

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
JOSE P., et al.,

Plaintiffs,

v.

RICHARD P. MILLS, et al.,

Defendants.

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

Plaintiffs,

v.

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

Defendants.

-----X  
DYRCIA S., et al.,

Plaintiffs,

v.

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

Defendants.

**FILED**  
IN CLERKS OFFICE  
COURT ST. N.Y.  
U.S. ★ JUN 4 2003 ★  
P.M. \_\_\_\_\_  
TIME A.M. \_\_\_\_\_

96 Civ. 1834 (EHN)(SMG)  
79 Civ. 560 (EHN)(SMG)  
79 Civ. 2562 (EHN)(SMG)

STIPULATION

-----X  
**WHEREAS**, City Defendants seek to implement a series of changes in regard to procedures and staffing for (1) the evaluation, placement and delivery of special education and related services; and (2) the monitoring and reporting of City Defendants' compliance with the requirements of the Judgment, Orders and Stipulations in this case,

as generally outlined in the "Special Education Plan," dated April 21, 2003 ("the restructuring plan"), and in the "Redesigning the School Improvement Plan for Students with Disabilities," dated January 2003 ("the school improvement plan"); and

**WHEREAS**, Plaintiffs assert that the documents provided by City Defendants to date lack sufficient information to allow Plaintiffs to assess the extent to which City Defendants' proposed plans would facilitate or impede City Defendants' ability to achieve substantial compliance with the Judgment, Orders and Stipulations in this case and with applicable provisions of Federal and State law; and

**WHEREAS**, on or about May 6, 2003, Plaintiffs filed with the Court a request for a pre-motion conference concerning the filing of a motion for contempt and a preliminary injunction regarding these issues; and, on or about May 12, 2003, City Defendants filed with the Court a response denying that grounds for contempt and injunctive relief exist; and

**WHEREAS**, information to be provided by City Defendants to Plaintiffs pursuant to this Stipulation would, generally, be available pursuant to the Freedom of Information Law; and

**WHEREAS**, Plaintiffs and City Defendants desire to attempt to resolve their outstanding issues as expeditiously as possible,

**THEREFORE**, Plaintiffs and City Defendants stipulate that:

1. With respect to monitoring, the parties agree that:
  - a. City defendants may substitute for the monitoring personnel required by paragraph 40 of the Stipulation of August 1988, as modified by the Stipulation of March 1992 (the "1988 Stipulation"), the following: i) 38 full-time

professional school improvement team members with appropriate qualifications, at least 36 of whom will have civil service status above that of the current monitors, and one full-time supervisor; and ii) 22 professional auditors and 3 supervisors with appropriate qualifications, working full-time for two months in the fall of each year and four months in the spring of each year. Adequate clerical support shall be provided for these professionals. All professionals covered by this subparagraph shall be hired and trained as soon as possible, but in no event later than August 31, 2003. City Defendants will apprise Plaintiffs twice a month of the progress in hiring and training the staff covered by this subparagraph.

- b. City Defendants may begin to implement the general approach to monitoring set forth in the school improvement plan, provided, however, that Plaintiffs and City Defendants shall meet regularly over the next month and shall attempt to reach agreement regarding the details of the specific programs, schools and functions to be monitored, the manner in which professionals referenced in subparagraph 1(a) above will be deployed, their precise duties, the specific indicators and benchmarks they will use in carrying out their tasks, the consequences to result from findings of noncompliance and/or failure to meet benchmarks, and the manner in which their findings shall be reported to Plaintiffs.
- c. To permit City Defendants to undertake the above-described staffing changes and the monitoring initiatives for the next school year, the provisions of paragraph 1 of this Stipulation shall supersede until June 30, 2004, any

inconsistent provisions of paragraphs 40 and 45 and the reference to ¶49e in paragraph 43 of the 1988 Stipulation, provided, however that: i) consistent with the provisions of paragraph 7 below, Plaintiffs may seek judicial relief regarding the specific details of the school improvement plan to the extent legally cognizable, if the parties fail to reach agreement on those issues; and ii) if Plaintiffs bring a motion for noncompliance with the provisions of the Judgment, Orders and/or Stipulations in this case, they may request, and the City Defendants may oppose, that the Court order additional monitoring and/or additional monitoring staff. All other monitoring provisions of the 1988 Stipulation shall remain in full force and effect. Prior to June 30, 2004, Plaintiffs and City Defendants shall assess the implementation of the school improvement plan and attempt to reach a final agreement on all monitoring issues covered by the 1988 Stipulation.

2. With respect to English Language Learners ("ELLs"), the parties will meet and attempt to resolve as soon as possible the following issues:

- a. the appropriate identification of the psycho-educational assessment instruments and procedures to be used in ELL evaluations;
- b. the appropriate administration to ELLs of such instruments and procedures;
- c. the appropriate interpretation of and reporting to the applicable individualized education program ("IEP") teams on the results attained by ELLs to whom such instruments and procedures have been administered. (An IEP team, known in

this state as a committee or subcommittee on special education, is the group of individuals who develop, review and revise the student's IEP.);

- d. the sections of the Standard Operating Procedures Manual ("SOPM") to be developed incorporating the requirements of subparagraphs 2(a)-2(c), above;
- e. the training to be provided to Department of Education ("DOE"), contract agency and independent providers which incorporates the requirements of subparagraphs 2(a)-2(d), above;
- f. the methodology by which the appropriate assignment of DOE, contract agency and independent providers to specific sites to conduct bilingual initial, re-evaluation and triennial evaluations and to participate in IEP team meetings in light of existing and projected resources and need (by language);
- g. the cascade of bilingual personnel to be utilized in conducting certain bilingual evaluations (e.g., where the student is in an Alternate Placement, or where the student may be considered for an exception to bilingual/ESL placement; or where the DOE anticipates that one or more of the bilingual evaluators may be from a contract agency or an independent evaluator); and
- h. the appropriate assignment of current bilingual educational evaluators to teaching positions that will i) allow for the continued involvement of bilingual special education teachers in initial evaluations for ELLs and other evaluations, as may be required (e.g., the evaluations of ELLs in Alternate Placements); and ii) maximize the DOE's ability to augment services for ELLs in the least restrictive environment.

3. City Defendants shall provide Plaintiffs with detailed information regarding their proposed restructuring and school improvement plans as follows:

a. By June 6, 2003:

- (1) The job responsibilities of school psychologists under the proposed new system for evaluation and placement, and whether the present number of school psychologists can perform all their duties under the new system, without detrimentally affecting compliance with applicable timelines for case completion, quality of evaluations, IEP development, and placement decisions.
- (2) The extent to and the manner in which current education evaluators will be assigned to specific schools as special education teachers, and the extent to and manner in which special education teachers will participate in the evaluation, IEP development and placement process.
- (3) To the extent not covered in the preceding sub-paragraphs, how City Defendants will ensure that sufficient personnel and resources are allocated to perform timely and appropriate evaluations and placements.
- (4) How City Defendants will provide adequate clerical support for professional personnel involved in the evaluation and placement process.
- (5) A general description of the anticipated effect of the City Defendants' restructuring plan on the ability of professional personnel of the IEP teams to have the opportunity to provide preventive, consultative, and related services.

- (6) The job responsibilities of supervisors of psychology, regional administrators, chairs of regional Committees on Special Education ("CSEs"), assistant chairs/placement officers, instructional support specialists, speech and language evaluators, speech therapists, teachers of speech, parent members, contracted non-DOE personnel, and the special education-related job responsibilities of principals and parent coordinators under the proposed new system; how those responsibilities differ from past responsibilities of each such job category; and whether the number of CSE chairs can be reduced, and the positions of special education supervisor and CSE assistant chair and placement officers can be eliminated without detrimentally affecting compliance with applicable timelines for case completion, the quality of evaluations and placement decisions, and the provision of special education and related services within each school.
- (7) How the job functions currently performed by health facilitators, information managers, regional bilingual coordinators, administrators of the Hard of Hearing and Vision Impaired ("HHVI") units, vocational assessment teachers, supervisors of social workers, supervisors of educational evaluators, assistant placement officers and psychiatrists will be performed under the proposed new system.
- (8) The role and deployment of personnel of the regional CSEs under the proposed new system for evaluation and placement, including but not limited to: i) the conducting of (a) IEP team meetings involving out-of-

school placements, and (b) appeals from decisions of school-level IEP team meetings; ii) the functions of the HHVI Units; iii) evaluations of nonpublic school students; iv) inter-district placements and transfers; v) vocational assessments; vi) medical and psychiatric examinations; vii) distribution and processing of related services authorizations (RSAs) and contracting out for evaluation and placement services; and viii) distribution and processing of authorizations of unilateral enrollments in approved nonpublic schools for students who have not received timely placements ("Nickerson letters").

- (9) How City Defendants will ensure that all regional CSEs are accessible to the physically disabled and are accessible to public transportation for parents, students and staff, that all IEP team meetings will be conducted in a manner that will comply with applicable accessibility requirements, and that sufficient space will exist in local schools for IEP teams to properly carry out their functions.
- (10) How and by whom placement decisions will be made under the new system, including, but not limited to i) the role of the assistant chairs/placement officers; and ii) how the articulation at each level would be handled in the absence of district CSEs and high school CSEs.
- (11) The extent to which the function of the "district representative," as required by paragraph 27 of the Judgment and by Federal law will be fulfilled.



- (12) The general criteria and manner for determining which IEP team meetings (including which will be CSE or CSE subcommittee meetings) will be held at the student's school and which at the office of the regional CSE.
- (13) A "level of decisions" chart setting forth the specific personnel who will be responsible for the initial evaluation and placement, annual evaluation, re-evaluation review and triennial review processes, and decertification processes.
- (14) The most recent bilingual cascade directory.
- (15) The plans for training and timelines, if any, for special education teachers, regional administrators, principals, school improvement team members, speech and language evaluators, speech therapists, speech teachers, placement officers, parent coordinators, parent members, and parent support center staff regarding their responsibilities concerning evaluation and placement under the proposed new system. In addition, City Defendants will provide Plaintiffs with regular updates describing implementation of training and modifications of initial training plans.
- (16) A general description of the roles of the parent support centers in providing information and outreach services to parents of students with disabilities.
- (17) The method for storing and expeditiously retrieving student files and for ensuring that current IEPs and other necessary materials in student files.

are available for review by the teachers and their supervisors, and the related service providers of students with IEPs.

b. By other dates as follows:

- (1) By June 10, 2003: Projections regarding the number of referrals and the number of initial, reevaluation and triennial evaluations expected to be completed during the school year commencing on July 1, 2003, and an explanation of how these projections were derived.
- (2) By August 1, 2003:
  - i) The content, instructional methods and timelines for the initial training and on-going professional development of psychologists and supervisors of psychologists, and the extent to which appropriate evaluative criteria will be put into place to ensure that each individual is properly trained before assuming his or her new duties. City Defendants will provide Plaintiffs with regular updates describing implementation of training and any modifications of initial training plans.
  - ii) The plans for training and timelines for instructional support specialists. City Defendants will provide Plaintiffs with regular updates describing implementation of training and modifications of initial training plans, if any.
- (3) As soon as available and to the extent available, the role and staffing of the pupil personnel team under the proposed new system.

- (4) A copy of the implementation plan for District 75, within 24 hours of the DOE Chancellor's publication of it.

4. The parties will attempt to reach agreement on a new Standard Operating Procedures Manual ("SOPM"), including but not limited to (i) standards for conducting evaluations used to develop IEPs, and (ii) the SOPM sections described in subparagraph 2(d) above, and a new parents' rights booklet prior to the opening of school in September 2003. Plaintiffs may, for a period not to exceed six months, retain the services of a competent expert to advise Plaintiffs and consult with City Defendants on special education evaluation and placement procedures and the development of a new SOPM. Reasonable compensation and expenses for such individual shall be paid by City Defendants, in an amount to be agreed to by the parties. Plaintiffs and City Defendants will also attempt to reach agreement as soon as possible on the issuance of an interim parents' rights letter.

5. The parties will meet on a regular basis between the date of the signing of this Stipulation and the opening of school in September 2003, or until City Defendants' proposed restructuring and school improvement plans are implemented, but in any event, said meetings shall conclude by November 30, 2003. The parties shall attempt to reach agreement regarding:

- a. The manner in which the categories of personnel set forth in subparagraph 3(b)(2)(i) of this Stipulation will be trained for their new duties under City Defendants' proposed restructuring and school improvement plans, and the extent to which appropriate evaluative criteria, if any, will be employed to

ensure that each individual is properly trained prior to assuming such new duties;

b. The transition from the current system to the new structure, including but not limited to the manner in which City Defendants will ensure that throughout such transition period evaluations and placement decisions are made in timely fashion and students receive the programs and services specified in their IEPs in the requisite amounts and group sizes. The parties agree that the first such meeting will occur no later than June 6, 2003;

c. How implementation of the restructuring and school improvement plans will promote compliance with the requirements of the Judgment, Orders and Stipulations in this case and with applicable Federal and State law, and whether provisions of the Judgment, Stipulations and Orders should be modified, suspended and/or altered to implement the restructuring and school improvement plans;

d. The extent to which specific compliance benchmarks should be established.

6. If the parties reach agreements which require modification of existing provisions of the Judgment, Orders and Stipulations in this case, they shall enter into a superceding stipulation and jointly request the Court to "so order" any such stipulation.

7. Either party may at any time declare an impasse in these negotiations and, on five business days written notice to the other party, seek relief from the Court. In the absence

of such declaration and notice, neither party shall seek judicial relief regarding any of the issues covered by this Stipulation.

8. The information provided pursuant to this Stipulation is for settlement purposes only. Except as expressly provided in paragraph 1 of this Stipulation, nothing herein shall be interpreted to expand or reduce any party's rights or obligations under the Judgment, Stipulations, and Orders in this action or applicable law. City Defendants' failure to provide the information required herein shall only entitle Plaintiffs to seek an order to enforce the obligations herein. City Defendants' failure to provide information pursuant to this Stipulation shall not be used as a basis upon which to enjoin the restructuring or school improvement plans or as evidence in any contempt or noncompliance motion. However, in any contempt or noncompliance motion brought by Plaintiffs, Plaintiffs shall not be precluded from alleging that insufficient data exists to support the restructuring or school improvement plans.

9. Nothing in this Stipulation shall be interpreted, consistent with the provisions of paragraph 7 above, to prohibit City Defendants from moving at any time to terminate the Judgment, Orders and Stipulations in this case, or to prohibit Plaintiffs from moving to consolidate the Judgment, Orders and Stipulations and to revise them to explicitly incorporate recent changes in applicable Federal and State law.


10. This Stipulation shall expire on June 30, 2004, unless the Plaintiffs and City Defendants agree in writing to an extension of that date. The stipulation is limited to the unique circumstances herein and shall have no precedential value with respect to any obligations of the City, the City Defendants or DOE under Federal or State law or the Judgment, Orders and Stipulations in this case. However, either party may introduce the terms of Paragraph 1 into evidence in future proceedings.

11. The parties agree that pursuant to 28 U.S.C. § 636 they consent to have Magistrate Judge Steven M. Gold (a) "so order" this Stipulation and any stipulations developed pursuant to paragraph 6 of this Stipulation; and (b) hear and decide any motion arising from a declaration of impasse by either party pursuant to paragraph 7 of this Stipulation or alleging that City defendants have not complied with their obligations under this Stipulation, as if Magistrate Judge Gold were the District Court Judge to whom the case has been assigned. The parties hereto agree to execute and file any written consent required by the District Court or the District Court Clerk to confer jurisdiction upon Magistrate Judge Gold to hear and decide any such motion. The parties further consent that any appeal from an order of Magistrate Judge Gold determining such motion shall be to the United States Court of Appeals for the Second Circuit in the same manner as an appeal from an order of a District Court Judge.

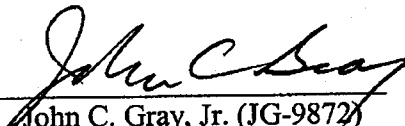
12. This Stipulation cannot be altered, supplemented, amended or modified in any manner except in a writing signed by all of the parties to this Stipulation or their duly authorized representatives.

Dated: New York, New York  
May 29, 2003

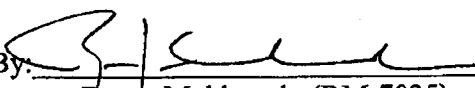
MICHAEL A. REBELL ASSOCIATES  
Attorneys for UCP Plaintiffs

By:   
Michael A. Rebell (MR-6168 )  
6 East 43rd Street, 19th Floor  
New York, NY 10017  
(212) 867-8455

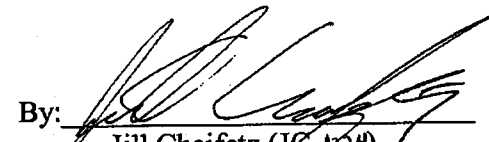
John C. Gray  
~~BROOKLYN LEGAL SERVICES P~~  
Attorneys for Jose P. Plaintiffs

By:   
John C. Gray, Jr. (JG-9872)  
176 Kane Street  
Brooklyn, NY 11201  
(718) 330-0357

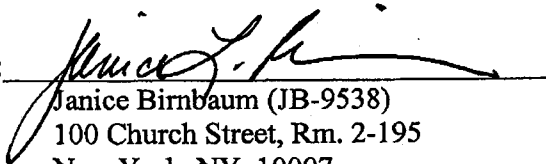
BALBER PICKARD BATTISTONI  
MALDONADO & VAN DER TUIN, PC  
Attorneys for Dyrchia S. Plaintiffs

By:   
Roger Maldonado (RM-7035)  
1370 Sixth Avenue, 30<sup>th</sup> floor  
New York, NY 10019  
(212) 246-2400

ADVOCATES FOR CHILDREN  
OF NEW YORK, INC.  
Attorneys for Jose P. Plaintiffs

By:   
Jill Chaifetz (JC-1324)  
151 West 30<sup>th</sup> Street, 5<sup>th</sup> floor  
New York, NY 10001  
(212) 947-9779

MICHAEL A. CARDOZO, CORPORATION  
COUNSEL FOR THE CITY OF NEW YORK  
Attorney for City Defendants

By:   
Janice Birnbaum (JB-9538)  
100 Church Street, Rm. 2-195  
New York, NY 10007  
(212) 513-7970

So Ordered:

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

Dated:

May 30, 2003