

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JOSE P., ET AL.,

Plaintiffs,

-against-

GORDON M. AMBACH, ET AL.,

Defendants.

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STIPULATION

79 Civ. 270

79 Civ. 560

79 Civ. 2562

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.

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(Nickerson, J.)

DYRCIA S., ET AL.,

Plaintiffs,

-against-

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

Defendants.

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The Plaintiffs and the City Defendants hereby stipulate as follows:

1. The City Defendants reaffirm the plan for activities to be conducted during the summer of 1983 and for activities to be conducted during the 1983-84 school year as contained in the April 26, 1983 plan for compliance previously submitted to the Court, except as herein modified. The parties recognize that portions of the April 26, 1983 document were predicated upon the City Defendants adopting a "phase-in" plan whereby organization of classes for the 1983-84 school year would be conformed to the requirements of Section 200.6 of the regulations of the State Education Department.

To the extent that the City Defendants choose not to "phase-in" the new organizational scheme, a matter which is the subject of discussion between the City Defendants and the State Defendants, the portion of the April 26, 1983 document pertinent to the phase-in will not be operative.

2. Any student who has been evaluated and is awaiting placement over 60 days on or before June 29, 1983, (except for those students eligible for unilateral private school placement under Judge Nickerson's Order of July 2, 1982 who have exercised their options and are receiving educational services under that Order by June 29, 1983) shall be guaranteed a definite place in a specific class for the fall term and shall be notified of such assignment no later than August 17, 1983. That seat shall be reserved for that student through the opening of school unless the parent affirmatively rejects the offered program.

3. Any student who was referred for evaluation before June 29, 1983, will be evaluated and, if found to be in need of a special education placement, will be entitled to an offer of placement in a specific class by August 17, 1983. Parents of students referred for evaluation by June 29, 1983 will be given written notifications by July 15, 1983 of the summer placement process and of the need to be available to receive a possible offer of placement letter during the few days after August 17, 1983. Parents will be requested to consent to this offer by August 29th. Students whose parents return a consent to placement after August 29th will be placed as soon as possible in the original placement offered, if still available, or in another appropriate class or site. Parents to whom an August 17th offer of placement letter is sent who do not respond independently will be telephoned during the day and the evening on at least two different days if necessary or, if no telephone number is known to the City Defendants, a home visit will be undertaken to ensure maximum response by August 29, 1983. Sufficient personnel will be assigned to comply with this commitment by City Defendants.

4. All provisions of the Order of this Court dated July 2, 1982, permitting handicapped students who meet stated requirements to enroll in approved non-public school programs or to obtain resource room services or independent evaluations, shall not be operative for the period June 30, 1983 through August 17, 1983 in regard to enrollment in non-public school programs and obtaining resource room services, and for the period June 30, 1983 through July 29, 1983 in regard to independent evaluations.

It is further agreed that letters informing parents of their rights under the July 2, 1982 Order need not be sent during the period June 1 to August 17, 1983.

5. Handicapped students who were referred at least 60 days prior to August 17, 1983, and who have not been sent a placement recommendation from City Defendants by August 17, 1983, may enroll effective for the fall term in appropriate non-public school programs or obtain resource room services, as permitted under the aforesaid Order, as of August 18, 1983. The notice requirements of the July 2, 1982 Order as regards unilateral placement shall resume, effective August 17, 1983. It is expressly understood that students who exercise their option under the July 2, 1982 Order and actually enroll in a non-public school at any time after August 18, 1983 shall be entitled to attend such school for the 1983-84 school year notwithstanding receipt of an offer of a public school placement after the date of such enrollment.

6. Students who have been referred for evaluation and have not been evaluated within 30 days of the date of referral, as of July 29, 1983, may obtain an independent evaluation in accordance with the provisions of the July 2, 1982 Order as of August 1, 1983 provided, however, that any such students who, on or before July 29, 1983, received written notice of a firm appointment for an evaluation to be conducted by employees of City Defendants no later than August 10, 1983, may not obtain such independent evaluation if a proper evaluation is conducted by City Defendants by that date, and provided further that City Defendants' obligation to conduct an evaluation by August 10, 1983, shall not apply to postponements reasonably attributable to parental delay.

7. City Defendants agree that they will not close cases over the 1983 summer months for parental non-response or non-appearance.

8. City Defendants acknowledge that the provisions of the July 2, 1982 Order covers students referred for re-evaluation. Plaintiffs acknowledge that pursuant to Judge Nickerson's decision of July 2, 1982, City Defendants may make a motion before the Court to modify the Order in regard to its coverage of students referred for re-evaluation.

9. City Defendants assure that all notification letters required pursuant to the July 2, 1982 Order and paragraph 5 above shall be promptly sent as of August 17th and thereafter throughout the school year.

10. All those students identified in the "Pupil Status Survey" conducted on March 7, 1983, as awaiting placement and who are still awaiting placement as of this

date, and all those students listed in the February 1983 Monthly Report as then awaiting placement and who are still awaiting placement as of the date of this stipulation, shall be immediately offered available vacancies in non-public schools approved for contracting with the Board of Education. Such students shall be deemed to have been placed pursuant to the July 2, 1982 Order and all such placements shall be deemed to be for the balance of the 1982-1983 school year and shall continue for the 1983-1984 school year unless the parents consent to any public placement that may be offered. No later than June 30, 1983, City Defendants shall supply Plaintiffs and the Court with a report listing by name all students covered by this paragraph and the non-public schools in which they have been placed. For any covered students who have not been placed, said report shall indicate the category of program designated for such student on his or her IEP, all available vacancies as reported by the non-public schools in the applicable category in all non-public schools with whom the Board of Education contracts, and the reason why the child was not placed in any available vacancies providing services appropriate for the student's handicapping condition.

11. City Defendants will hire for new positions, in addition to personnel needed to replace staff who leave, 600 people who are appropriately licensed as psychologists, social workers or educational evaluators for the 1983-84 school year subject to their availability for employment. At least 200 of these persons shall be licensed psychologists. All such persons shall also be offered full summer employment for the 1983 summer months.

12. Clinical evaluation staff will be assigned overall at least 60% of their time in evaluation work, i.e., performing initial evaluations, re-evaluations, annual reviews and triennials, during the school year. Up to 40% of their time may be allocated to other services including related services, informal assessment, counseling, consultation and services to students in the general education system to help prevent inappropriate referrals for formal evaluations.

13. Clinicians who were providing counseling as of February 24, 1983 to specific students who were subsequently relieved and assigned evaluation duties will be reassigned to resume counseling for the rest of this school year to such of those students who are not presently receiving counseling; if, despite maximum efforts, such clinicians cannot be reassigned, another clinician will be assigned immediately.

14. Clinicians who were physically transferred to other locations as of February 24, 1983 to do evaluative work in low incidence programs will be returned to their prior assignments forthwith for the rest of this school year.

have a Board employee present when access to information or documents is granted. The parties agree to cooperate with each other in making exchanges of information quick, accurate and informal. The Data Consultant may undertake such independent or joint research reasonably necessary to carry out the purposes and tasks of his position. Before undertaking such research, the Data Consultant shall inform City Defendants of the subject of the research and the work produced shall not be published or used for any purpose, outside the litigation, without their prior approval.

19. The Data Consultant will make comments and suggestions on the implementation and modification of data systems to comply with the requirements of the Judgments and this stipulation. City Defendants will consider these comments and suggestions but shall not be required to accept them in any respect. In order to ensure maximum informal exchange, Plaintiffs shall not be bound by the decisions, actions or actual systems designed in consultation with the Data Consultant nor shall Plaintiffs be bound by comments and suggestions of their Data Consultant in this or any other litigation. It is understood that Plaintiffs do not hereby waive their rights to seek discovery.

20. The position of Plaintiffs' Data Consultant shall continue at least until City Defendants have implemented in full their manual student tracking system, after which City Defendants may request the termination of the position.

21. City Defendants will establish by October 1, 1983, a manual system for maintaining records and preparing periodic reports on the related service needs of students. This manual system will be in full compliance with the April Plan's requirements for an SBST Tracking System by December 1, 1983, unless further modifications are agreed to by the Plaintiffs. City Defendants agree to meet with the Plaintiffs and provide a progress report by July 15, 1983, and to hold further meetings and to provide progress reports if requested by the Plaintiffs.

22. During the summer of 1983, City Defendants will review the design of the computer-based student tracking system which they are developing to ensure that it will provide all information needed under the requirements of this litigation. Implementation of the computer-based system will begin on an experimental basis in the winter of 1983. The system will be implemented in full by the beginning of the 1984-1985 school year, unless, following a progress report delivered by City Defendants to Plaintiffs by July 15, 1983, or any subsequent progress reports, Plaintiffs agree to change this date.

23. City Defendants will prepare by August 12, 1983, a Jose P. monthly report for the end of the school year using the definitions of "referral" and "placement" approved by the Court. The report will otherwise be prepared under existing procedures. During the summer, City Defendants will modify the existing system for preparing Jose P. monthly reports to assure compliance with the requirements of the Judgment and to add a section reporting on the size of the backlog of triennials and progress made in the reduction of that backlog. Plaintiffs agree to participate in the review of the system for preparing monthly reports and to agree to drop elements of the reports which they acknowledge to be unnecessary. City Defendants will begin providing monthly reports under the modified system with a report for September, 1983.

24. All students identified in Mr. Glen's March 17, 1983 letter to Magistrate Caden for whom an SBST-1 form was transmitted to an SBST and all students for whom an SBST-1 form was transmitted to an SBST after March 7, 1983 and before June 15, 1983 for whom parental consent has not been obtained for formal assessment will be identified by City Defendants. City Defendants will contact the teachers of these students to determine whether a formal referral for assessment is now necessary. The City Defendants and the Plaintiffs will agree on the form to be used for this purpose by June 8, 1983, and any disagreements will be submitted to the Court. All students for whom an SBST-1 form is transmitted to an SBST or COH after June 14, 1983 shall be deemed to have been referred for formal evaluation.

25. All students who have been recommended for a resource room before August 17, 1983, including those who received per session services during the 1982-83 school year if they continue to require resource room services, will be offered a regular resource room assignment for the opening of school.

26. Based upon register projections agreed to between the City Defendants and the New York City Office of Management and Budget, City Defendants project a need for a net increase of 613 teachers by the end of the first semester for the 1983-84 school year. City Defendants commit to hire a net addition of 613 teachers by the opening of school, subject to their availability for employment. This commitment may be modified if Plaintiffs agree, based on a review of register projections and in light of placement recommendations made over the summer, that this number of teachers will exceed the projected first semester need. Plaintiffs and City Defendants will meet on or about August 20, 1983 to conduct this review.

27. The City Defendants commit to hiring by the start of school in September a sufficient number of teachers to provide an appropriate educational placement for all students projected to require placement in the Division of Special Education through the end of the first semester of the 1983-84 school year. In the event that the number of students currently in the Division, together with those students offered placements on or before August 17th, and any additional students projected to be entitled to special education services during the first semester would not be appropriately served by the hiring commitment contained in paragraph 26, additional teachers will be hired before the beginning of the school year to ensure the provision of appropriate services as required under this paragraph. To effectuate the commitment contained in this paragraph, City Defendants will provide to the Plaintiffs by June 10, 1983, the data upon which they made the register projections for the fall semester.

28. City Defendants acknowledge that there is currently a large backlog of undone triennial evaluations of unknown proportions. City Defendants will prepare on or about June 15, 1983, a list as supplied to the State Education Department of those students known to City Defendants to be in need of a triennial by the opening of school in September 1983. A copy of this list will be forwarded to the Court and to the Plaintiffs shortly after June 15th. As part of the IEP review described in paragraphs 15 and 16, additional students in need of triennials by September may be identified and they will be added to the June 15, 1983 list. City Defendants acknowledge that the evaluation resources described in paragraph 11 may not be sufficient to provide all necessary triennials by September 1984, which is the date by which City Defendants intend to be in compliance with Federal and State regulations and the Jose P. judgment regarding triennial evaluations. City Defendants commit to the provision of additional resources to complete all triennials by the opening of school in September 1984 by utilizing the following procedures: a) authorization of per session work for evaluations during the 1983-84 school year; b) performing triennials during the summer evaluation program during the summer of 1983; c) a decision by March 1984 whether a summer evaluation program in the summer of 1984 will be necessary; d) contracting out for evaluations.

29. City Defendants shall discuss with the Plaintiffs the range and amount of contracting out for evaluation services and related services and mechanisms for implementing a contracting out system prior to July 15, 1983.

30. City Defendants agree to meet with the parties on or about November 1, 1983, to review progress on completion of triennials and to provide assurances for continued compliance with evaluation and placement requirements for the 1983-84 school year. City Defendants shall at that time present a hiring plan for the balance of the 1983-84 school year reasonably calculated to assure that sufficient staff can be hired to provide timely evaluations and placements of all students referred for the balance of the school year. If it cannot reasonably be anticipated that sufficient staff will be hired to complete all triennials by the opening day of school in September 1984, City Defendants shall promptly expand the contracting out system adopted pursuant to paragraph 29 above to complete all triennials by that date.

31. City Defendants shall designate an individual whose responsibility shall be to develop or contract for additional low incidence programs and programs to serve those students designated as "hard to place" and will issue a progress report by March 1, 1984. City Defendants agree to create or contract for programs designed to serve a substantial number of additional students by the conclusion of the 1983-84 school year.

32. City Defendants will assure that every student designated as needing specific related services on his/her IEP and/or case conference summary (as indicated in the Data Study Group summer survey referred to in paragraphs 15 and 16 above), will be provided such services, for the indicated frequency and duration, as of the commencement of school in September 1983. In the event that a student so designated is not provided with such services, the student will be entitled to obtain such services from private providers at City Defendants' expense as provided in paragraph 35, infra. City Defendants will further attempt to assure that all students designated as needing specific related services on IEP forms prepared during the 1983-84 school year or thereafter shall similarly be provided with such services, for the indicated frequency and duration, on a timely basis, or will be entitled to obtain such services from private providers at City Defendants' expense.

33. On August 17, 1983, City Defendants shall use their best efforts to notify all students designated as needing related services other than counseling and transportation as a related service as to whether such services shall be assigned as of



the opening day of school. Any students for whom the Board is unable to provide reasonable assurances that service will be so provided at the commencement of the 1983 school term shall be informed by letter, mailed no later than August 17th, of their rights to obtain such services from private providers in accordance with the procedures established pursuant to paragraph 35, infra.

34. All other students who are entitled to receive related services, including counseling services, but for whom such services were not in fact provided as of the opening of school or at any time during the school year, shall be entitled to obtain such services from private providers at City Defendants' expense in accordance with the procedures established pursuant to paragraph 35, infra.

35. Students entitled to receive related services for whom the Board does not have personnel available to provide such services, shall be entitled to obtain such services from private providers, having appropriate qualifications, with appropriate transportation, at the Board's expense. Parents shall receive prompt notification of their rights to obtain such services from the Board; such notification shall indicate that such services may commence no sooner than five working days after notification to the Board of Education of an intent to exercise this option. Payments for such provider services shall be at rates which are reasonable and sufficient to attract and encourage private providers to participate in the program, and procedures shall be implemented to assure prompt payment with minimal paperwork obligations to providers. Responsibility and accountability for the implementation and operation of the provisions of this paragraph shall be centralized under the authority of a single administrator or office. The parties agree to negotiate specific procedures to implement these provisions, including implementation of the notification requirements, no later than July 1, 1983. If the parties are unable to agree on appropriate procedures by that date, any open issues concerning such procedures shall be submitted for decision to the Court.

36. Nothing herein shall be deemed to limit or qualify Defendants' responsibilities under the Judgments in this case, including, but not limited to paragraphs 2(b), 35 and 57(f) of the UCP/Dyrcia S. Judgment, and paragraphs 3(b), 35 and 57(f) of the Jose P. Judgment. City Defendants further specifically commit themselves to recruit vigorously and to hire all available personnel qualified to provide related services and/or arrange for the provision of such related services in school sites on a contract basis until such time as all related service needs can be met at regular school sites and

to make maximum reasonable efforts to provide full-time support teams for low incidence programs as defined in paragraph 57(f) of the Judgments. In addition, City Defendants agree that those sections of the April 26, 1983 plan calling for redeployment of staff personnel providing related services shall be considered inoperative. City Defendants agree to consult with Plaintiffs if any large scale redeployment of clinical staff is under consideration in the future.

37. City Defendants have furnished data setting forth their progress on the Architectural Barrier Removal Program to date and agree to furnish data on the progress with respect to accessibility of Committees on the Handicapped by June 15, 1983.

38. City Defendants agree that plaintiffs can seek verification of the facilities accessibility data submitted and, upon reasonable notice, may have access to any school in order to independently assess compliance with facilities accessibility requirements.

39. It is agreed that discussions will continue aiming at an agreement between Plaintiffs and City Defendants for a reasonable schedule to achieve compliance with the facilities accessibility requirements of the Judgment, Plans and Appendices.

By July 15, 1983, a further report will be made setting forth the agreed schedule, and, if no such agreement is reached, plaintiffs may then seek additional judicial review of compliance with the facilities accessibility requirements of the Judgment, Plans and Appendices.

40. The parties agree promptly to undertake further negotiations to limit or avoid the hearings called for in the Court's Order of February 24, 1983, and on methods for bringing about prompt compliance on all issues not covered in City Defendants' April 26, 1983 compliance plan and this stipulation, including, but not limited to, specialized equipment, due process protections and language guarantees for parents, continuum of programs and services, mainstreaming, and programs for hard-to-place students. City Defendants shall submit a plan for compliance on these issues no later than August 1, 1983.

It is further agreed that as part of said plan for compliance, City Defendants will provide that Plaintiffs may designate a representative (whose qualifi-

cations are subject to the review of City Defendants and whose reasonable compensation will be paid by City Defendants) to meet on a regular basis with Board of Education personnel responsible for continuum development, specialized equipment, mainstreaming, training and implementation in order to obtain information and status reports on planning and implementation on these issues and to carry out such other functions as may be agreed to by the parties.

The City Defendants agree to designate, by July 1, 1983, a person in central administration to participate in discussions concerning the provision of education to students from non-English speaking communities. Such designee shall be deemed acceptable unless counsel for plaintiffs set forth objections in writing within ten days of the date such designee is named. Should objection be raised, counsel will meet within a reasonable time to resolve differences.

Should counsel for plaintiffs feel a lack of progress is being made in these discussions as of September 1, 1983, they shall set forth in writing their objections and a conference would be held in order to resolve such differences. Should that conference fail to resolve matters, any of these parties may resort to court proceedings.

41. Plaintiffs and City Defendants agree that a representative of the State Education Department may participate in any meetings held pursuant to any of the provisions of this stipulation.

42. Plaintiffs agree not to request imposition of sanctions for non-compliance with the Judgments on all issues covered by this stipulation prior to the dates for achievement of compliance set forth in this stipulation, the April 26th compliance plan as modified by this stipulation or any further modification agreed to by the parties in further stipulations contemplated under the terms of this stipulation, provided that the City Defendants fully adhere to the specific terms of this stipulation. Plaintiffs do not hereby endorse or accept either the desirability or the legality of any or all provisions of City Defendants' April 26, 1983 compliance plan, nor do Plaintiffs necessarily believe that the April 26, 1983 plan, even as modified by this stipulation, will bring City Defendants into compliance. City Defendants, on the other hand, have herein agreed to undertake certain obligations that they do not concede are compelled by State or Federal law, or by the Jose P. Judgment, but have so agreed as

part of the parties' joint desire to achieve rapid and complete compliance with legal requirements.

Dated: New York, New York  
June 8, 1983

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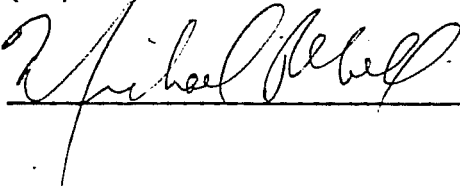
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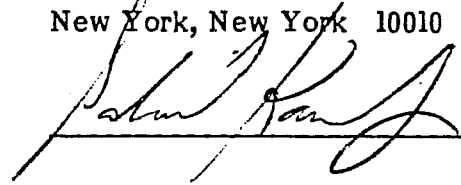
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