

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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J.G., *et al.*,

Plaintiffs,

-against-

RICHARD MILLS, *et al.*,

Defendants.

**STIPULATION AND
ORDER OF
SETTLEMENT**

04 CV 5415 (ARR)
(SMG)

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WHEREAS, plaintiffs commenced the instant lawsuit on December 14, 2004, in the United State District Court for the Eastern District of New York, Docket No. 04 CV 5415 alleging that defendants violated federal and state law by depriving them of educational services upon their return from court-ordered settings; and

WHEREAS, plaintiffs further allege defendants violated federal and state law by depriving them of educational services to which they are entitled while in court-ordered settings;

WHEREAS, defendants Joel Klein, in his official capacity as Chancellor of the New York City school District, New York City Board of Education, and New York City Department of Education (“DOE defendants”) deny each and every allegation contained in the complaint and stated in the whereas clauses set forth in this Stipulation and Order of Settlement;

WHEREAS, no finding of liability has been made;

WHEREAS, the plaintiffs and the DOE defendants desire to resolve the issues raised in this litigation, without further proceedings and without admitting any fault or

liability;

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

I. DEFINITIONS

1) For the purposes of this Stipulation, the terms listed below shall have the following meaning:

- a. Effective date: Date on which this stipulation is so-ordered by the Court.
- b. Court-ordered setting: Any juvenile delinquency or “juvenile offender” placement ordered by the Family, Criminal or Supreme Court, with the New York City Department of Juvenile Justice (“DJJ”) (now known as the New York City Administration for Children’s Service’s Division of Youth and Family Justice), the New York State Office of Children and Family Services, or an agency with whom OCFS contracts (“OCFS”).
- c. Community School: a registered school under the jurisdiction of the Chancellor of the New York City school district or a community school district, excluding New York City Department of Education (“DOE”) schools and programs in District 79.
- d. Free Appropriate Public Education (“FAPE”): The educational program for a child with a disability, as described in 20 U.S.C. §1401(9) and implemented at 8 N.Y.C.R.R. §§ 200, *et seq.*
- e. Individualized Education Program (“IEP”): A written statement for a child with a disability that is developed, reviewed, and revised in accordance with the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §1414(d).

- f. Passages Academy (“Passages”): Any program operated by the New York City Department of Education that provides educational services to students who are remanded to the custody of the New York City Department of Juvenile Justice (now part of the Administration for Children’s Services, Division of Youth and Family Justice).
- g. Student(s): any youth who is entitled to attend public school pursuant to New York State Education Law § 3202, who has not yet received a high-school diploma, and who resides in New York City.
- h. Enrollment Location: A location which is authorized by the DOE to directly enroll a student in school or provide a school placement. Depending on the student, this could include a school or Enrollment Office.
- i. Enrollment Office: Locations which serve as part of the Office of Student Enrollment (“OSE”), or their successors.
- j. Peak Enrollment Period: August 15th through September 30th of each school year.
- k. Education Plan: A written statement for a child with a disability who attends Passages, that is developed in accordance with paragraph 30.
- l. Education Plan Team: Passages staff including: 1) a general education teacher, 2) a special education teacher, 3) a school psychologist or an individual who can interpret the instructional implications of any evaluation results. The individual listed in (3) may be the same individual described in (1) or (2). A parent or guardian will also be invited to participate as part of the Education Plan Team.
- m. 3-year re-evaluations: Re-evaluations conducted pursuant to 20 U.S.C. § 1414(a)(2)(B)(ii)

- n. Parent: For purposes of school enrollment, parent means parent or guardian or any person in parental or custodial relationship with the student. For purposes of special education requirements in this stipulation, parent means a parent, a legally appointed guardian generally authorized to act as the child's parent or authorized to make educational decisions for the child, a person in parental relationship to the child, an individual designated as a person in parental relation who is acting in the place of a birth or adoptive parent (including a grandparent, stepparent, or other relative with whom the child resides), a surrogate parent who has been appointed in accordance with section 8 NYCRR 200.5(n), or a foster parent, where permitted by 8 NYCRR 200.1.
- o. Termination Date: The date defined in paragraph 53 below.
- p. Settled Claims: Any and all claims that have been asserted in the Action or that could have been asserted in the Action or in any forum by the Named Plaintiffs or Class Members against any of the Released Parties which arise out of, relate to, or are based upon the allegations, transactions, facts, matters or occurrences, representation or omissions involved, set forth, or referred to in the Complaint, except that "Settled Claims" do not include (a) claims to enforce the Settlement or any provision thereof; (b) claims pursuant to the IDEA, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, or New York Education Law, to the extent that those claims do not arise out of nor are based upon the allegations, facts, occurrences, representation or omissions that establish the individual as a Class Member; (c) prospective claims (i.e., claims that arise after the Effective Date of this Stipulation) by individual students who seek to

challenge the appropriateness of the educational services and/or placements provided to them by the DOE following their return from a Court-Ordered Setting; and (d) prospective claims by groups or classes of students that educational services and/or placements provided to them by the DOE are unlawful for reasons other than those related to students' having returned to DOE schools from court-ordered settings.

- q. Released Parties: Any and all of the DOE defendants and the legal representatives, heirs, successors in interest, or assigned of the DOE defendants.
- r. Compensatory Relief Subclass Period: The period from December 14, 2001, until the Effective Date of this stipulation.
- s. Student with a Disability: A Student with a Disability as defined in section 4401(1) of the Education Law, who has not attained the age of 21 prior to September 1st and who is entitled to attend public schools pursuant to section 3202 of the Education Law and who, because of mental, physical or emotional reasons, has been identified as having a disability and who requires special services and programs.
- t. J.G. Counselor: An individual appointed pursuant to Section V of this Stipulation, who meets the requirements set forth in paragraph 46.
- u. Tutoring: Subject-based support, offered in small groups or one-to-one. Tutoring shall be provided by or overseen by adult instructors (in accordance with paragraphs 41(c) and 42(a)) who are trained in teaching and trained in the subject matter in which the tutoring is being provided.

- v. Accelerated Credit Acquisition: Educational services that allow students to earn additional credits outside of the regular school schedule, such as, for example, summer school, and additional classes provided after school or on weekends.
- w. Remedial literacy or math intervention: Remedial instruction in literacy or math, provided by a professional educator.
- x. School-based guidance: Meetings with a school guidance counselor or other professional whose job responsibilities include counseling regarding academic options and students' educational rights. If a student's issues are primarily academic, it is expected that the counselor or other professional will have available and be familiar with relevant DOE educational records.

II. SCOPE AND EFFECT OF SETTLEMENT

- 2) The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action and any and all Settled Claims as against all Released Parties.
- 3) Upon the Effective Date of this Settlement, the Class Members, on behalf of themselves, and their past or present legal representatives shall, with respect to each and every Settled Claim, release and forever discharge, and shall forever be enjoined from prosecuting, any Settled Claims against any of the Released Parties.

III. CLASS CERTIFICATION

- 4) The parties agree that plaintiffs will seek certification of the Class and Subclasses (A) through (E) under Rule 23(b)(2) and certification of Subclass (F), the "Compensatory Relief" Subclass under Rule 23(b)(3) of the Federal Rules of Civil Procedure.
- 5) The Class is defined as students aged 7-21 without a high school diploma who, during the period from December 14, 2001 through the end of the Stipulation period, are,

were, or will be residents of the City of New York; and either (a) are. were or will be enrolled at Passages Academy (“Passages”), or (b) sought or will seek to re-enroll in New York City public schools after being discharged from the custody of the New York State Office of Children and Family Services (OCFS).

6) “Subclass A” is defined as Class Members who attend or have attended Passages Academy.

7) “Subclass B” is defined as Class Members who sought or will seek to re-enroll in New York City public schools after being discharged from OCFS custody.

8) “Subclass C” is defined as Class Members with disabilities who sought or will seek to re-enroll in New York City public schools after being discharged from OCFS custody.

9) “Subclass D” is defined as Class Members who sought or will seek to return to a New York City community school after being discharged from Passages.

10) “Subclass E” is defined as Class Members with disabilities who attended or will attend Passages Academy.

11) “Subclass F” or the “Compensatory Relief Subclass” is defined as Class Members who, at any time during the Compensatory Relief Subclass Period, sought re-enrollment in Community School upon their discharge from a Court-Ordered Setting, and were not provided with a school placement within five school days or, if the student so requested, referral to an interview school within five school days.

IV. INJUNCTIVE RELIEF

A. Re-enrollment

12) Except as set forth in paragraph 15 below, Class Members who are not enrolled in a DOE school at the time of discharge from Court-ordered Settings shall be provided a school placement within five school days of appearing at an Enrollment Location seeking enrollment in school.

13) The DOE will not place students returning from court-ordered settings in any transitional environment that does not provide: 1) credit-granting coursework designed to lead to a high school diploma; and 2) all legally required special education services. However, nothing herein shall be construed to preclude eligible students from enrolling in a GED or pre-GED program.

14) Class members returning from Passages shall be registered at their last community school within two school days of discharge from Passages. If a student's circumstances require a different school placement, as determined by the DOE Office of Student Enrollment ("OSE"), or its successor, in consultation with the family, the DOE shall transfer such students within five school days of appearing at an Enrollment Location seeking enrollment in a different school, unless the student requests a DOE placement which requires a screening process, as set forth in paragraph (15).

15) Any student who is referred to a DOE placement that requires a screening process (including but not limited to schools/programs that require an interview or audition, transfer schools, or GED programs) shall be permitted to attend the school/program upon confirmation of acceptance into the school/program. At the time the student is referred to a DOE placement that requires a screening process, the DOE shall inform the student to

return to the Enrollment Office if the student is not accepted by the screening school. If a student is not accepted by such school(s)/program(s), the DOE will either provide that student a school placement which does not require a screening process within two school days of appearing at an Enrollment Office seeking enrollment in school, or if the student's parent so requests, will provide the student with additional referrals to schools which require a screening process.

16) For students in Subclass C, if the DOE has been provided with an IEP from OCFS or an OCFS contract agency upon the student's return, the DOE shall provide a school placement which is able to provide FAPE (including services comparable to those described in the child's IEP from the previous public agency) until a new IEP is developed as set forth below. In making such determination, the DOE shall also consider any available previous DOE IEP's, and any available, current clinical reports or academic records. A new IEP shall be developed within 30 days from the date of registration at a DOE community school, except as set forth below:

- a) Students in Subclass C who appear at an Enrollment Office seeking enrollment, and are provided with (and accept) a school placement in a time-frame that does not comply with paragraphs 12 and 15 of this Stipulation, will be provided a new IEP within 30 days from the date they appeared at an Enrollment Office seeking enrollment.
- b) Students in Subclass C who appear at an Enrollment Office seeking enrollment who do not appear at the school in which they were enrolled for more than 10 school days immediately following their registration at a DOE community school will be provided a new IEP within 30 days from their date of first appearance.

- c) If the DOE determines that additional assessments are required in order to prepare a new IEP, the DOE shall have 30 school days in addition to the time frames set forth in paragraph 16, and (a) - (b) above to complete an IEP and arrange for the appropriate special education programs and services.
- d) The time frames set forth above will not apply if the development of an IEP under this provision was legally dependent upon further steps that could not be completed because of delay caused by the student or the parent.
- e) For purposes of this paragraph, any school vacation that is two or more school days in length shall be excluded from the calculation of days.
- f) Nothing in this Stipulation prohibits the DOE from conducting IEP reviews and/or preparing new IEPs before these students return to the New York City school system.

17) For students in Subclass C, if the DOE has not been provided with an IEP from OCFS or an OCFS contract agency upon the student's return, the DOE shall, within 5 school days of the student's appearance at an Enrollment Location seeking a school placement following discharge, provide the student a school placement that is able to provide a program recommended on the student's last DOE IEP.

18) DOE will continue its policy which requires that principals and other school personnel must promptly admit class members assigned to a school by OSE or registered at a school, or who are otherwise eligible to attend that school.

19) Any student who seeks re-enrollment at a DOE location that is not mandated to enroll the student will be, at that time, referred by the DOE to an appropriate DOE Enrollment Location.

20) Upon return to a community school, class members shall be offered ERSS, AIS, and guidance services, if eligible for such services. Class members shall be permitted to attend summer school, if they are eligible.

B. Records Transfer and Programming

21) Upon a student's return to a community school directly from Passages, the following information shall be provided or made available to the community school: 1) transcript of coursework completed by high school students; 2) report cards or other report of completed work for middle school students; and 3) for all students with disabilities, any Education Plans created while the student is at Passages. Community schools will also be provided with contact information for relevant Passages staff so that the community school may request Passages' input in the development of any new IEPs.

22) Upon a student's return to a community school from Passages, the DOE shall remind the community school to check the data system to see whether the student is eligible for an annual review or a three-year re-evaluation and take appropriate action.

23) Upon a student's return to a community school from OCFS or a contract agency, the school in which the student is registered shall, in accordance with Chancellor's Regulation A-101, request a copy of student records from the school which the student attended while in OCFS or an OCFS contract agency's custody, if student records have not otherwise been provided in advance of or at the time of re-enrollment of the student.

24) Upon a student's discharge from Passages to OCFS custody, or to the custody of an agency with which OCFS contracts, DOE will provide to OCFS relevant educational records including, but not limited to: the student's most recent transcript, any available report cards from Passages, results of any diagnostic tests administered by Passages, and

for students with disabilities, the Education Plan developed for the student by Passages, and any IEPs and accompanying evaluations received by Passages pursuant to paragraph 30. Compliance with this provision may be accomplished by providing OCFS access to the above listed educational records electronically, so long as the electronically available records include the same substantive information as the documents listed above.

25) Except during Peak Enrollment, upon a student's appearance at an Enrollment Office following discharge from OCFS, if a student's academic transcript from OCFS is not presented or is not otherwise received in advance, the DOE will, at that time, attempt to obtain such transcript from OCFS. If the DOE has previously received a transcript, but that transcript is more than 60 school days old at the time of the student's appearance at an Enrollment Office, the DOE will, at that time attempt to obtain an updated transcript from OCFS. Nothing in this provision shall be construed to require the DOE to delay the student's enrollment if the transcript or updated transcript is not promptly transmitted.

26) For any student who appears at an Enrollment Office seeking to be re-admitted, and who received special education services from the DOE at the time of discharge from a DOE school, the Enrollment Office personnel will request from OCFS a copy of any IEPs and accompanying special education evaluations which may have been prepared while the student was in the custody of OCFS or an OCFS contract agency, if those documents have not already been provided by OCFS. DOE will train Enrollment Office personnel that it is best practice to make such request immediately upon a student's appearance, unless it is during a time of peak enrollment. Nothing in this provision shall be construed to require the DOE to delay the student's enrollment if the prior IEP is not promptly transmitted.

27) The DOE shall prepare and make available to all schools a Best Practices Guide, which will include information for school personnel about how to obtain educational records from court-ordered settings, make programming determinations for students returning from court-ordered settings, calculate credits for work successfully completed at court-ordered settings, and make programming recommendations for students who are under-credited. Plaintiffs' counsel has received a draft of the guide and will have the opportunity to comment before the guide is finalized.¹ DOE will make training available annually to schools on the use of the best practices guide and, each year, will invite and encourage at least 10 schools, identified by plaintiffs as having a significant number of class members, to participate in the training.

28) After a high school student returning from an OCFS or an OCFS contract agency facility is registered and appears at a DOE school, the principal (or the principal's designee) shall evaluate any available transcripts, and, in his/her discretion, shall award the appropriate units of transfer credits towards a high school diploma. DOE will encourage principals to consult the Best Practices Guide in connection with exercising this responsibility.

C. Education at Passages

29) Upon a student's admission to Passages, DOE staff at Passages shall consult the DOE computer system to determine whether the student has an Individualized Education Program ("IEP"), and if so, determine the program and services prescribed by such IEP. If a student does have an IEP, DOE staff at Passages shall, promptly, but in no case later than five school days after admission to Passages, request in writing the IEP of that

¹ The parties have agreed that the plaintiffs will, upon settlement of this action, provide a copy of the Best Practices guide to the Court by letter. Such letter, and its exhibit will become part of the Court's record. However, nothing in the letter or the Best Practices Guide is intended to confer any enforceable right.

student, developed most recently before his or her admission to Passages, including any accompanying evaluations. Passages shall also request notification of whether a 3-year re-evaluation has been commenced for the student and has had all steps completed but for the IEP team meeting, and if so, will request that the community school provide all documents generated by and relevant to the 3-year re-evaluation.

30) Students in subclass E will be provided with the special education services set forth in the student's Education Plan, which is described below.

- a. The Education Plan Team will formulate an Education Plan for a student in subclass E within five school days of the student's admission at Passages.
- b. The Education Plan will set forth the recommended special education instructional program, and will include academic and functional goals. The Education Plan will also include the related services listed on the student's most recent IEP, subject to paragraph 32 below.
- c. A meeting of the Education Plan Team (hereinafter, "re-assessment meeting") will occur no later than 30 days after a student's admission to Passages, unless the parent or advocate requests a later date. At the meeting, the team will review any written IEPs in the possession of Passages, information regarding the student's current classroom performance and other available information to determine whether modifications to the student's Education Plan are appropriate. At that time, the Education Plan will be modified to include information about the student's social/emotional needs and progress.

31) Except as set forth herein, students in subclass E will be provided, either directly by Passages staff, by an agency under contract with the DOE or by an independent

provider, with all of the related services set forth on the student's last DOE IEP, unless:

a) DOE is unable to secure a provider; or b) the Education Plan Team has a documented basis for a change in services based on an evaluation, observation or assessment of the child's needs by qualified personnel. Where the DOE has been unable to locate a provider, the DOE will maintain information regarding its efforts to secure related services providers. For students who returned directly to a DOE placement after their discharge from Passages, and who were enrolled in Passages for at least 30 consecutive days, but were not provided with one or more related services contained on the student's Education Plan during such period, Passages will inform the student's next DOE placement and the student's parent that those services were not provided. The community school to which the student is transferred shall consider the number of related service sessions missed and, on a case-by-case basis, determine whether any related services in addition to those required by the IEP mandate should be offered. Nothing in this provision shall be construed to create any entitlement to or bar from compensatory services, make-up services or additional related services of any nature.

32) Passages will continue to make remedial services available to those students who are performing below grade level. Such services may include, but are not limited to, literacy instruction, for those students for whom Passages staff believe that such instruction is appropriate. If a student who is not already classified as having a disability has not made adequate progress after an appropriate period of time of receiving pre-referral interventions and the student's lack of progress is suspected of being the result of a disability, the principal of Passages will refer such student for an initial evaluation. If Passages Academy staff determine that the student's need for referral is immediate, they

need not wait for the results of pre-referral interventions, but may request that the principal refer the student for an evaluation at that time.

33) DOE will conduct 3-year re-Evaluations for students in Subclass E as follows:

- a. Commencing 3-Year Re-evaluations from Enrollment through the Education Plan Re-assessment Meeting: For a member of Subclass E who is identified as having an overdue 3-year re-evaluation at the time of his or her enrollment in Passages Academy, such review will not commence between the date of enrollment at Passages Academy and the date of the Education Plan re-assessment Meeting, except as set forth below. If, during this time period, the student's parent makes a request that the overdue 3-year re-evaluation occur during the student's enrollment at Passages Academy, the request will be noted and the review will commence only after the Education Plan re-assessment Meeting. If, however, the parent's request indicates that possible placement at a non-public school or residential setting is contingent upon completion of a 3-year re-evaluation, and Passages so verifies with the student's attorney that such placement is being sought, then the review process shall be commenced forthwith. Nothing herein shall be construed to require the DOE to recommend or provide funding for any non-public school or residential setting.
- b. Commencing 3-Year Re-evaluations from the Education Plan Re-assessment Meeting until the 60th calendar day following enrollment: At or before the Education Plan re-assessment Meeting, Passages Academy shall provide to the parent of a student described in paragraph (a) above a notice indicating that, from the date of the notice until the 60th calendar day following enrollment, any

overdue 3-year re-evaluation will only be conducted upon specific, written request by the parent. If, during this time period, the parent specifically requests that Passages conduct such a re-evaluation, the review process shall be commenced forthwith.

- c. Commencing 3-Year Re-evaluation after the 60th calendar day following enrollment: For a student described in paragraph (a) above, an overdue three-year re-evaluation shall be commenced by the 61st calendar day after the student's admission to Passages Academy, unless the parent and the DOE agree otherwise.
- d. Completing 3-Year Re-evaluations Commenced in Community Schools: With respect to students who have had a 3-year re-evaluation commenced in a community school and completed there but for the IEP team meeting, Passages shall schedule an IEP team meeting promptly after receipt of the documents identified with respect to such students in paragraph 29.

34) Eligible eighth grade students attending Passages will be given the opportunity to take State standardized examinations which are required for promotion under Chancellor's Regulation A-501. Eligible high school students attending Passages will be given the opportunity to take Regents and Regents Competency Tests.

D. Staff and Training

35) The DOE will provide plaintiffs' counsel with the names of designated individuals located at Enrollment Offices who will be available to provide assistance to students, families and representatives with the re-enrollment process. Additionally, the DOE will provide plaintiffs' counsel with the names of individuals, who are not school-based, who will be specially trained in and familiar with the credit accounting process for

students from court-ordered settings, and who will be available to provide assistance to school personnel upon request. The DOE shall notify plaintiffs' counsel of all liaison personnel changes in a timely manner.

36) The DOE will provide training regarding the provisions of this Order and the practices for re-enrollment for students returning from court-ordered settings to all staff referred to in paragraph (35) herein.

37) Within three months after the effective date of this Stipulation, defendants shall make available initial and ongoing (at least annual) training for principals, guidance counselors, deans, enrollment staff and other appropriate school staff, concerning the provisions set forth in this Stipulation and Order.

V. COMPENSATORY RELIEF

38) Any member of the Compensatory Relief Subclass may request to be excluded from the Compensatory Relief Subclass following receipt of the Settlement Notice. Any such request must be made within the time period and in the manner described in the Settlement Notice. The opt-out form shall be substantially similar to the form attached as Exhibit A. Any member of the Compensatory Relief Subclass who submits a valid and timely request for exclusion shall have no rights under the Settlement to Compensatory Relief and will not be deemed to have released any of the DOE defendants with regard to his or right, if any, to seek individual compensatory relief in an appropriate forum.

39) Compensatory Relief Subclass members may access the relief described in paragraph 40 - 43 as follows:

- a) As part of the Settlement Notice, the DOE will send notice to each member of the Compensatory Relief Subclass setting forth the availability of the counseling sessions and other services described in paragraphs 40 - 45.
- b) In order to be eligible for Compensatory Relief, the Compensatory Relief Subclass member must, in writing, no later than 30 days after the effective date of the Settlement, inform the DOE that they wish to participate in counseling sessions. The Compensatory Relief Subclass Member must include in their response the requested biographical information. The Compensatory Relief Subclass Member must also affirm that during the Compensatory Relief Subclass Period, he or she sought re-enrollment in a DOE Community School upon their release from a Court-Ordered Setting, and was not provided with a school placement within five school days or, if the student so requested, referral to an interview school within five school days. The form must be signed either by the student, the student's parent, or class counsel. By signing the form, class counsel certifies that he/she was contacted by the class member for assistance with accessing this relief, and that he/she spoke to the class member and obtained facts sufficient to form the basis to determine that the class member was eligible for remedial relief. DOE reserves its right to subsequently confirm the information affirmed to by class counsel with the student. The biographical information and the affirmation shall be made substantially in the form attached hereto as Exhibit B.
- c) If the DOE has reason to believe that the student is not eligible for Compensatory Relief, Defendants' Counsel shall notify Plaintiffs' Counsel. If the parties are

unable to resolve the dispute within two weeks, either party may bring the matter to the attention of the United States Magistrate Judge assigned to this case, for mediation.

d) Beginning no later than 30 days after the Effective Date of this Stipulation, the DOE will commence providing the services described below in paragraphs 40 through 43 to eligible Compensatory Relief Subclass Members on a rolling basis, but in no event shall such services to an individual Compensatory Relief Subclass Member commence more than 15 school days after written notice is received, or more than 15 school days after 30 days from the Effective Date of this Stipulation, whichever is later. However, the DOE shall not be required to commence this program before September 30, 2010. The DOE will notify the Compensatory Relief Subclass Member of the date, time and location of their initial guidance sessions using the contact information provided by the Compensatory Relief Subclass Member on Exhibit B.

40) Compensatory Relief Subclass Members who are of compulsory school age, but are not enrolled in a Community School will be referred to an Enrollment Location. Such students will be provided with a school placement in accordance with Section IV(a), *supra*. Compensatory Relief Subclass Members who are above compulsory school age, but under 21, and not enrolled in a Community School will meet with a DOE counselor to determine whether the student should be provided with a school placement in a Community School in accordance with Section IV(a), or whether the student wishes to seek enrollment in a GED program.

41) Eligible Compensatory Relief Subclass Members who are enrolled in High School shall be offered an initial counseling session. At the initial counseling session, the student will meet with a *J.G.* Counselor, who will:

- a) review any available OCFS transcripts and, if necessary, provide assistance to the student's community high school about credit decisions, to the extent not previously made. If credit decisions were previously made by the high school, the counselor shall, if warranted, confer with the staff of the community school concerning those decisions. The principal of the high school retains discretion concerning the award of credits, and nothing herein shall be construed to require the community school to adhere to any recommendation of the *J.G.* Counselor with respect to credits, or to modify any prior credit determinations.
- b) in collaboration with the student and the student's high school, develop a plan for the student to progress towards graduation. If such plan includes exploring alternative placements, the *J.G.* Counselor shall provide assistance in the transfer or application process.
- c) based on the information available, and in the discretion of the *J.G.* Counselor, recommend that the student participate in: (i) tutoring, (ii) Accelerated Credit Acquisition, (iii) remedial literacy or math intervention, and/or (iv) school-based social services (e.g. counseling). If one or more of the above is recommended, the *J.G.* Counselor shall then coordinate with the student's high school, and if necessary, with other DOE offices, to ensure that the recommended service(s) are made available to the student in a manner designed to address the needs of the student, as determined by the *J.G.* Counselor. Students who attend District 75

Schools will not be provided with peer tutoring as part of this program. Peer tutoring will also not be provided as part of this program in any subject for which a student with a disability is recommended for placement in a self-contained special education classroom. For students with disabilities, remedial intervention, if recommended, shall be made available consistent with the student's determined needs. A difference of professional opinion concerning the appropriateness of the service(s) offered will not be the basis for a determination that the DOE has not satisfied its obligation to make available such service(s).

- d) for students with disabilities, determine whether the annual or triennial review is due, and, if so, inform the high school of its obligation to conduct any such review. The *J.G.* Counselor will periodically review the high school's progress concerning such review, and follow-up as appropriate.

42) Eligible Compensatory Relief Subclass Members who are enrolled in Middle School shall be offered an initial counseling session. At the initial counseling session, the student will meet with a *J.G.* Counselor, who will:

- a) based on the information available, and in the discretion of the *J.G.* Counselor, recommend that the student participate in: (i) tutoring, (ii) remedial literacy or math intervention, and/or (iii) school-based social services (e.g. counseling). If one or more of the above is recommended, the *J.G.* Counselor shall then coordinate with the student's middle school, and if necessary, with other DOE offices, to and ensure that the recommended service(s) are made available to the student in a manner designed to address the needs of the student, as determined by the *J.G.* Counselor. Students who attend District 75 Schools will not be provided

with peer tutoring as part of this program. Peer tutoring will also not be provided as part of this program in any subject for which a student with a disability is recommended for placement in a self-contained special education classroom. For students with disabilities, remedial intervention, if recommended, shall be made available consistent with the student's determined needs. A difference of professional opinion concerning the appropriateness of the service(s) offered will not be the basis for a determination that the DOE has not satisfied its obligation to make available such service(s).

b) for students with disabilities, determine whether the annual or triennial review is due, and, if so, inform the middle school of its obligation to conduct any such review. The *J.G. Counselor* will periodically review the middle school's progress concerning such review, and follow-up as appropriate.

43) Eligible Compensatory Relief Subclass Members who are over 21 shall be offered an initial counseling session. At the initial counseling session, the student will meet with a *J.G. Counselor* or other DOE employee with knowledge regarding adult education opportunities, who will assist the student in accessing available public adult education and/or vocational options and services, including but not limited to VESID, DOE vocational program, DOE GED programs, and CUNY GED and CUNY vocational programs. If appropriate, the counselor will assist the student in completing an application and making an appointment with the appropriate institution or program. Nothing herein shall be construed to guarantee eligibility or entitlement to any such services. Nothing herein shall be construed to entitle a Compensatory Relief Subclass Member who is age 21 or older to attend a community school.

44) In addition to the initial counseling session described in paragraphs 41 through 43, the J.G. Counselor (or, for students over 21, a DOE employee described in paragraph 43) will, for a period of three (3) months following the initial counseling session, conduct follow-up with the Eligible Compensatory Relief Subclass Member, on at least a monthly basis, to discuss the student's academic and social issues and to provide continued assistance in accessing the services set forth, and as described in paragraphs 41 through 43. The recommended services described in paragraphs 41 through 43 will continue to be available to the student during this three-month period. Compensatory Relief Subclass Members will be eligible to receive services to the same extent as any other DOE student who is not a Compensatory Relief Subclass member, but all entitlements under Section V of this stipulation shall terminate after three months, except with respect to any recommended program that has a specific beginning and termination date, which program does not exceed one semester in duration (e.g., a semester-long class). With respect to any such program, if the J.G. Counselor recommended it, the student will be entitled to complete that program, even if the completion of the program takes place after three months, so long as the student continues to participate in the program.

45) At the conclusion of the three (3) month follow-up period, the J.G. Counselor will discuss the Eligible Compensatory Education Subclass Member's progress, and possible appropriate services or programs with the principal (or the principal's designee) of the school where the student is enrolled.

46) The DOE shall ensure that the *J.G.* Counselor has a degree in education, counseling, social work, or the equivalent and/or has a valid New York State certificate in teaching, supervision or administration or pupil personnel services or the equivalent

Board of Examiners license. In no event shall the *J.G.* Counselor have less than a four-year degree. The DOE shall designate a project supervisor who will be responsible for providing substantive assistance to the *J.G.* Counselor(s), and who will be available to review a recommendation made by the *J.G.* Counselor which is objected to by a parent or student.

47) Prior to the start of the counseling sessions described in paragraphs 41-43, the DOE will afford plaintiffs' counsel the opportunity to conduct an information session for the *J.G.* Counselor(s), selected at that time and the project supervisor.

VI. MONITORING

48) During the term of this Agreement, the DOE shall conduct monitoring for three consecutive school semesters, and shall provide plaintiffs' counsel with three monitoring reports, as set forth below. The monitoring reviews will be conducted by the DOE's Office of the Auditor General ("OAG"), and for that review that is based on a scientific methodology, with assistance from the OAG's contracted audit partner. The contracted audit partner will meet the minimum qualifications set forth in the Request for Proposals ("RFP") No. R-0828, which was published in the City Record March 23, 2010. Data shall be drawn from the DOE's ATS (including OSE data, where applicable), and/or HSST computer systems or their successors, and/or hard copy records. Defendants have drafted, and plaintiffs have agreed to, a "work plan" setting forth the procedures to be used in conducting the monitoring. The work plan itself does not confer any enforceable right herein.

- a) DOE will draw a sample from students in Subclass D who attended a DOE community school prior to their transfer to Passages, and will test the sample for the following attributes:
- i) Whether students were returned to their prior school registers within two school days of Passages having retrieved from the DJJ database notice of the students' release date from DJJ custody.
 - ii) Where applicable, whether Passages requested the student's last IEP upon the student's enrollment at Passages;
 - iii) Whether information concerning completed coursework was entered into HSST (or any successor DOE computer system/database) for high school students who, at the time of discharge from Passages, had completed at least 30 days of satisfactory class work at Passages;
 - iv) Whether Passages entered coursework information on middle school students' transcripts;
 - v) The number of school days between the students' discharge from Passages and the first date of attendance;
 - (A) Whether, in any case where DOE recorded an unexcused absence for 10 consecutive school days immediately upon return to a community school register from Passages, outreach efforts had been undertaken by the DOE. Information concerning the number of school days from the generation of a Form 407, Attendance Follow-up and Outreach Referral (or any equivalent successor form) to the first recorded outreach effort will also be reported.

- b) DOE will draw a sample from students in Subclass B who appeared at an Enrollment Office seeking re-enrollment, and will test the sample for the following attributes:
- i) Whether students were placed on the register of a DOE school or were offered a school placement within five school days of appearing at an Enrollment Office with appropriate paperwork. Whether a student was timely provided a school placement shall be evaluated in conformity with the chart attached hereto as Exhibit C. DOE reserves its right to amend Exhibit C with 10 days prior notice to plaintiffs' counsel, to conform with any changes in DOE's enrollment process;
 - (A) For a student who requested placement at a school(s) which requires a screening process, and who returned to the Enrollment Office after not being accepted to such school(s), whether the student was provided a school placement within two school days of the student's re-appearance at the Enrollment Office.
 - ii) Whether students' records were transmitted by Passages to OCFS;
 - iii) Whether, for students appearing at an Enrollment Office (except during the Peak Enrollment Period) without an OCFS transcript or where the OCFS transcript provided is more than 60 school days old at the time of the student's appearance, the DOE requested the student's transcript from OCFS.
 - iv) If a student's OCFS transcript is in the student's DOE file, whether DOE's records (HSST or any successor computer system/database) reflect that credits were awarded or whether the principal or the principal's designee confirms at

the time of the audit, or the records confirm that, the OCFS transcript was evaluated for the purpose of considering if credits should be awarded.

- v) The number of school days between the students' registration at a DOE school following the students' return from OCFS and the first date of attendance;
 - (A) Whether, in any case where DOE recorded an unexcused absence for 10 consecutive school days immediately upon the student's return to a community school register from Passages, outreach efforts had been undertaken by the DOE. Information concerning the number of school days from the generation of a DOE Form 407 Attendance Follow-up and Outreach Referral (or any equivalent successor form) to the first recorded outreach effort will also be reported.
- vi) For students with disabilities, for whom the DOE was provided with an IEP from OCFS or an OCFS contract agency upon the student's return, whether a comparable services plan was created.
 - (A) For those students tested in (vi) for whom a comparable services plan was created, whether a new IEP was created for the student, in accordance with the applicable timeframes set forth in paragraph (16);
 - (B) For those students tested in (vi) for whom a comparable services plan was not created, whether a new IEP was created for the student, in accordance with the applicable timeframes set forth in paragraph 16.
- vii) For students with disabilities, and except during the Peak Enrollment Period, whether the Enrollment Office requested an IEP from OCFS when the

student's OCFS IEP was not otherwise available at the time the student appeared at the Enrollment Office.

c) DOE will draw a sample from students in Subclass B who were registered at a DOE school following their discharge from OCFS, but who did not first appear at an Enrollment Office seeking re-enrollment, and will test the sample for the following attributes:

i) Whether student records were transmitted by Passages to OCFS;

ii) If a student's OCFS transcript is in the student's DOE file, whether DOE's records (HSST or any successor computer system/database) reflect that credits were awarded by DOE or whether the principal or the principal's designee confirms at the time of the audit, or the records confirm that, the OCFS transcript was evaluated for the purpose of considering if credits should be awarded;

iii) The number of school days between the students' registration at a DOE school following the students' return from OCFS and the first date of attendance;

(A) Whether, in any case where DOE recorded an unexcused absence for 10 consecutive school days immediately upon the student's return to a community school register from Passages, outreach efforts had been undertaken by DOE. Information concerning the number of school days from the generation of a Form 407, "Attendance Follow-up and Outreach Referral" (or any equivalent successor form) to the first recorded outreach effort will also be reported.

49) The three monitoring reports shall be provided as follows:

- a) The first monitoring report shall reflect the results of an audit based on data generated between October 1, 2011, and January 31, 2012. With respect to the selection of the samples from the universes detailed in paragraphs 49(a) and 49(b), the first audit will be conducted on the basis of a scientific attribute testing methodology utilizing a confidence level of 90% with a precision range of +/- 7%. That methodology will support extrapolation of the findings of the tests described in 48(a)(1) and 48(b)(1), respectively. With respect to the reporting detailed in paragraph 48(c), the first monitoring report will be based on a randomly selected sample of 13 students. The first monitoring report will be provided to plaintiffs' counsel no later than July 31, 2012.
- b) The second and third monitoring reports shall reflect the results of audits based on data generated during i) February 1, 2012, and June 28, 2012 (for the second monitoring report); and ii) during the Fall Semester of the 2012-2013 school year (for the third monitoring report). The sample size for each semester will be no less than half the total number drawn for the tests described in paragraphs 49(a) and 49(b) in the first monitoring report. The students whose records are subject to the audit tests will be randomly selected. For example, if, for the first monitoring report, 100 students were sampled for the tests set forth in 49(a), and 100 students were sampled for the tests set forth in 49(b), then for the second and third monitoring reports, a sample shall be drawn of at least 50 students, each, for the tests set forth in paragraphs 49(a) and 49(b). With respect to the reporting detailed in paragraph 49(c), the second and third audits will each be based on a randomly selected group of 13 students. The second monitoring report shall be

provided to plaintiffs' counsel no later than January 31, 2013. The third monitoring report shall be provided to plaintiffs' counsel no later than July 31, 2013.

50) In addition, the DOE will identify students, up to 25 students, included in the sample selected pursuant to paragraph 48(b), who are designated as Special Education students, and for those students, provide to plaintiffs' counsel any documents available at the student's local Committee on Special Education Office ("CSE") that reflect that the student appeared at that CSE after they were discharged from the DOE but before they appeared at an Enrollment Center seeking re-enrollment. These documents will be provided to plaintiffs' counsel with students' names, dates of birth (but not months and years of birth), social security numbers, OSIS numbers and home addresses redacted. Documents produced pursuant to this paragraph are intended to inform plaintiffs' counsel regarding the performance of DOE's systems, but shall not form the basis of any contempt or enforcement motion, and shall not be used in this or any other action. Plaintiffs will not be permitted to seek attorneys fees for the review of any documents or any related work concerning the documents produced pursuant to this paragraph.

VII. DURATION OF ORDER AND RETENTION OF JURISDICTION

51) On the Effective Date the parties' obligations, rights and responsibilities under this Stipulation and Order of Settlement ("Stipulation"), and this Stipulation's terms and conditions, shall commence. Defendants' obligations under this Stipulation shall run from the Effective Date until the jurisdiction of the Court lapses. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action and any and all Settled Claims as against all Released Parties. Except as set forth in

paragraph 52, as of the Effective Date, all remedies in this action are limited to those provisions specifically set forth in this Stipulation.

52) Plaintiffs' Fourth, Fifth and Sixth Claims for Relief, as set forth in the Second Amended Complaint, concerning the provision of educational services by the DOE at Passages Academy, have been resolved by a letter agreement between the parties, and are hereby dismissed with prejudice.

53) The jurisdiction of this Court shall end seventy-five (75) calendar days following the provision of the third monitoring report described in paragraph 49(b) ("Termination Date"), unless plaintiffs move pursuant to paragraphs 58 and 59 of this Stipulation. Prior to the expiration date and/or until jurisdiction otherwise lapses in accordance with paragraphs 58 and 59, the Court shall retain jurisdiction over this agreement for the purpose of enforcement. On the Termination Date, unless a motion or motions pursuant to paragraphs 54 - 59 have been timely made, all rights and claims arising under the provisions of this Stipulation shall terminate and all remaining claims under this complaint shall be dismissed with prejudice. Defendants reserve their right to move to terminate any provisions concerning education at Passages Academy pursuant to the Prison Litigation Reform Act ("PLRA") before the jurisdiction of the Court lapses.

VIII. ENFORCEMENT

54) In the event of a motion by plaintiffs for enforcement, contempt or for further relief based upon the DOE's alleged non-compliance with this Stipulation, plaintiffs bear the burden of establishing that the DOE's failures or omissions to comply with the provisions of this Stipulation were not minimal or isolated, but were sufficiently

significant and widespread or recurring as to be fairly characterized as systemic. Any such motion must be filed no later than 30 days prior to the Termination Date.

55) During the time that the Court retains jurisdiction for enforcement purposes, if plaintiffs' counsel believes that the DOE has failed to comply, as defined by paragraph 54 above, with the provisions of this Stipulation, plaintiffs' counsel shall notify defendants' counsel in writing of the nature and specifics of the alleged failure to comply and shall specify the evidence of the claimed violation, at least fifteen (15) business days before any motion is made for enforcement of this Stipulation or for contempt or for further relief. The parties' counsel shall meet within the fifteen (15) business day period following notice to DOE defendants' counsel in an attempt to arrive at a resolution of the alleged failure to comply.

56) If no resolution is reached within fifteen (15) business days from the date of notice, plaintiffs may move this Court for an order enforcing this Stipulation and/or for contempt or for further relief. Plaintiffs shall bear the burden of proving that the alleged noncompliance is sufficiently significant and widespread or recurring as to be systemic. Non-systemic individual and isolated violations of this Stipulation shall not form a basis for a finding that defendants have acted in contempt of this Stipulation, or a basis for a motion for enforcement or for further relief. Neither a single incident nor a series of incidents involving a single student shall constitute systemic noncompliance. No motion for contempt or enforcement or for further relief shall be brought to remedy those violations that the parties agree (a) have been cured, or (b) will be cured pursuant to a plan agreed upon by the parties, provided that the plan actually cured those violations. In the event that the parties agree to a plan to cure an alleged violation and plaintiffs believe

that the violation has still not been cured, plaintiffs must provide at least fifteen (15) business days notice before any motion is made for enforcement of this Stipulation or for contempt or for further relief.

57) Plaintiffs may not seek judicial relief in this action on behalf of individual Class Members who assert claims pertaining to matters that are the subject of this Stipulation, although plaintiffs may bring such cases to the attention of DOE defendants' counsel with the goal of resolving any disputes in such cases on an informal basis. Nothing in this paragraph diminishes the rights of individual Class Members pursuant to paragraph 1(o) of this Stipulation and Order of Settlement or to obtain relief as part of a successful class-wide enforcement motion.

IX. EXTENSION OF THE TERM OF THE STIPULATION

58) In addition to a motion for enforcement, contempt or further relief, plaintiffs may move this Court for an order extending the jurisdiction of the Court over this Stipulation and Order of Settlement by complying with the provisions of paragraphs 55 and 56, and shall make any such motion at least 30 days before the scheduled termination of this Court's jurisdiction, unless another date is agreed to by the parties, and, on an application for interim relief to extend the Stipulation and Order of Settlement pending a decision on the motion, the Court's jurisdiction is extended pending a decision on a motion for enforcement, contempt or further relief, including to extend the Court's jurisdiction. If the Court grants the interim relief of extending the Stipulation and Order of Settlement pending the decision on the motion, the defendants are required to comply with the provisions of the Stipulation and Order in issue pending the decision on the motion.

59) In the event plaintiffs move to extend the jurisdiction of this Court pursuant to paragraph 58 of this Stipulation and Order of Settlement, the standard for measuring defendants' compliance with the provisions of this Stipulation and Order of Settlement is that set out in paragraph 54 above of this Stipulation and Order of Settlement. Any such extension of the jurisdiction of this Court shall be for a period of not more than one (1) year at a time from the date the Court's jurisdiction was scheduled to terminate, and the scope of the relief the Court may order shall extend only so far as is necessary to correct violations of the specific provisions of this Stipulation and Order of Settlement. The plaintiffs may seek to extend the Court's jurisdiction for additional one-year periods beyond the first one-year period based on a showing that the defendants are not in compliance with this Stipulation as measured by the standard set forth in paragraph 54 above. Any provision of this Stipulation that is not the subject of a successful extension motion is terminated for all purposes on the Termination Date or when the Court's jurisdiction otherwise lapses.

X. ATTORNEY'S FEES

60) Plaintiffs' counsel shall provide counsel for defendants with all time records supporting plaintiffs' claim for attorneys' fees, and the parties shall attempt to agree on attorneys' fees through good faith negotiations. If the parties are unable to reach agreement on the amount of attorneys' fees, plaintiffs shall move the Court, pursuant to Rule 54 of the Fed. R. Civ. P., for an Order awarding the reasonable costs, fees, and disbursements to plaintiffs pursuant to 42 U.S.C. §1988. Defendants may oppose the motion, and the Court shall decide the motion.

XI. SETTLEMENT PROCEDURES

61) The Parties agree to take all necessary steps to obtain court approval of this settlement in the following sequence:

(a) Promptly after this Stipulation has been fully executed, Plaintiffs' Counsel shall make a motion to the Court for preliminary approval of this Agreement and for a finding that the class as defined in paragraph 5 and the subclasses defined in paragraphs 6-11 should be certified for settlement purposes. Defendants reserve the right to oppose this motion. Plaintiffs' counsel shall also request that, if the Court certifies a class for settlement purposes, the Court enter an Order for Notice and Hearing, substantially in the form annexed hereto as Exhibit D, setting procedures and a date for a fairness hearing on the proposed settlement and approving the Settlement Notice.

(b) If and when a class is certified for settlement purposes, within 10 business days of the date of the Court's order for Notice and Hearing, the DOE shall mail the Settlement Notice, attached hereto as Exhibit E, to all students who attended Passages Academy, at any time between December 14, 2001, and the date of this Stipulation who have not received a High School Diploma on or before the date of this Stipulation, at the addresses currently maintained in DOE's electronic records by the date ordered by the Court.

(c) If and when a class is certified for settlement purposes, the DOE shall within 10 business days of the date of the Court's order for Notice and Hearing post a one-page summary of the Settlement Notice, in substantially the same form as annexed hereto as Exhibit F, in all permanent DOE Enrollment Locations and at all Passages

Academy school sites, and shall maintain those postings until the conclusion of the fairness hearing.

(d) If and when a class is certified for settlement purposes, plaintiffs' counsel shall mail copies of the Settlement Notice to the administrative judges of the Family Courts in New York City, to OCFS for posting in its residential facilities and contracted facilities, and to the New York City Department of Juvenile Justice with a request to post the notice in its secure and non-secure detention facilities; and Plaintiffs' counsel shall post the Settlement Notice on the websites of Advocates for Children and the Legal Aid Society..

(e) Defendants shall bear all the costs incurred in connection with subparagraphs (b) and (c) of this paragraph.

62) If and when a class is certified for settlement purposes, and the Settlement contemplated by this Stipulation is approved by the Court, Counsel for the Parties shall jointly request that the Court enter an Order and Final Judgment.

63) Defendants' or Plaintiffs' Counsel shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so to all other parties within thirty (30) days of any of the following actions, if they occur: (i) the Court's denial of plaintiffs' motion for class certification and/or intervention; (ii) the Court's declining to enter the Order for Notice and Hearing; (iii) the Court's refusal to approve this Stipulation or any material part of it; or (iv) the Court's declining to enter the Order and Final Judgment.

64) In the event of appeal of the Court's final approval of the Settlement, Defendants' Counsel or Plaintiffs' Counsel may seek to stay the Effective Date of the Settlement.

65) Except as otherwise provided herein, in the event the Settlement is terminated, reversed, or fails to become effective for any reason, the parties to this Stipulation shall be deemed to have reverted to their respective positions in the action immediately prior to the execution of this Stipulation and, except as otherwise expressly provided, the parties shall proceed in all respects as if this Stipulation and any related orders had not been entered.

66) Plaintiffs' Counsel and Defendants' Counsel agree to cooperate fully with one another with respect to the parties' seeking Court preliminary approval of the Settlement Agreement and class certification, entry of the Order for Notice and Hearing; approval of the Settlement Notice, the Stipulation, and the Settlement; and entry of the Order and Final Judgment, except that Defendants reserve their right to oppose plaintiffs' motion for class certification and/or any motion for intervention; and all counsel agree to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

XII. GENERAL PROVISIONS

67) Nothing contained herein shall be deemed to be an admission by DOE defendants or the City of New York of liability or of the truth of any of the allegations set forth in the complaint, or that they have in any manner or way violated 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, the City of New York, or any other rules, regulations or bylaws of any department or subdivision thereof.

68) This Stipulation is solely for the purposes of settlement, and does not reflect the positions of the defendants in any other judicial or administrative action or proceeding. This Stipulation shall not be admissible in, nor is it related to, any other judicial or administrative action or proceeding or settlement negotiations, except that any party may use this Stipulation in connection with any subsequent action or proceeding brought to enforce the Stipulation.

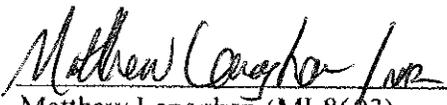
69) Notwithstanding the provisions of this Stipulation, DOE defendants reserve the right to implement, change, or otherwise alter or amend the procedures and requirements of this Stipulation if required by intervening changes in federal statute or regulation or state statute inconsistent with this Stipulation. DOE Defendants shall provide counsel for plaintiffs with written notification, by certified mail or by hand delivery with written acknowledgment of receipt, of a required or permitted change at least thirty (30) days prior to the commencement of implementation, unless DOE defendants are required or permitted to implement such a change in less than thirty (30) days. If DOE defendants are required to implement a change in less than thirty (30) days, DOE defendants shall provide notice to plaintiffs' counsel no later than seven (7) working days after learning of a required change. Plaintiffs may move to challenge whether the change is required by federal statute or regulations or state statute pursuant to the procedure denoted in paragraphs 42-45, supra.

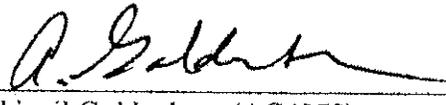
70) This Stipulation is final and binding upon plaintiffs and defendants, their successors and assigns.

Dated: Brooklyn, New York
February 14, 2011

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SO ORDERED:

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