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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

J.G., *et al.*,

Plaintiffs,

-against-

RICHARD MILLS, *et al.*,

Defendants.

**STIPULATION AND
ORDER OF
SETTLEMENT WITH
STATE DEFENDANT
04 CV 5415 (ARR)
(SMG)**

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WHEREAS, plaintiffs commenced the instant lawsuit on December 14, 2004, in the United States District Court for the Eastern District of New York, alleging that City and State defendants violated federal and state law by depriving them of educational services upon their return to New York City community schools from court-ordered settings; and

WHEREAS, the Commissioner of the New York State Education Department (State defendant) denies each allegation contained in the Complaint;

WHEREAS, no admission or finding of liability has been made; and

WHEREAS, the plaintiffs and State defendant desire to resolve the issues raised in this litigation;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

Definitions

1. For the purposes of this Stipulation and Order, the following definitions shall apply:

- (a) "Court-ordered settings" mean all residential facilities operated by or under contract with the New York State Office of Children and Family Services, ("OCFS") and residential facilities operated by or under contract with the New York City Department of Juvenile Justice ("DJJ").
- (b) "Stipulation and Order" shall mean a fully executed copy of this Stipulation and Order that has been so-ordered by the Court in this action.
- (c) "State defendant" shall mean Richard P. Mills in his official capacity as Commissioner of Education of the State of New York, and his successors in their official capacities.
- (d) "Effective date" shall mean the date on which this Stipulation is "so-ordered" by the Court .

Class Certification

2. A plaintiff class has been provisionally certified for purposes of settlement between plaintiffs and the State defendant only, consisting of students aged 7-21 without a high school diploma who are residents of New York City and who, during the period from December 14, 2004 through the end of the Stipulation and Order period either: (a) seek or sought to re-enroll in New York City community schools after being discharged from residential facilities operated by or under contract with the New York State Office of Children and Family Services ("OCFS") and residential facilities operated by or under contract with the New York City Department of Juvenile Justice ("DJJ") (collectively "court-ordered settings"); or (b) attended or attend programs operated by the New York City Department of Education while remanded to a court-ordered setting in New York City operated by or under contract with the DJJ.

Subclass A:

A plaintiff subclass ("Subclass A") has been provisionally certified for purposes of settlement between plaintiffs and the State defendant only, consisting of those class members with and without disabilities who attend or have attended programs operated by the New York City Department of Education while remanded to a court-ordered setting in New York City operated by or under contract with the DJJ and who allege that they have not received general or special education services to which they are entitled in such programs.

Subclass B:

A plaintiff subclass ("Subclass B") has been provisionally certified for purposes of settlement between plaintiffs and the State defendant only, consisting of class members who seek or sought to re-enroll in New York City community schools after being discharged from court-ordered settings.

Subclass C:

A plaintiff subclass (Subclass C") has been provisionally certified for purposes of settlement between plaintiffs and the State defendant only, consisting of class members with disabilities who seek or sought to re-enroll in New York City community schools after being discharged from court-ordered settings and who allege that they have not received a free appropriate public education upon their discharge from court-ordered settings.

Policies and Procedures

3. The New York State Education Department ("NYSED") will promulgate a field memorandum regarding students returning to community schools from court-ordered settings and post the memorandum on the NYSED website. The field memorandum is attached hereto as Exhibit A.

4. NYSED will continue to monitor the policies and procedures of the New York City Department of Education ("NYCDOE"), OCFS and OCFS contract agency-affiliated schools regarding class members returning to New York City (NYC) community schools from court-ordered settings for compliance with the time frames and substantive requirements of the federal Individuals with Disabilities Education Act and its implementing State law for special education and Child Find students, in connection with the return to and reenrollment of class members in NYC community schools.

Technical Assistance

5. NYSED will make available on its Website, and by request, any current NYSED guidance documents and guidance documents as they are issued by NYSED for districts concerning reenrollment and transfer of records for students returning to community schools

from court-ordered settings. NYSED will also make available on its website and by request the document entitled "Guidelines for Completing Transcript Summary Form for Students Returning to NYC Public Schools," dated April 11, 2005, attached hereto as Exhibit B, and any subsequent version of that document. NYSED will continue to discuss with OCFS and NYC DOE the translation of credits, and will update plaintiffs' counsel on the status of those discussions.

6. Except as otherwise provided in this paragraph, in addition to continuing the technical assistance to Title I, Part D Neglected/Delinquent programs and schools as set forth in NYSED's Technical Assistance Plan, a copy of which is annexed hereto as Exhibit C, NYSED will respond to requests for technical assistance to schools and programs serving court-involved youth in the additional categories set forth in Exhibit C. NYSED may revise the particular forms of technical assistance contained in Exhibit C, including but not limited to the Consolidated Application and associated annual workshops, if required by changes in law. In addition, NYSED may revise the means of providing technical assistance consistent with new technology and procedures utilized by the agency, but shall not substantially diminish the amount or substance of the technical assistance described above during the term of this Stipulation and Order.

7. NYSED will continue, during its annual Consolidated Application workshop, to update all Local Education Agencies (LEA) about new or updated federal or state regulatory or non-regulatory guidance regarding the Title I, Part D Neglected or Delinquent student program. NYSED will also address re-enrollment and transfer of records requirements for youth discharged from residential placements during this training. Training materials used during these workshops will be posted on the NYSED website. After each such training, all new training or informational materials in final form prepared by NYSED or the United States Department of

Education regarding Title I, Part D, or re-enrollment and transfer of records requirements, will be posted on the NYSED website. In addition, NYSED will alert LEAs by electronic mail to such postings and include web addresses for them.

Interagency Coordination

8. NYSED will continue to promote efforts by NYCDOE and OCFS to develop agreements between those agencies that will facilitate effective and timely transition of class members and their credits and records, including agreements regarding sharing education information through technology and facilitating records transfer.

Monitoring and Quality Assurance

9. On-Site Monitoring: For the school year 2007-08 and annually thereafter, NYSED will conduct on-site monitoring as described in Part I.C. of the NYSED Monitoring Plan (the Plan is attached hereto as Exhibit D). NYSED will conduct on-site monitoring of the NYC DOE's Passages Academy every three years, and of the educational services at at least twelve (12) OCFS residential facilities and/or OCFS contract agency-affiliated schools per year. Schools and programs identified as presenting particular concerns based on NYSED's desk audits will take priority in the determination of which OCFS and/or contract agency-affiliated schools will be monitored on site each year.

10. Desk Audits: NYSED will conduct desk audits as described in Part I.B. of Exhibit D. Of the total number of desk audits conducted each year for N/D programs, NYSED will include annual desk audits for Passages Academy, and annual desk audits for the 10-12 OCFS residential facilities and schools affiliated with OCFS contract agencies that serve the largest number of New York City court-involved youth, to determine compliance with NYSED Title I(D) program

policy and regulations. NYSED has provided to plaintiffs' counsel a proposed chart/calendar of desk audits for the sites at issue in this case, which includes the size of each site/facility. Plaintiffs' counsel will suggest to NYSED which sites should be the 10-12 referred to above, for the entire term of the Stipulation and Order. Specific indicators for use in the desk audit protocol will include, for each facility: the discharge/transition process; time frames for discharge/transition including sending all educational records (as defined in the federal Family Education Rights and Privacy Act) to the students' home school district; barriers encountered, if any, by facilities when sending records back to the home school district; timeline and procedures for pre-discharge planning and coordination with the home school district regarding student reenrollment and transfer of records; and areas of technical assistance the facility needs for the desk audited time period.

11. Coordinated Monitoring: NYSED will continue to conduct coordinated monitoring as described in Part I.A. of Exhibit D.

12. Corrective Action: As is its usual practice, whenever NYSED finds a deficiency that warrants corrective action, NYSED will request such corrective action within 30 business days from the date of receipt of the LEA/agency's response to NYSED's monitoring report, consider requests for additional time, set specific timelines for corrective action, and conduct appropriate follow-up to monitor implementation of the corrective action. Where it deems appropriate, NYSED will also offer training and guidance to the sending or receiving school personnel involved.

13. NYSED will provide plaintiffs' counsel, semi-annually during the duration of the Stipulation and Order, with copies of completed reports of all monitoring and corrective actions

as described in paragraphs 9-12 of this Stipulation and Order for Passages Academy, OCFS residential school programs, and OCFS contract agency-affiliated schools.

Duration of Order and Retention of Jurisdiction

14. On the Effective date (as defined in paragraph 1), the parties' obligations, rights and responsibilities under the Stipulation and Order, and the Stipulation and Order's terms and conditions, shall commence. This Stipulation and Order will last for thirty-six (36) months from the Effective date and will automatically terminate thirty-six months after the Effective date. At such time, the State Defendant's obligations under paragraphs 3 through 13 of the Stipulation and Order shall terminate. On the Effective date, all claims in the Complaint as to the State defendant will be dismissed with prejudice. The Court will retain jurisdiction to enforce the terms of the Stipulation and Order, and any party may reopen the case at any time up until thirty-six months after the Effective date for the limited purpose of invoking the enforcement procedures set forth in the Stipulation and Order.

Enforcement

15. In the event that a dispute arises concerning this Stipulation and Order, the disputing party shall provide written notification to plaintiffs or the State defendant as appropriate of the specific dispute at least 30 business days prior to making an application to the Court. During this period, the parties shall attempt in good faith to resolve the dispute without judicial intervention. If the parties are unable to resolve the dispute in such period, and any party seeks to raise the matter with the court, that party shall do so by addressing the matter by letter or motion to the assigned Magistrate Judge in the first instance for report and recommendation. Any objections shall be heard and determined by the district judge pursuant to Fed. R. Civ. P. 72.

Attorneys' Fees

16. The State defendant agrees to pay reasonable attorneys' fees to plaintiffs' counsel. Plaintiffs and the State defendant have come to an agreement on the amount of attorneys' fees. That payment is subject to the approvals of all necessary state officials as required by Public Officers Law section 17, subdivision 3(d). If payment is not approved, counsel for the State defendant shall so notify the plaintiffs' counsel within five business days of the disapproval. In the event of such disapproval, plaintiffs shall have 90 days from such notice to make a motion seeking from the State defendant fees, costs, litigation expenses and disbursements. In the event that payment of the agreed amount is not made within 120 days after notice is given to the New York State Department of Law of final approval by the Court of this Stipulation and Order of Settlement or of notice of the "so ordering" by the Court of the Stipulation and Order regarding attorney's fees, whichever is later, interest on the unpaid amount shall begin to run on the 121st day at the statutory rate pursuant to 28 U.S.C. § 1961.

17. In addition to the fees described in paragraph 16 above, plaintiffs shall be entitled to an award of reasonable fees and expenses, but not to exceed \$10,000.00 in total during the term of the Stipulation and Order, for plaintiffs' counsel's review of the reports described in paragraph 13 of the Stipulation and Order. Plaintiffs' counsel shall be entitled to an award for review by only one attorney or paraprofessional of any report provided to plaintiffs pursuant to paragraph 13, at a rate not to exceed \$200 per hour or the reviewer's normal hourly rate, whichever is less.

18. If plaintiffs move for enforcement of any part of this Stipulation and Order pursuant to paragraphs 14-15 herein, they may move for an award of reasonable fees and expenses only if

the application for enforcement is granted and not reversed on appeal.

Procedural Matters

19. Nothing contained herein shall be deemed to be an admission by the State defendant or NYSED or any of their officials, employees, agents or representatives that they have in any manner or way violated any of plaintiffs' rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations or bylaws of any department or subdivision of the State of New York, NYSED or the City of New York

20. This Stipulation and Order, any action taken to carry out the Stipulation and Order, any negotiations or proceedings related to this Stipulation and Order, and the carrying out and entering into the terms of this Stipulation and Order shall not be construed as, or deemed to be evidence of, an admission of acknowledgement of, or concession with regard to any alleged fault, wrongdoing, culpability, or liability whatsoever by the State defendant or NYSED or any of their officials, employees, agents or representatives.

21. This Stipulation and Order is limited to the unique circumstances herein and shall not be cited by plaintiffs as precedent or authority in any litigated adversarial proceeding in which the State defendant or the New York State Board of Regents or NYSED is a defendant or respondent, except in a proceeding in this action to enforce the Stipulation and Order. Nothing in this paragraph shall bar the plaintiffs from using information or documents obtained during the duration of this Stipulation and Order in any new case filed after the expiration of this Stipulation and Order.

22. This Stipulation and Order constitutes and contains the parties' entire agreement and

contains all the terms and conditions agreed upon by the parties hereto. No oral agreement entered into at any time or any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein. This Stipulation and Order, including but not limited to the settlement class and subclasses recited herein, shall be of no force and effect unless and until it is finally approved by the Court.

23. Each party has cooperated in the drafting and preparation of this Stipulation and Order. Hence, in any construction to be made of this Stipulation and Order, the same shall not be construed for or against any party on the basis that the party was the drafter.

24. All written notifications sent pursuant to the enforcement procedures herein and all other correspondence concerning this Stipulation and Order shall be sent by electronic mail or facsimile and by first class mail to the following, or to such other address as the recipient named below shall specify by notice in writing:

To Plaintiffs:

Nancy Rosenbloom, Esq.
Nancy Ginsburg, Esq.
The Legal Aid Society
199 Water Street, 3rd floor
New York, NY 10038
Fax: 212-577-3521
Email: nrosenbloom@legal-aid.org, nginsburg@legal-aid.org

Matthew Lenaghan, Esq.
Christopher Tan, Esq.
Advocates for Children of New York
151 West 30th Street, 5th floor
New York, NY 10001
Fax: 212-947-9790
Email: mlenaghan@advocatesforchildren.org, ctan@advocatesforchildren.org

To State defendant:

Kathy Ahearn, Esq.
Deputy Commissioner for Legal Affairs
and Counsel
New York State Education Department
Office of Counsel
89 Washington Avenue
Albany, NY 12234
Fax: 518-473-2925
Email: ksurgall@mail.nysed.gov, kahearn@mail.nysed.gov

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52 Chambers Street, Room 308, A-8
New York, NY 10007
Fax: 212-374-5596
Email: jnathan@schools.nyc.gov

All reports to be sent to any party pursuant to this Stipulation and Order, including the reports specified in paragraph 13, shall be sent to that party by first class mail at the addresses indicated above.

25. Plaintiffs may not seek judicial relief in this action against the State defendant on behalf of individual class members who assert claims pertaining to matters that are the subject of this Stipulation and Order. Nothing herein precludes any individual student or parent on behalf of a class member from pursuing existing due process administrative hearings and any appeals arising from those proceedings. The parties agree that this Stipulation and Order has claim and issue preclusive effect during its term.

26. Except as otherwise provided in this Stipulation and Order, the State defendant reserves the right to implement, change, or otherwise alter or amend the procedures and requirements of this Stipulation and Order if required by intervening changes in federal statute or regulation or State statute or regulation which are inconsistent with the terms of this Stipulation and Order. The State defendant shall provide counsel for plaintiffs with written notification, by facsimile or electronic mail, of a required change at least 30 days prior to the commencement of implementation, unless the State defendant is required to commence implementation of such a required change in less than 30 days. If the State defendant is required to commence implementation of a required change in less than 30 days, the State defendant shall provide such notice no later than seven (7) working days after learning thereof or at the time the change must be made by law, whichever shall first occur.

Dated: New York, New York
~~April~~ 2008
July 22

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By: 
Nancy Rosenbloom

Entered by the
Magistrate Judge
with the consent of
the parties on
10/3/08.

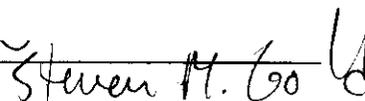
10/3, 2008





SO ORDERED:

s/ SMG


The Hon. ~~Allyne R. Ross~~ Steven M. Co
U.S. J.