet with plaintiffs to discuss efforts at carrying out the responsibilities of the Office. Commencing in September 1988,

said meetings shall take place on a monthly basis. The frequency of such meetings shall decrease as greater levels of compliance are achieved.

42. The "parent and advocacy group" liaison function of the Office shall continue. The scope of the responsibilities of the person carrying out that function shall be expanded to respond to inquiries regarding compliance with evaluation and placement requirements.

43. Plaintiffs shall have access to the reports from the field monitors, to those documents which reflect the final resolution of the issues identified in the field monitor reports, and to the out-of-compliance tracking lists described in paragraph 49(e). In addition, effective June 30, 1989, plaintiffs shall be given an annual report informing them of the Office's operations over the past year.

44. City defendants agree to continue the operation of the Office, with respect to the functions and responsibilities assumed herein, until one year after the date of disengagement as determined pursuant to paragraph 52. Thereafter, monitoring shall be continued in such reasonable manner as the Board shall determine at that time.

45. In June 1990, or thereafter, or in the context of developing a new SBM model, city defendants may propose a

plan for restructuring the Office, and/or a reduction in the number of monitors, and plaintiffs may propose that additional monitors are needed to properly carry out the functions of the Office. In either case, if the opposing party does not consent to the proposed change, the proposing party may seek Court approval for the change. The parties agree to recommend to the Court the following criteria for consideration in resolving these disputes: whether city defendants' proposed restructuring or reduction in staff will be as effective in carrying out the responsibilities of the Office as is the existing structure; or whether any additional monitors proposed by plaintiffs are necessary for the Office to carry out effectively its functions and responsibilities. The parties further agree to inform the Court that nothing in this paragraph is intended to authorize any substantive change in the responsibilities or functions of the Office in any way.

46. Nothing herein shall be construed as relieving the Chief Administrator of the Division of Special Education of his responsibility for insuring systemic compliance with the city defendants' obligations in this action regarding evaluation and placement, and the operation of citywide programs. The Chief Administrator shall hire five individuals, to be assigned one to each region, to assist each District Assistant Superintendent in monitoring compliance

with defendants' obligations in this action by each CSE and each school-based team in such region. In addition, the Chief Administrator shall hire two individuals to assure that CSE's and school-based teams are making maximum reasonable efforts to evaluate and place each of the students on the out-of-compliance tracking lists described in paragraph 49(e) below.

X. ALTERNATIVE DISPUTE RESOLUTION

47. The parties agree that prior to seeking judicial resolution of any issues covered by the provisions of this Stipulation, the moving party shall provide all other parties with notification of intent to seek judicial relief, except in emergencies. Immediately upon issuance of such notification, the parties shall attempt in good faith to negotiate a resolution of the particular issue. If such negotiations do not lead to such resolution within thirty days of the issuance of the notice of intent to seek judicial relief, or sooner, if either party believes that further attempts at direct negotiation will not be useful, the parties shall meet with a mediator to pursue further negotiations, in accordance with the following procedures:

a. The parties shall, as soon as possible after the execution of this Stipulation, choose an individual to serve as an alternate dispute resolution mediator. The mediator

should be knowledgeable about the programmatic needs of special education students and about the organizational structure of large public educational institutions, and, if possible, should have experience in dispute resolution. The mediator should also be a person whose place of residence and other professional commitments would not make him or her inaccessible to the parties if they need that person's services on short notice. If the parties cannot agree upon the person to be chosen as mediator, they shall seek the advice of a recognized alternative dispute resolution resource or provider organization.

b. The mediator, once chosen, shall be retained at the expense of the defendants, and shall be compensated at a daily or hourly rate for services rendered, subject to a maximum amount per annum agreed upon by the parties. If the annual maximum amount is reached and city defendants do not agree to increase the maximum amount for that year, thus making mediation services no longer available, the obligation of the parties to mediate hereunder shall terminate for that year.

c. The mediator's sole function shall be to attempt to facilitate the resolution of any dispute between plaintiffs and defendants. In no event shall the mediator attempt to or be called upon to administer any aspect of

this Stipulation or to make any recommendations to the Court. Plaintiffs or defendants may terminate the mediation process with respect to a particular issue at any point at which they believe it is not useful, provided that they meet at least once with the mediator on the particular issue. The parties expressly agree that none of the parties are bound by any recommendations that the mediator may make. The parties also expressly agree that the mediation process is confidential and is in the nature of a settlement discussion; any statement or representation as to either fact or intent made by any party during the process or any recommendation made by the mediator is hereby deemed inadmissible or otherwise excluded under FRE 408 at any subsequent court hearing.

d. If the issue is not resolved after submission to the mediation process, any party may submit the issue to the Court.

XI. REPORTING REQUIREMENTS

48. The parties agree that there is a need to develop additional data collection and reporting mechanisms in order to provide periodic reports, meeting the requirements of paragraphs 41-48 of the Judgment, as well as providing the additional information needed to implement this Stipulation. The parties recognize that some of this infor-

mation may be collected through the Child Assistance Program ("CAP") and some through other mechanisms. Accordingly, the parties agree to negotiate, by October 31, 1988, or any later date jointly agreed by the parties, in conjunction with relevant experts, specific mechanisms for providing appropriate periodic reports.

The data collection and reporting mechanisms described below, as specifically implemented and modified by agreements to be negotiated by the parties, shall be deemed to satisfy city defendants' reporting requirements under this Stipulation. The parties agree further that paragraphs 41 through 48 of the Judgment, as modified herein and by such further agreements as shall be reached by October 31, 1988, shall constitute city defendants' entire periodic reporting obligations in this action, notwithstanding any prior inconsistent Orders, stipulations or practices. If the parties agree that it is not feasible to collect or report data regarding any specific issue or area covered in this paragraph, the parties shall jointly approach the Court to seek modification of the Stipulation. If the parties disagree as to the feasibility of collecting or reporting data, they shall pursue mediation under paragraph 47. If mediation fails, city defendants reserve their right to seek a modification under F.R.C.P. 60-b.

a. As of a date to be agreed to by the parties, the monthly report required pursuant to paragraph 42 of the Judgment shall be modified to report data indicating whether city defendants are in substantial compliance as defined in paragraph 49 of this Stipulation each month with respect to students in each of the following categories (i) initial evaluations and reevaluations; (ii) triennial evaluations; (iii) HHVI cases; (iv) related services, according to the definition of substantial compliance with respect to related services to be agreed to by the parties pursuant to paragraph 49(c) of this Stipulation. Until such time as city defendants begin to issue the modified monthly data reports reflecting substantial compliance regarding related services, city defendants shall continue to report on a monthly basis the information now being provided, including the number of students recommended for, but not yet receiving as a related service, counseling, health-related services by a nurse, health-related services by a paraprofessional, hearing education, occupational therapy, physical therapy, speech therapy and vision education.

b. The modified monthly reports shall also include the number of students who have received eligibiity letters permitting unilateral enrollment in non-public schools pursuant to the Court's Order of July 2, 1982, as modified by paragraph 30 of this Stipulation.

c. City defendants shall prepare the modified monthly reports including all of the information described in subparagraphs (a) and (b) above to reflect the appropirate data for all LEP students by language separately from non-LEP students; they shall also combine the number of LEP and non-LEP students in each category of information to show overall compliance with the terms of this Stipulation. The modified monthly reports will also include the following information, by language, regarding LEP students:

1) the number of triennial recommendations as differentiated from the number of program recommendations,

2) the number of LEP students offered sites,

3) The number of cases closed for LEP students according to those categories included in the current monthly reports,

4) a breakdown by language of students awaiting completion of bilingual assessments between those awaiting evaluation and those awaiting CSE review; and

5) The total number of students awaiting authorization to attend recommended bilingual programs, including those who have not been appropriately placed because they are awaiting site offers, need a parental response, are awaiting transportation, have a delayed placement, or are in an alternative placement.

d. The reference to "days" in the monthly reports required under paragraph 42 of the Judgment shall be modified to incorporate the computational definitions set forth in paragraph 49(a) of this Stipulation.

e. City defendants shall no longer be required to report on the numbers of vacant classrooms as required by paragraph 44 of the Judgment. As part of the negotiations described herein, the parties will consider the issue of the necessity of continued reporting on vacant seats as required presently by paragraph 43 of the Judgment.

f. City defendants shall report by position and by language the number of positions allocated and the number of vacancies for personnel providing evaluative, instructional and related services to children in special education. City defendants will report, in a form to be agreed on by the parties, on the retention rate for bilingual special education staff who are hired through the incentive programs set out in paragraph 20.

g. Plaintiffs allege that city defendants have not been providing preventive services to LEP children to the same extent as such services are provided to non-LEP children. City defendants deny this allegation, but, in any event, agree to provide the following information. City defendants shall report by position and by language the

number of positions allocated for preventive services, the number of other persons providing preventive services, and the number of vacancies for personnel providing preventive services to children in general education.

The parties recognize that city defendants contract out some preventative services to community groups and other organizations for whom it may be necessary to modify the reports to reflect the fact that these organizations do not always maintain a constant number of personnel providing the services requested and do not now report to city defendants the number of personnel delivering preventative services at any given time.

The parties also recognize that pursuant to the procedures discussed in paragraph 7-15, the manner in which preventative services are provided may be changed in a way that may require modification of the reports discussed in this subparagraph. Therefore, the parties agree to negotiate and resolve any necessary modifications to the report discussed in this subparagraph during the appropriate periods and according to the same procedures as are set forth in paragraphs 7-15.

h. City defendants shall report, on a schedule to be negotiated, on an aggregate basis by language for children referred for bilingual evaluation, primary

languages of assessment and program recommendations. In addition, for each type of evaluation, such reports shall list, on an aggregate basis by language, whether the evaluator is a Board employee, a licensed professional, an individual fluent in the student's or parents' primary language, the language in which the evaluation was conducted, whether a translator was used in the evaluation and, if so, what category of translator as defined in the "bilingual cascade" was utilized.

i. City defendants shall report, on a schedule to be negotiated, on the number of LEP students eligible for bilingual special education services who are placed in alternate placements. Such reports shall indicate on an aggregate basis by language the LEP students' school levels and identify the number of classes having no other students who share the primary language of the alternately placed student. City defendants shall also report for all alternate placement classes on an aggregate basis by language a) the number of classes where the teacher has received ESL training and the number of classes where the teacher has not received ESL training; and b) the number of classes where a paraprofessional fluent in the LEP children's languages has been assigned to the class, and the number of classes where no paraprofessional fluent in the LEP children's languages has been assigned to the class. Such reports shall also

state the length of time each LEP student has spent in alternate placements. Because information is not currently available regarding the period of time LEP children have been in existing alternate placements, the reports discussed in this subparagraph will reflect for all LEP children who are in alternate placements as of the beginning of the 1988/89 school year, September 1, 1988 as the date the LEP child entered the alternate placement.

City defendants shall also provide reports containing information similar to that required by this subparagraph for LEP children considered placed pursuant to paragraph 49(a)(4) despite the absence of a teacher who speaks the children's language.

j. City defendants shall report, on a schedule to be negotiated, on 1) the number of approved exceptions to placement in a bilingual special education class reported by each community district or high school region; 2) whether the required number of bilingual clinicians approved the exception; and 3) whenever possible, the other-than-English language spoken by the child at the time the exception was approved.

k. The reports prepared by city defendants pursuant to subparagraphs h,i and j above, shall be reviewed and acted upon by the appropriate monitors and staff pur-

suant to the provisions of paragraphs 35 through 46 of the Stipulation.

XII. SUBSTANTIAL COMPLIANCE

49. City defendants shall be deemed in "substantial compliance" of the requirements for timely evaluation and placement of students referred for initial evaluation or reevaluation or triennial evaluations when the following conditions have been met specifically for 8 of the 12 months in a school year (including 8 of the 10 months from September through June), and as averaged numerically for the entire school year:

a.1) Ninety percent of the students have been evaluated and their placement arranged in an appropriate educational program, including transportation as needed, within 60 days, and 99% have been so placed within 80 days. "Days" for the purposes of this paragraph, in regard to initial evaluation, shall be computed from the date of the receipt of parental consent or 10 days from the date of referral, whichever is earlier, and in regard to re-evaluation, from the date of referral for re-evaluation. "Hard-to-place" students shall be excepted from these calculations. Hard-to-place students shall be defined as students with all the following characteristics: a) require residential placement; b) are multiply-handicapped with severe handicapping

conditions or exhibiting severe behavioral disorders which present a threat to themselves or others; and c) are, consistent with current practice, referred to the interagency "Hard to Place Task Force" chaired by the New York State Council of Families and Children, or its successor. In the event that the Task Force ceases to exist and there is no successor, children will be considered "hard to place" if they would have been eligible under the current criteria.

2) If, in the course of carrying out the terms of this Stipulation, it proves impossible to meet the objectives of achieving 99% compliance within 80 days in regard to specific categories of children, defendants may seek to have the Court create a specific exception to compliance with the 80-day timelines for those children. If defendants seek any such exception, plaintiffs may seek to shorten the 80-day timeline.

3) It is further understood in regard to initial placement that if a parent has not consented to a site offer within 12 days of actual notice of such site offer through a documented, personal contact, and/or documented receipt of mail, the time period following such twelfth day, up until the date of consent or up to a maximum of 15 days, whichever is shorter, shall not be included in the calculation of "days" for purposes of substantial compliance. If consent

has not been received, the case closed or an impartial hearing request filed by the end of such 15-day period, all days thereafter shall count as "days" for substantial compliance purposes, until consent is received, the case closed, or an impartial hearing request filed.

4) LEP children who speak only languages spoken by a de minimus number of children in the school system shall be counted as placed for the purpose of substantial compliance under this paragraph when placement has been arranged, including transportation as needed, in classes which are appropriate for them in every respect except that the teacher does not speak the LEP child's language. Such classes must have paraprofessionals who speak their language, and city defendants must establish that it is not feasible to hire teachers who speak these children's languages.

b. Ninety-seven percent of the triennial evaluations have been completed within the month in which they are due, and 99% by the end of the month following the month in which they were due. In addition, 99% of all changes in placement recommended as a result of triennial evaluations have been effectuated within 30 days of the end of the month in which the triennial evaluation was due. "Hard to place children" shall be excepted from these calculations.

c. Substantial compliance has been achieved in terms of timely provision of appropriate related services to all students whose IEP's require related services. The parties shall attempt to negotiate a precise definition of "substantial compliance" for these purposes as soon as possible, in conjunction with the negotiations described in paragraph 32. It is expressly understood that either party may declare an impasse in the negotiations on this particular issue without affecting the status of the other negotiations under paragraph 32, and may then seek judicial resolution on this issue at any time after February 15, 1989, pursuant to the procedures set forth in paragraph 47. In the event the issue is submitted to the Court for resolution, the Court shall determine a standard for substantial compliance for the provision of related services. It is further understood that a moratorium, similar to the moratorium described in paragraphs 4 and 5, shall be negotiated as part of the negotiations concerning the definition of substantial compliance in regard to related services. Pending agreement on such moratorium, plaintiffs commit themselves not to seek class relief with respect to timely provision of related services only so long as the negotiations called for under this subparagraph continue.

d. The basis for determining substantial compliance will be all cases pending at the end of a par-

ticular month on the monthly reports required pursuant to paragraph 42 of the Judgment. Cases will be considered pending if they were referred at any time and have not yet been completed by an authorization to attend, with appropriate arrangements for transportation, or by the "closing of the case" under agreed standard operating procedures, or by filing a request for an impartial hearing.

e. City defendants shall institute a system for listing and continuing to track the progress toward evaluation and placement of each child, including each hard-to-place child, who is not evaluated and placed within 80 days, or whose triennial evaluation is not completed by the end of the month following the month in which they were due, or whose placement recommended as a result of a triennial evaluation was not effectuated within 30 days following the end of the month in which the triennial evaluation was due. Such lists shall be updated and circulated to the appropriate CSE's, DAS' and compliance monitors on a biweekly basis. City defendants shall make maximum efforts to evaluate and place each child on such lists as promptly as possible.

f. Notwithstanding any language to the contrary in paragraph 3 of the Judgment, no adjustments of the above compliance periods shall be made for instances of alleged

parental delay or parental non-cooperation, except as specifically provided in subparagraph (a)(3) above.

50. Notwithstanding the provisions of paragraph 49, city defendants shall not be deemed to have achieved substantial compliance regarding the evaluation and placement of LEP children until they meet the conditions described in paragraph 49 and have met the staffing goals for bilingual professionals set forth in paragraphs 1 and 23(f).

51. If city defendants achieve substantial compliance as defined in paragraph 49 for all students except students with limited English proficiency, a) plaintiffs agree not to request imposition of sanctions for non-compliance, or otherwise seek judicial class relief concerning any aspects of the evaluation and placement process not involving, directly or indirectly, the evaluation and placement of children with limited English proficiency, so long as city defendants remain in substantial compliance for non-LEP students, and b) city defendants may reduce evaluation staff by attrition or otherwise, or reallocate said staff, consistent with collective bargaining agreements and requirements, or modify procedures without providing the 10-day notice to plaintiffs called for under paragraph 54 of the Judgment, provided that they have maintained substantial

compliance for at least one year since the date of first achieving substantial compliance and continue to maintain such substantial compliance.

XIII. DISENGAGEMENT

52. At such time as city defendants shall achieve substantial compliance as set forth in paragraphs 49 and 50, and have remained in compliance for one year since the date of first achieving substantial compliance and are in compliance with other provisions of the Judgment, this Stipulation, and other Orders and Stipulations in this case, or with an amended Judgment entered pursuant to paragraph 34, plaintiffs will consent to entry of a Final Order terminating the Court's active jurisdiction over this action. At that point, plaintiffs' rights shall be limited to seeking relief for widespread and pervasive violation of substantial and core provisions of the Judgment and this Stipulation, other Orders or Stipulations or an amended Judgment.

53. Approval of this Stipulation by the Court shall be deemed a full resolution of the claims set forth in plaintiffs' motion for contempt dated May 5, 1986, and shall supersede the Stipulation of June 2, 1988.

54. 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. If final approval of the agreements described in this Stipulation is not obtained for any reason whatsoever, the Stipulation shall not be used in the litigation or in any other proceeding for any purpose. Any statement or representation by any party made in negotiating this Stipulation shall not be used in any manner or for any purpose in any subsequent proceeding in the litigation or in any other action in any court.

55. Plaintiffs shall fully cooperate with defendants in defending any provisions in this Stipulation, and shall offer full support of all aspects of the Stipulation. It is understood, however, that plaintiffs are not obligated to seek to become parties in any new litigation unless the plaintiffs and defendants agree upon a method for defendants to pay plaintiffs' costs and attorneys' fees.

56. The provisions of this Stipulation supersede any provisions of the Judgment which are inconsistent with this Stipulation.

57. In regard to the statute of limitations contained in paragraphs 31(b), 33 and 34, should plaintiffs not

seek judicial relief concerning the issues in said paragraphs within the periods of time set forth therein, they are forever barred from seeking relief with respect to those issues, unless the parties agree to extend such time periods. Nothing herein shall, however, preclude plaintiffs from continuing to enforce existing, particular requirements and remedies related to the aforesaid issues in the Judgment, Orders or Stipulations in this action, subject to any relevant moratoria, nor shall anything herein preclude any plaintiff from raising any issues covered by these statutes of limitations in another lawsuit.

58. Nothing in this Stipulation shall be construed to create any legal obligation to provide preventive services, which is not already contained in the Judgment or prior Stipulations or Orders in this action. Except as provided in paragraphs 7-15, nothing herein shall be construed as providing any rights for plaintiffs to have a role in planning or determining the delivery of preventive services.

59. Nothing in this order shall be construed to waive any procedural or substantive rights to receive appropriate special education and related services on a timely basis as set forth in paragraph 3 of the Judgment which may be asserted on behalf of any individual child, parent or guardian under state or federal law or regulation

at any time, provided that all class members shall be bound by the procedures, but not the moratorium on class relief, set forth in paragraphs 26-30.

60. Nothing herein shall be construed as a concession by city defendants concerning the obligation of the state defendants to share in the payment of attorneys' fees, as may be ordered by the Court, in connection with the negotiation and implementation of this Agreement.

Dated: July 28, 1988

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SO ORDERED:

/s/ Lowell H. Nickerson
U.S.D.J.

8-3-88