

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, Plaintiff

v.

THE STATE OF NEW MEXICO; THE NEW MEXICO SCHOOL FOR THE VISUALLY
HANDICAPPED; and THE BOARD OF REGENTS OF THE NEW MEXICO SCHOOL FOR THE
VISUALLY HANDICAPPED, Defendants

STIPULATION

I. INTRODUCTION

Plaintiff, the United States, and defendants, the State of New Mexico, et al., in order to ensure the protection of the federal rights of students of the New Mexico School for the Visually Handicapped ("NMSVH"), and to avoid protracted and adversarial litigation, hereby stipulate and agree as follows:

1. The United States filed this action pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997 et seq.
2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345. Venue is proper pursuant to 28 U.S.C. § 1391(b).
3. The United States is authorized to initiate this action pursuant to 42 U.S.C. § 1997a and has satisfied all statutory prerequisites for filing this action.
4. This Stipulation does not constitute, nor shall it be construed in any manner, as an admission by the signatory State officials or entities of any violation of federal law. The parties to this Stipulation intend that this Stipulation is not evidence of liability, and is not to be used as evidence of liability in any other proceeding.
5. The defendants in this action are the State of New Mexico ("State"), the New Mexico School for the Visually Handicapped, and the Board of Regents of NMSVH. The New Mexico Department of Education is not named as a defendant, but as an agent of the State is bound by the terms of this Stipulation.
6. The defendants are legally responsible, in whole or in part, for the operation of and conditions at NMSVH, as well as for the care and treatment of the students attending that institution. Defendant State of New Mexico represents that it has authority for issuing such constructions of State law as are or may be required to ensure that State law comports with federal law.
7. NMSVH, located in Alamogordo, New Mexico, is an institution as that term is defined in 42 U.S.C. § 1997(1).
8. NMSVH students range in age from five to eighteen years old. Approximately half of the students attending NMSVH have one or more disabilities in addition to their visual impairment; some of these children are nonverbal and some have significant medical needs.
9. On February 26, 1997, the Attorney General of the United States, by and through the Acting Assistant Attorney General, Civil Rights Division, notified the Governor of New Mexico, the Attorney General of

New Mexico, and the Superintendent of NMSVH of her intention to investigate, pursuant to CRIPA, allegations of conditions depriving NMSVH students of federal constitutional and statutory rights.

10. In a letter dated April 17, 1998, the Attorney General, by and through the Acting Assistant Attorney General, Civil Rights Division, informed the Governor of New Mexico, the Attorney General of New Mexico, the Superintendent of the New Mexico Department of Education, the President of the Board of Regents of NMSVH, and the Superintendent of NMSVH of her investigation findings and informed them that she believed conditions at the School violate the federal constitutional and statutory rights of its students.

11. For the purpose of avoiding protracted and adversarial litigation, the parties agree to the provisions set forth in this Stipulation.

12. The parties agree that the provisions of this Stipulation are a reasonable, lawful and fair resolution of this action.

13. This Stipulation shall be applicable to and legally binding upon all of the parties, their officers, employees, assigns, and successors.

II. DEFINITIONS

1. The term "individualized education plan" (IEP) has the same meaning as it has in the IDEA, 20 U.S.C. § 1400 et seq., and regulations promulgated thereunder.

2. The term "least restrictive environment" (LRE) has the same meaning as it has in the IDEA, 20 U.S.C. § 1400 et seq., and regulations promulgated thereunder.

3. The term "mental health professional" refers to a licensed psychiatric social worker, a certified master's level counselor with training and specialization in mental health, a licensed psychologist, or a board-certified, licensed psychiatrist.

4. The term "related services" has the same meaning as it has in the IDEA, 20 U.S.C. § 1400 et seq., and regulations promulgated thereunder.

5. The term "special education" has the same meaning as it has in the IDEA, 20 U.S.C. § 1400 et seq., and regulations promulgated thereunder.

6. The term "supplementary aids" has the same meaning as it has in the IDEA, 20 U.S.C. § 1400 et seq., and regulations promulgated thereunder.

III. BRAILLE SKILLS INSTRUCTION

1. Defendants shall provide Braille instruction to all students who need such instruction in order to benefit from their educational program.

2. Within 60 days of the signing of this Stipulation, defendants shall employ or retain the services of as many full-time Braille skills instructors as are required to meet the educational needs of NMSVH students.

3. Within 45 days of the signing of this Stipulation, NMSVH, through its IEP team, shall assess each

student at the School to determine whether the student should receive Braille instruction, and for each student identified as needing Braille instruction, shall make a documented determination in the student's IEP of the number of hours per week that the student should receive Braille skills instruction, and shall provide such instruction until the student is able to read in Braille at a level commensurate with age and capability. Beginning with the second semester of the 1998-1999 school year, defendants shall ensure that each student or applicant for admission is assessed before the date of matriculation to determine the student's specific needs for Braille instruction, and the result of that assessment shall be documented in the student's IEP.

4. Beginning with second semester of the 1998-1999 academic year, the NMSVH IEP team shall assess periodically, and in no event less often than yearly, the Braille proficiency of each student identified as a reader of Braille, whether or not that student is currently receiving continuing education in Braille skills. NMSVH shall provide additional instruction as necessary to remediate any deterioration in Braille skills identified by such periodic assessment of students.

5. Beginning with the second semester of the 1998-1999 academic year, each student who matriculates at NMSVH and has been identified by his or her local public school district as being in need of Braille skills shall receive training in Braille upon matriculation at NMSVH unless and until a substantiated determination is made and documented in the student's IEP that the student does not need instruction in Braille.

6. Within 60 days of the signing of this Stipulation, defendants shall eliminate delays or waiting lists for Braille instruction at NMSVH, and ensure that delays or waiting lists do not develop.

7. Within 60 days of the signing of this Stipulation, defendants shall ensure that whenever technically possible, texts in all courses offered at the School are available in Braille for the students who need them. If texts are not available in Braille from the publisher, defendants shall have thirty (30) days from the date the text is received from the publisher in an electronic medium capable of conversion to Braille within which to make the text available to students in Braille.

8. Immediately upon the signing of this Stipulation, the School's Braille instructor(s) and other instructional staff shall make reasonable efforts to ensure that students studying and using Braille do so using their fingers, not their eyes.

9. NMSVH shall continue to offer courses in the reading and writing of Braille to NMSVH staff. Defendants shall ensure that all academic teachers at NMSVH become proficient in Braille no later than September 1, 1999. The Braille proficiency of each NMSVH teacher shall be assessed periodically, but in no event less often than yearly, by a qualified professional. If in the yearly assessment any teacher is determined not to be proficient in Braille, that teacher shall be required to become proficient within 180 days by means of a refresher course or tutorials offered either on or off the School's campus at the expense of the School. Other School staff, including education assistants and dorm counselors, also will be required to meet Braille proficiency requirements, though these requirements may not be at the same level as those required of academic teachers. A protocol designed to measure Braille reading and writing proficiency will be developed by a qualified professional within 30 days of the signing of this Stipulation. The protocol will be presented to the United States for review by such date and the United States shall have an opportunity to object to the proposal within 30 days. If the United States objects, a new protocol shall be developed within 60 days with technical assistance provided by the United States. Once an appropriate protocol has been developed, it will be used to measure Braille reading and writing proficiency of academic teachers and other staff required to meet proficiency requirements. All staff subject to Braille proficiency requirements shall be required to be proficient in Braille by September 1, 1999.

IV. ORIENTATION/MOBILITY TRAINING

1. Beginning with the second semester of the 1998-1999 academic year, all students seeking admission or enrollment at NMSVH shall receive an initial orientation and mobility (O&M) assessment as part of the pre-admission process. At least annually thereafter, as part of the IEP team's annual review and in consultation with the School's O&M instructor, the IEP team shall consider each student's need to use a cane or other orientation and mobility assistive device, and shall document the team's conclusions and the basis for those conclusions in the student's IEP.
2. Any student identified by the IEP team as needing a cane or other orientation and mobility assistance device shall be encouraged to use the device and shall receive O&M instruction in accordance with the student's IEP until he or she can demonstrate proficiency. Students capable of deriving benefit from developing O&M proficiency in a setting other than the School's campus shall receive O&M instruction until they can demonstrate proficiency in a setting, appropriate to the individualized needs of the student, other than the School's campus. Students shall be given O&M training sufficient to enable each to navigate as independently as possible.

V. SUPPLEMENTAL VISION AND MOBILITY AIDS

Immediately upon the signing of this Stipulation, defendants shall ensure that any student who misplaces, damages, or destroys his or her eyeglasses or other supplemental vision or mobility aids receives replacement eyeglasses or aids in a timely manner.

VI. MENTAL HEALTH, BEHAVIORAL, AND SUBSTANCE ABUSE SERVICES

1. Defendants shall provide care, treatment, and services sufficient to meet the needs of each student who has mental illness or who has substance abuse, behavioral, or emotional problems, including emotional or behavioral needs related to his or her vision impairment.
2. Within 30 days of the signing of this Stipulation, defendants shall employ or retain the services of one full-time and one half-time mental health professionals (as defined in Section II, Paragraph 3 of this Stipulation) to provide counseling and other mental health services, including emergency mental health services, on campus to students. NMSVH may satisfy the requirements of this paragraph by entering into a contract with a private provider or public agency for the provision of appropriate mental health counseling and other mental health services for students. Each student receiving counseling shall receive counseling on a basis consistent with the student's IEP, for a period no shorter than the period established by the IEP team, unless a shorter period of treatment is determined to be clinically appropriate by the professional treating the student. Defendants shall ensure that mental health services, as distinguished from guidance counseling and other services, are provided only by qualified persons as defined in Section II, Paragraph 3 of this Stipulation. Defendants may provide students with the services of school counselors or school social workers, but such services shall not be considered appropriate to replace or substitute for mental health services.
3. Within 30 days of the signing of this Stipulation, defendants shall ensure that any student needing emergency mental health care is examined and treated promptly by a psychiatrist or other medical doctor (to determine whether psychotropic medication is indicated) or if appropriate, by another mental health professional as that term is defined in Section II, Paragraph 3 of this Stipulation.
4. Within 60 days of the signing of this Stipulation, defendants shall ensure that the School has implemented a program sufficient to (a) train all educational, residential (dormitory) and health care

staff on how to recognize serious behavioral and emotional problems of students, including substance abuse problems, and (b) educate students about behavioral and emotional problems, including substance abuse, and how to obtain confidential help with these problems.

5. Upon the signing of this Stipulation, defendants shall develop and implement appropriate, individualized therapeutic and behavior modification interventions as necessary to address any student's suicidal or self-injurious behavior.

6. Within 30 days of the signing of this Stipulation, defendants shall ensure that each NMSVH student's behavioral and mental health needs, if any, are identified and incorporated into his or her IEP, along with any needed related services, and that these elements of the IEP, like any other elements of the IEP, are implemented.

7. Upon the signing of this Stipulation, defendants shall ensure that nursing staff at the School have information concerning students' mental health and substance abuse status where this information is necessary for School nurses to appropriately care for students, subject to the requirement that the nursing staff shall maintain the confidentiality of such information.

8. The mental health professionals employed or retained pursuant to Section VI, Paragraph 2 of this Stipulation shall assist the School in implementing the provisions of this Section of the Stipulation, as well as any other policies developed by the School relating to behavior, mental health and substance abuse.

VII. RESPONSE TO INJURIES/PROTECTION FROM ABUSE AND NEGLECT

1. Defendants shall ensure that NMSVH students are protected from harm.

2. Within 60 days of the signing of this Stipulation, in order to ensure that NMSVH students are safe, defendants shall review NMSVH's policies, procedures, and practices for reporting and investigating allegations of abuse, neglect and injury and taking action when abuse and/or neglect allegations are substantiated, or when injuries are found to be preventable. Within 60 days of the signing of this Stipulation, defendants shall:

(a) Ensure that all reports of abuse and neglect of students made to NMSVH staff are reported on a single standardized form, and that all reports of student injuries are made on another standardized form. The content of these forms shall be maintained in hard copy as well as in the automated system described in Section VII, Paragraph (2)(d).

(b) Review NMSVH's 7/26/96 policy (NMSVH Policy No. 517) on reporting suspected abuse and neglect and assure that mechanisms for students, relatives, parents, guardians, and visitors to report allegations of abuse or neglect to School and State officials are implemented. Notify all staff at least twice yearly of their obligation to report abuse and neglect to School and State officials, and the mechanisms for doing so. Review all policies on abuse and neglect and injuries at least annually. Provide all new staff with information or instruction on child abuse and neglect issues and reporting, and on recognizing and reporting student injuries.

(c) Post notices in regular print and in Braille in conspicuous locations throughout NMSVH concerning the mechanisms referred to in Section VII, Paragraph (2)(b) for reporting allegations of abuse or neglect of students. Describe these mechanisms in the student and parent handbooks to be distributed to students and parents at least once yearly, and provide a separate written notification of these mechanisms (in the

form of a letter) to parents and guardians at least once yearly. Provide this individually distributed information orally to students, parents and guardians who are illiterate or have difficulties reading; and in Braille to students, parents, guardians and staff upon request.

(d) Develop and implement within 30 days of signing this Stipulation an automated system that will be used to maintain all reports of child abuse or neglect made to NMSVH staff, serious incidents of student misbehavior and student injuries, and, except where precluded by State law, the results of the investigation of any such allegations.

(e) Utilize the automated system described in Section VII, Paragraph (2)(d) to track trends in allegations of abuse and neglect reported to NMSVH (including NMSVH staff), defined by (i) type of abuse or neglect alleged (physical, sexual, emotional; staff on student; student on student), (ii) student(s) involved, (iii) staff involved, (iv) source of allegation, (v) date of incident, (vi) outcome of investigation, and (vii) any other necessary data.

(f) Ensure coordination as appropriate between NMSVH and the New Mexico Department of Children, Youth and Families so that every report of child abuse or neglect is investigated by one or both entities, or where appropriate by law enforcement. NMSVH shall report any instances in which there is reason to suspect abuse or neglect to the appropriate authorities, as required by State law, NMSA 1978 § 32A-4-3, and shall cooperate in any investigation conducted by any other State agency or by law enforcement.

(g) Ensure that each time the NMSVH Board of Regents convenes, the NMSVH Superintendent reports to the Board in executive session any allegations or suspected incidents of abuse or neglect at the School.

(h) Utilize the automated system described in Section VII, Paragraph (2)(d) to track trends in student injuries, defined by (i) type of injury, (ii) cause of injury, (iii) student injured, (iv) date of injury, and (v) any other necessary data.

(i) Establish a review committee composed of the NMSVH Superintendent, Director of Student Services, Mental Health Counselor(s) and Nurse(s), to review all reported student injuries on an ongoing basis, and to report to the Board of Regents on a quarterly basis.

Whenever a student is injured, the report of the injury, together with any evidence such as photographs, will be evaluated by the review committee to determine any preventive steps that shall be taken on an individual and systemic basis to prevent further injuries.

(j) Ensure that whenever an NMSVH staff member has reason to suspect abuse or neglect of a student, the staff member complies with the reporting requirement of Section VII, Paragraph 2(k) below, and then advises the Superintendent of NMSVH. The Superintendent shall not screen, prevent or place conditions on reports to the Department of Children, Youth and Families or law enforcement. In responding to an allegation of abuse or neglect of a student, the Superintendent shall make a determination of any immediate actions necessary to protect the student or preserve evidence; shall implement such actions immediately; and shall cooperate with any agency investigating the alleged incident or incidents.

(k) Ensure that reports of abuse and neglect are made to law enforcement, the Department of Children, Youth and Families, or other authorized agencies, immediately where any defendant or staff member has reason to suspect abuse and/or neglect, or has learned of an allegation of abuse and/or neglect. The State shall use reasonable efforts to assure that investigations by authorized agencies are initiated

immediately. Results of the investigation will be requested by NMSVH and will be documented and retained in the automated system described in subparagraph VII(2)(d) above.

(l) Ensure that NMSVH or its Board of Regents takes disciplinary action in cases of documented, substantiated abuse or neglect of students by staff members.

(m) Ensure that NMSVH investigates the criminal history and other relevant background factors of every applicant offered employment at the School, whether full-time or part-time, temporary or permanent, in the manner specified by NMSA § 22-10-3.3B (1998 Supp.). The School shall require similar assurances as to the background of personnel who have unsupervised access to NMSVH students pursuant to contracts or other arrangements made by the School or the defendants with private entities.

3. Defendants shall ensure that within 30 days of the signing of this Stipulation, NMSVH and the Department of Children, Youth and Families enter into a protocol or cooperative agreement to assure that NMSVH is notified of any allegation of abuse or neglect of an NMSVH student by an NMSVH employee, contractor or student, and permitting an NMSVH investigation for purposes of protecting students and determining whether disciplinary action against any staff member is appropriate, provided such investigation would not impede an actual investigation undertaken by the Department of Children, Youth and Families, or law enforcement. This protocol or cooperative agreement shall be incorporated into this Stipulation, by way of an attachment, within 60 days of the signing of this Stipulation. NMSVH and the Department of Children, Youth and Families shall work collaboratively and cooperatively wherever possible to investigate allegations of abuse and neglect of NMSVH students as referred to above. NMSVH shall seek assistance from the Department of Children, Youth and Families in implementing Section VII of this Stipulation.

4. Nothing in this Stipulation otherwise releases NMSVH or its staff from their obligations to notify appropriate authorities, including those agencies specified in NMSA 1978 § 32A-4-3, when there is reason to suspect abuse and/or neglect involving an NMSVH student.

VIII. PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT AND DOCUMENTATION THEREOF

1. Beginning with the second semester of the 1998-1999 academic year, defendants shall ensure that no student matriculates at or attends NMSVH without an individualized, documented determination that the School is the least restrictive environment in which the student's needs can be met, i.e., a determination that "the nature or severity of the disability of [the] child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 20 U.S.C. § 1412(a)(5) (A).

2. Within 60 days of the signing of this Stipulation, defendants shall revise the forms used for documentation of the need for placement of students at NMSVH, to permit an individualized and substantiated description of the reason(s) for residential placement of each student at NMSVH. The reasons for placement of each student at NMSVH shall be documented immediately on the new forms.

3. As part of each student's annual IEP review, the IEP team shall consider and document its analysis of whether continued placement of the student at NMSVH is the least restrictive environment appropriate to the student's needs under the IDEA and regulations promulgated thereunder.

4. The State or the School shall, within 120 days of the signing of this Stipulation, commission a study by a qualified professional or agency to determine whether students at NMSVH, as well as other blind

and visually impaired students in the State, might be appropriately educated in their local public school districts through the use, among other things, of outreach educators employed by NMSVH.

5. With the signing of this Stipulation, defendants represent and affirm that they have adopted a construction of NMSA 1978 §§ 21-5-5 and 21-5-8 that is consistent with the IDEA, and that they do not construe, interpret or seek to enforce these statutes in a manner which would require student attendance at NMSVH for seven years or expose violators to criminal sanctions. The NMSVH Board of Regents and the New Mexico Attorney General further represent and affirm that they will seek the amendment or repeal of these statutes during the 1999-2000 session(s) of the New Mexico Legislature.

IX. GENERAL PROVISIONS

1. Defendants shall employ or reassign a sufficient number of individuals to implement the provisions of this Stipulation.

2. Defendants shall develop and implement quality assurance mechanisms that are sufficient to enable the defendants to demonstrate that they are ensuring the full implementation of the provisions of this Stipulation.

3. Within 90 days of the signing of this Stipulation, NMSVH shall initiate the advisory council approved by the Board of Regents at its September 26, 1997 meeting. The Board of Regents shall invite interested members of the public, parents and guardians of NMSVH students, and NMSVH students to nominate persons to serve on the advisory board to be selected by the Board of Regents. The council shall include three parents and/or guardians of NMSVH students (one of whom shall be a parent of an Outreach student), one NMSVH student and two NMSVH alumni. The council will provide parent and consumer input to the Board of Regents, including advice on the implementation of this Stipulation.

4. Within ten days of the signing of this Stipulation, the defendants shall provide a copy of this Stipulation and shall explain the terms of this Stipulation to all employees of NMSVH, and to all contractors in a position to have access to NMSVH students without direct supervision, in order to ensure their understanding of the requirements of this Stipulation and the necessity for strict compliance with the Stipulation. Until such time as the Stipulation is no longer in effect, NMSVH shall ensure that all NMSVH staff members and other individuals responsible for implementing this Stipulation sign a statement indicating that they have read and understand this Stipulation.

Such statements shall be retained in the NMSVH personnel office. The defendants shall require strict compliance with this Stipulation by their respective employees, agents, assigns, or successors.

5. Within ten days of the signing of this Stipulation, and until termination of this Stipulation, the defendants shall provide notice of this Stipulation to all NMSVH students and their parents or guardians by informing them in writing, either in a letter or as part of a handbook, that NMSVH is operating under the terms and conditions of this Stipulation and that upon request, any student and any parent or guardian shall be given a copy of the complete Stipulation. The notification shall include a summary of the substantive provisions of the Stipulation in easily understood language. Defendants shall provide notification of the Stipulation orally to students, parents and guardians who are illiterate or have difficulties reading; and in Braille to students, parents, guardians and staff upon request.

X. CONSTRUCTION, IMPLEMENTATION, TERMINATION

1. This Stipulation shall take effect on the date of its signing by the parties. Except where otherwise

specifically

indicated, the defendants shall fully implement all of the provisions of this Stipulation within one hundred and eighty days of the parties' signing of the Stipulation.

2. The defendants shall provide the Department of Justice, and its consultative experts and agents, with access to all buildings and facilities at NMSVH, faculty, staff, and students attending NMSVH; records maintained by the defendants or any State actor (including private contractors providing educational or related services to NMSVH students) in any location concerning students' education, placement, and medical (including mental health) status; reports of abuse, neglect or other misconduct involving any student; and all records maintained by the State, the School or the Board of Regents concerning the School's personnel, budget, operation and management.

3. The defendants shall maintain sufficient records to document their compliance with all the terms of this Stipulation. The defendants also shall maintain any and all records required by or developed under this Stipulation.

4. Seventy-five days after the signing of this Stipulation and quarterly thereafter, the defendants shall provide the United States Department of Justice with a status report of their compliance with each provision of this Stipulation. The status report shall state the steps taken to achieve compliance with each provision of the Stipulation during the reporting period.

5. The defendants shall report immediately to the United States Department of Justice any substantiated allegation of abuse or neglect and any serious student injury or death that occurs during the life of this Stipulation.

6. Within 30 days of receipt of written questions from the United States concerning the defendants' compliance with the Stipulation, the defendants shall provide the United States with written answers and any requested documents regarding the defendants' compliance with the requirements of this Stipulation.

7. To ensure that the provisions of this Stipulation are properly and timely implemented, the Court shall retain jurisdiction over this action for purposes of enforcement of the Stipulation, until such time as the defendants have fully implemented all requirements of the Stipulation and compliance has been maintained for at least one year. When the defendants have determined that they are in full compliance with the Stipulation and that full compliance has been maintained for no less than one year, the defendants shall so advise the United States in writing. At that or any other time, the United States may evaluate the status of compliance with this Stipulation, including by means of a tour of the School and a review of documents. If the parties agree that the defendants have

achieved full compliance with the Stipulation and that full compliance has been maintained for no less than one year, the parties shall request that the Court issue an order dismissing the Stipulation and the Court's order retaining authority to enforce the Stipulation. In case of dispute concerning defendants' compliance with the Stipulation, the burden shall be on the United States to demonstrate to the Court that defendants have not met the criteria for full compliance with the Stipulation and/or have not maintained full compliance with the Stipulation for a period of at least one year, and that the Stipulation and order through which the Court retains authority to enforce the Stipulation should not be dismissed.

8. The defendants may, during the pendency of this Stipulation, modify policies and procedures referred to herein, provided that such revision is consistent with the terms and conditions of this Stipulation. The defendants shall provide the United States with a copy of any such revisions on a quarterly basis.

9. The United States shall not seek judicial enforcement of this Stipulation during its initial 180 days term except in case of conditions that pose a threat to the life, health or safety of NMSVH students.

10. The United States shall notify the defendants of any instance in which it maintains that the defendants have failed to carry out the requirements of this Stipulation. With the exception of conditions posing a threat to the life, health or safety of NMSVH students, the defendants shall have thirty (30) days from the date of a deficiency notice to respond to or cure the claim of non-compliance before any judicial enforcement of this Stipulation is sought by the United States.

11. All parties shall bear their own costs, including attorneys' fees.

Dated: _____, 1999

AGREED TO:

FOR DEFENDANTS

THE STATE OF NEW MEXICO, ET AL.

THE HONORABLE PATRICIA A. MADRID, Attorney General, State of New Mexico

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FOR PLAINTIFF

THE UNITED STATES OF AMERICA

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By: _____ By: _____

JOHN J. KELLY, United States Attorney, District of New Mexico

JAMES SALAS, President, Board of Regents, New Mexico School for the Visually Handicapped

_____ By: _____

ROBERT GORENCE, First Assistant U.S. Attorney

SIMONS CUDDY & FRIEDMAN, Counsel to New Mexico School for the Visually Handicapped

By: _____

JOHN F. KENNEDY

ORDER OF CONDITIONAL DISMISSAL

This Court having reviewed the foregoing Stipulation, the United States' Complaint, and the Motion for Conditional Dismissal of the Action under Rule 41(a)(2) of the Federal Rules of Civil Procedure, the action is dismissed without prejudice, subject to the parties' entry into the Stipulation set forth in its entirety above, with which the parties are hereby directed to comply. The Stipulation shall be merged into this Order of conditional dismissal. The dismissal of this action is specifically conditioned upon the parties' compliance with the Stipulation, which is in the public interest, and a fair and equitable resolution of this action. This Court retains jurisdiction to enforce the Stipulation until such time as a final order dismissing the Stipulation has been entered. The Clerk is directed to place the case on the Court's inactive docket.

IT IS SO ORDERED this ____ day of _____, 1999, at Albuquerque, New Mexico.

UNITED STATES DISTRICT JUDGE