

Cott, & mag.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

**USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 12/15/14**

T.H., individually and as next friend to minor child J.H.,
K.P., as next friend to minor child W.P.,
K.J., individually and as next friend to minor child J.R.,
C.J., individually and as next friend to minor child J.M.,
Y.P., individually and as next friend to minor child N.R.,
M.E., individually and as next friend to minor child D.E.,
T.W., individually and as next friend to minor child A.A.,
A.D., individually and as next friend to minor child S.D.,
N.C.R., individually and as next friend to minor child C.R.,
I.S., individually and as next friend to minor child Q.A.,
R.M.T., individually and as next friend to minor child R.T.,

Plaintiffs,

-against-

CARMEN FARIÑA, as Chancellor of the New York City
Department of Education; the NEW YORK CITY
DEPARTMENT OF EDUCATION; the CITY OF NEW
YORK; DANIEL A. NIGRO, as Commissioner of the Fire
Department of New York; and JOHN/JANE DOE #'s 1-24
in their individual capacities,

Defendants.

13 Civ. 8777
(JMF)(JLC)

**STIPULATION AND
ORDER OF
SETTLEMENT**

WHEREAS, Plaintiffs T.H., J.H., K.P., W.P., K.J., J.R., C.J., J.M., Y.P., N.R., M.E.,
D.E., T.W., A.A., A.D., S.D., N.C.R., C.R., I.S., Q.A., R.M.T., and R.T. (collectively,
"Plaintiffs") filed an Amended Complaint (the "Amended Complaint") on March 18, 2014
alleging that Defendants Carmen Fariña, as Chancellor of the New York City Department of
Education ("Chancellor Fariña"), the New York City Department of Education ("DOE"), the
City of New York (the "City"), Salvatore J. Cassano, as Commissioner of the Fire Department of
New York ("Commissioner Cassano"), and John/Jane Does Nos. 1-24 (collectively,
"Defendants") violated the federal and New York constitutions, federal statutes, and the New

**USDC SDNY
DATE SCANNED 12/15/14**

York City Human Rights Law by improperly calling 911, taking Plaintiffs to emergency rooms, discriminating against them on the basis of their disabilities and/or perceived disabilities, and interfering with their educational opportunities;

WHEREAS, pursuant to Federal Rule of Civil Procedure 25(d), Daniel A. Nigro, Commissioner of the Fire Department of the City of New York (“FDNY”) is substituted for Salvatore J. Cassano;

WHEREAS, Defendants deny that they have taken any action that violates the federal or state constitutions or federal, state, or local laws;

WHEREAS, Defendants deny any liability whatsoever to Plaintiffs and assert that they have meritorious defenses;

WHEREAS, nothing in this Stipulation and Order of Settlement shall be deemed to be a finding or an admission that Defendants have in any way violated Plaintiffs’ rights as contained in the constitutions, statutes, ordinances, rules and regulations of the United States, the State of New York or the City of New York;

WHEREAS, the parties wish to voluntarily resolve the claims raised in the Amended Complaint, according to the terms set forth in this Stipulation and Order of Settlement, in order to avoid the costs and uncertainty of litigation; and

WHEREAS, the parties hereby waive trial or evidentiary hearing, as well as the entry of findings of fact and conclusions of law, and have agreed to the entry of this Stipulation and Order of Settlement, as indicated by the signatures appearing below;

NOW, THEREFORE, IT IS HEREBY AGREED by and among the parties as follows:

I. DEFINITIONS

For purposes of this Stipulation and Order of Settlement and Exhibit A to this Stipulation and Order of Settlement, the following terms shall have the following meanings:

1. “Agency Site” is a site of a District 75 (“D75”) school: (a) that is not located in a DOE school building; (b) where students receive therapeutic, clinical, or other non-instructional services that are provided by non-DOE employees; and (c) where DOE provides instructional services only. “Agency School” means a D75 school comprised exclusively of Agency Sites.

2. “Building Response Team (BRT)” is a team selected by the principal, or the principals if more than one school is located in a building or on a campus, to serve as the building’s core emergency response group to help coordinate and activate building/campus-wide procedures in a school-related emergency until first responders arrive.

3. “Crisis Intervention Team” is a school crisis response/prevention/education/intervention multidisciplinary team which is established in each school in accordance with Chancellor’s Regulation A-755.

4. “Crisis De-escalation Plan” is a component of each school’s crisis intervention plan which contains the information noted in Paragraph II.C.3.

5. “Designated Schools” means New Explorations Into Science, Technology and Math (01M539); P.S. 149 Sojourner Truth (03M149); The Young Scholars’ Academy of the Bronx (11X289); and P.S. 141 K (75K141) (collectively, “Plaintiffs’ Schools”), and 20 Selected Schools. “Selected Schools” means the 20 schools with: (a) the highest rates of transports of students to a hospital emergency room for an emotional/psychological condition in the prior school year, as determined by dividing the number of such transports from a school by that school’s student enrollment; and (b) a minimum of five such transports of students in the prior

school year. In the event there are fewer than 20 schools with a minimum of five such transports in the prior year, the remaining Selected Schools will be determined by rate alone. In no event will the number of Selected Schools in any year be fewer than 20. The Selected Schools will not include P.S. 023 Q (75Q023) or home and hospital instruction programs. For purposes of calculating rate of transport, student enrollment shall be based upon the enrollment numbers for each school as annually reported in DOE's Audited Register.

6. "Designated Site" means a site of a Designated School that is located in a DOE school building but excludes any D75 school site that exclusively serves students in inclusion, day-treatment, or work-study programs. A Designated School with a single site will also be considered a Designated Site. In the event DOE believes additional schools or sites not in existence at the time this Stipulation and Order of Settlement is entered, or in existence at the time this Stipulation and Order of Settlement is entered but subsequently materially reorganized or reconfigured, should be excluded from the list of Designated Schools or Designated Sites, DOE shall so advise Plaintiffs by July 31 of each year. Defendants shall initiate a meet and confer process with Plaintiffs to discuss the exclusion of such sites and schools. If, after the parties have met and conferred, they have not reached an agreement about such matter, Defendants may move to modify this Stipulation and Order of Settlement solely for the purpose of seeking an order from the Court permitting such proposed sites or schools to be excluded from the list.

7. "DOE" is the New York City Department of Education. "School" means a school operated by DOE.

8. "EMS" is the Emergency Medical Service Bureau of the Fire Department of the City of New York.

9. “FDNY” is the Fire Department of the City of New York.

10. “Online Occurrence Reporting System (OORS)” is DOE’s electronic system of record for documenting and maintaining information about school-related incidents.

11. “Occurrence Report” is the report about school-related incidents prepared in OORS by the principal/designee.

12. “Plaintiffs’ Counsel” means Legal Services NYC and Cuti Hecker Wang LLP.

13. “School Year” is the period from July 1 to the following June 30.

14. “Special Needs Coordinator” is the staff person who is the primary contact on the Building Response Team for issues involving special needs students which may arise during a school-related emergency.

15. “Stipulation Period” is the period from the entry of this Stipulation and Order of Settlement through June 30, 2018.

16. “TCIS Training” means the Therapeutic Crisis Intervention for Schools Training developed by Cornell University.

17. “TCIS Refresher Training” means the Therapeutic Crisis Intervention for Schools Refresher Training developed by Cornell University.

II. AGREEMENT REGARDING POLICIES, TRAINING, AND REPORTING

A. CHANCELLOR’S REGULATION

1. DOE shall include the language of the attached Exhibit A in a proposed Chancellor’s Regulation with an effective date of August 1, 2015, that if enacted, will be binding on DOE. DOE shall post the proposed Chancellor’s Regulation for adoption at a meeting of the Panel for Education Policy scheduled to be held prior to June 1, 2015.

2. DOE shall communicate interim guidance on the policies and procedures set forth in Section I of Exhibit A to all principals by January 31, 2015. Defendants shall provide Plaintiffs with a copy of the interim guidance two weeks prior to communicating the interim guidance to all principals.

3. Within seven days of the vote by the Panel for Educational Policy on the proposed Chancellor's Regulation incorporating the language in Exhibit A, Defendants will notify Plaintiffs that a vote was held and provide Plaintiffs with the text of the adopted regulation. If the relevant language of the Chancellor's Regulation as adopted is different than Exhibit A, then Plaintiffs shall have seven days from the notification to request a meeting with Defendants to discuss this development. If the parties cannot agree upon an appropriate course of action in light of this development, then Plaintiffs shall have 30 days from the meeting of the parties to make an application to the Court for appropriate relief in light of the development.

B. FDNY POLICIES

1. When EMS responds to a school's request for an ambulance in connection with a student experiencing an emotional, behavioral or psychiatric event, EMS will follow its regular policies and procedures for patient assessment, treatment and transport. If the student's parent seeks to refuse medical assistance or transport for the student, EMS will make a determination as to whether such request will be honored consistent with its policies and procedures governing refusal of medical aid (EMSC OGP 106-04), treatment and transport of a minor (EMSC OGP 106-05) and assignments involving an EDP (emotionally disturbed person) (EMSC OGP 106-08).

2. When EMS is called to a school for a student experiencing an emotional, behavioral or psychiatric event, if school staff has been unable to contact the student's parent, the

on-scene 911 responders will conduct an assessment of the student and obtain relevant information from school staff and others when appropriate and then determine, in consultation with FDNY medical oversight if necessary, whether the student requires emergency medical treatment and/or transport.

3. Within 90 days of the date of entry of this Stipulation and Order of Settlement, Defendants will provide Plaintiffs with written confirmation that FDNY has communicated with its EMS personnel to reinforce the policies governing refusal of medical aid (EMSC OGP 106-04), treatment and transport of a minor (EMSC OGP 106-05) and assignments involving an EDP (emotionally disturbed person) (EMSC OGP 106-08) with respect to the EMS responses set forth in Paragraphs II.B.1-2.

C. CRISIS INTERVENTION TEAMS AND DE-ESCALATION PLANS

1. Each school shall have a Crisis Intervention Team.

2. As of the effective date of a Chancellor's Regulation which incorporates the policies in Exhibit A, the responsibilities of the Crisis Intervention Team shall include assisting in de-escalating incidents involving student behavior that may pose a substantial risk of serious injury to the student or others.

3. By October 31 of each year, each Crisis Intervention Team shall develop a Crisis De-escalation Plan for its school. The Crisis De-escalation Plan shall include:

- a. Strategies for de-escalating behavioral crisis situations;
- b. Identification of locations in the school building in which students in crisis may be safely isolated from others;
- c. Identification of school staff trained in de-escalation techniques;

d. Identification of in-school and community resources that are available to the school and parents (e.g., mental health clinics, mobile crisis teams, facilities that provide urgent/same-day mental health assessments);

e. Description of how crisis de-escalation and response protocols are communicated to school staff.

4. By October 1 of each year, DOE shall make available to all schools best practices guidelines for: (a) the development of Crisis De-escalation Plans; and (b) the presentation of the Crisis De-escalation Plans to school staff at the orientation sessions described in Paragraph II.D.11. The best practices guidelines for conducting orientations shall include all of the requirements set forth in Paragraph II.D.11.d.i-iv. Defendants shall provide Plaintiffs with a copy of the best practices guidelines by September 29 of each year.

5. By the first day in September 2015 in which schools are open for instruction, DOE shall have staff designated to: (a) review each school's Crisis De-escalation Plan to ensure that it contains the information described in Paragraph II.C.3.; and (b) provide supports to schools in the development of such plans.

6. By February 1, 2016, and by each subsequent February 1, the designated staff shall review each school's Crisis De-escalation Plan to ensure that it contains the information described in Paragraph II.C.3.

7. By February 1, 2016, and by each subsequent February 1, each school must certify that it has conducted the orientation session required in Exhibit A in accordance with the best practices guidelines described in Paragraph II.C.4.

8. On or after March 1, 2016 and on or after each subsequent March 1, Plaintiffs may provide Defendants with a written request that DOE provide up to 75 school Crisis De-

escalation Plans of schools identified by Plaintiffs. Defendants shall provide the requested plans to Plaintiffs within 21 days of receiving Plaintiffs' written request.

9. By March 1, 2016 and by each subsequent March 1, Defendants will provide Plaintiffs with written confirmation that DOE is in compliance with Paragraphs II.C.1., II.C.3., II.C.4., II.C.5., II.C.6., and II.C.7.

D. TRAINING, ORIENTATION, AND COMMUNICATION OF DOE POLICY

1. DOE will provide TCIS Training to 500 employees assigned to Designated Sites at Designated Schools per school year in school years 2015-2016, 2016-2017, and 2017-2018. This Training will be in addition to the voluntary TCIS Training currently provided to DOE employees throughout the school system. DOE will make good-faith efforts to make available to DOE employees during the Stipulation Period voluntary TCIS Training beyond that which is mandated by this Stipulation. The intention of these efforts will be to substantially increase the total number of DOE employees trained in TCIS during the Stipulation Period compared to the total number of DOE employees trained in TCIS in the three years prior to July 1, 2015. If DOE provides TCIS Training to DOE employees during the period between July 1 and the first day in September in which schools are open for instruction, such Training will count towards the 500 employees DOE is required to train if the DOE employees who receive that Training are assigned to one of that school year's Designated Sites.

2. By February 1, 2016, and by each subsequent February 1, at every building at which a Designated Site is located, DOE will meet the following minimum training requirements. At Designated Sites with student enrollment of 25 or less, there will be at least two employees with TCIS Training, and one must be an employee assigned to the Designated Site of the Designated School, and the second must either be an employee assigned to the

Designated Site of the Designated School or the Special Needs Coordinator on the Building Response Team of the building in which the Designated Site is located. At Designated Sites with student enrollment of greater than 25, there will be at least three employees with TCIS Training, and two must be employees assigned to the Designated Site of the Designated School, and the third must either be an employee assigned to the Designated Site of the Designated School or the Special Needs Coordinator on the Building Response Team of the building in which the Designated Site is located. In the event that the number of trained employees at a Designated Site falls below the minimum requirements, DOE will meet these requirements as soon as reasonably practicable.

3. No sooner than April 1, 2017, Plaintiffs may initiate a meet and confer process with Defendants, who agree to meet with Plaintiffs in such event, to discuss whether the minimum number of TCIS-Trained employees at one or more Designated Sites should be increased. If, after the parties have met and conferred, they have not reached an agreement about increasing the minimum number of TCIS-Trained employees at Designated Sites, Plaintiffs may move to modify this Stipulation and Order of Settlement solely for the purpose of seeking an order from the Court mandating an increased minimum number of TCIS-Trained employees at one or more Designated Sites.

4. Provision of TCIS Training for additional employees assigned to the Designated Sites beyond the minimum requirements set forth above (up to the 500 employees that DOE is required to train per year as set forth in Paragraph II.D.1.) will be determined by DOE in its discretion. In making this determination, DOE shall consider the number of DOE staff at these Designated Sites who have already received TCIS Training, the number of students enrolled at that Designated Site and any other relevant factors. In providing the training mandated in

Paragraph II.D.1., DOE shall prioritize meeting the required minimum levels of trained employees as set forth in Paragraph II.D.2. as soon as possible. As mandated by Paragraph II.D.2., those minimum levels shall be achieved by no later than February 1, 2016, and by each subsequent February 1.

5. Selected Schools will be determined for each school year as set forth in Paragraph I.5. Insofar as a school that was a Selected School in a prior year remains a Selected School, the minimum requirements of trained employees outlined in Paragraph II.D.2. will remain applicable to that school's Designated Sites. If a school that was a Selected School in a prior year is no longer a Selected School, then these minimum requirements of trained employees will no longer be applicable at that school's Designated Sites. If a school that was not a Selected School in a prior year becomes a Selected School, then these minimum requirements of trained employees will become applicable to that school's Designated Sites.

6. By August 15 of each year, Defendants will provide Plaintiffs a list of the Designated Schools and Designated Sites for the coming year and will provide Plaintiffs with the data used for determining the list.

7. For purposes of meeting the minimum requirements set forth in Paragraph II.D.2., an individual employee must have either: (a) received TCIS Training in the last two years; or (b) received TCIS Training more than two years earlier and received TCIS Refresher Training in the last two years.

8. Effective July 1, 2015, DOE's TCIS Training will include the policies and procedures set forth in Exhibit A and an instruction to staff that 911 should not be called in response to a behavioral crisis unless the student's behavior poses an imminent and substantial

risk of serious injury to the student and/or others and cannot be safely addressed using de-escalation strategies and/or school and community resources.

9. By June 1, 2015, Defendants shall provide Plaintiffs with the written materials for the TCIS Training. During the Stipulation Period, DOE will provide Plaintiffs with any revisions to the TCIS Training materials within 30 days of receiving those revisions from Cornell.

10. The DOE policies set forth in Exhibit A shall be communicated to all principals in writing within 30 days of the effective date of the Chancellor's Regulation in which these policies are incorporated. Defendants will provide Plaintiffs with written confirmation that DOE has made this communication within seven days of the communication.

11. By October 1 of each year, the DOE policies set forth in Exhibit A shall be communicated to all principals. Such communication shall advise principals of their obligations under Exhibit A and shall instruct principals that: (a) their school's Crisis Intervention Team must develop a Crisis De-escalation Plan as part of their Consolidated School And Youth Development Plan; (b) their school's Crisis Intervention Team must conduct an orientation for all school staff, including non-instructional staff, in accordance with Exhibit A; and (c) their school must certify, in the school's Consolidated School And Youth Development Plan, that the orientation session was conducted; and (d) their Crisis Intervention Team must do the following at the orientation session: (i) review the requirements set forth in Exhibit A regarding the policies and procedures for when to seek emergency medical assistance for students in behavioral crises; (ii) advise staff that 911 must be called when a student's behavior poses an imminent and substantial risk of injury to himself or others and the situation cannot be safely addressed by school staff or the in-school or community resources identified in the Crisis De-escalation Plan;

(iii) advise staff that 911 should not be called in response to a behavioral crisis unless the student's behavior poses an imminent and substantial risk of serious injury to the student and/or others and cannot be safely addressed using de-escalation strategies and/or school or community resources; and (iv) advise staff that opportunities for de-escalation training may become available through the year and to contact the principal/designee for further information. By October 31 of each year, Defendants will provide Plaintiffs with written confirmation that all principals have been instructed in accordance with this paragraph.

12. Effective July 1, 2015, de-escalation and the policies and procedures set forth in Exhibit A will be addressed annually at one of the D75 meetings for all of the principals of D75 schools, if such meetings are held. Within 30 days of the meeting, Defendants will provide Plaintiffs with written confirmation that these topics were addressed at the meeting if such meetings are held.

13. Effective July 1, 2015, DOE shall instruct principals to encourage employees assigned to Agency Schools and Sites to attend voluntary TCIS Training. By July 31 of each year, Defendants shall provide Plaintiffs with written confirmation that this instruction to principals has been given.

E. DOE REPORTING

1. An Occurrence Report must be created for every situation in which EMS is contacted in response to a student's behavior resulting from an emotional/psychological condition and such report will indicate that EMS was contacted. All Occurrence Reports shall be stored in the Online Occurrence Reporting System ("OORS") or any other superseding electronic data system used by DOE in the future to collect such reports.

2. DOE shall take the following steps: (a) modify OORS to include a reminder that will appear in bold for all users who submit a report in OORS that if EMS was contacted or responded to a school-related incident, the “EMS Contacted” box on the “Suspect and/or Victims” tab must be checked and all required information about the EMS contact and/or response must be entered; and (b) make resources available to all schools to guide them in reporting when EMS is contacted or responds to a school-related incident. In the event DOE intends to take any additional steps to modify OORS with regard to capturing information regarding EMS contacts and/or responses and such modifications either materially change this reminder and/or replace it with alternative modifications, DOE shall notify Plaintiffs.

3. DOE shall provide to Plaintiffs semi-annually six-month data reports that contain the following information:

a. Data aggregated by school and DBN number showing (a) the number of EMS calls with incident code “Emotional/Psychological Condition—Student” and (b) the number of EMS transports with incident code “Emotional/Psychological Condition—Student;” and data aggregated by school and DBN number showing (a) the number of EMS calls with incident code “Medical Condition Other Than Injury—Student” and (b) the number of EMS transports with incident code “Medical Condition Other Than Injury—Student.” This data will be provided for these two incident codes as long as these incident codes continue to be used. If subsequently any other incident code is implemented reflecting calls or transports for behavioral or psychiatric issues, the data will be provided by that incident code. If the number of such incidents within an incident code at a school is between one and nine, DOE shall indicate only that there were between one and five incidents or between six and nine incidents. If the number of such incidents within an incident code at a school is zero, DOE will so report.

b. Data aggregated by school district indicating the race, Individualized Education Program (“IEP”) status, and age of the students (a) for whom EMS was called and (b) who were removed by EMS. If the number of such incidents is between one and nine, DOE shall indicate only that there were between one and five incidents or between six and nine incidents. If the number of such incidents is zero, DOE will so report.

c. The first data reporting period will be from January 1 to June 30, 2015. The final data reporting period will be from January 1 to June 30, 2018. The data shall be provided to Plaintiffs within 60 days after the six-month data period ends.

4. DOE shall provide to Plaintiffs, every four months, a report showing the number of DOE employees assigned to each Designated Site who have received TCIS Training or TCIS Refresher Training within the two-year period preceding the last date of each four-month reporting period. These reports will also indicate if the Special Needs Coordinator on the Building Response Team of the building in which each Designated Site is located has received TCIS Training or TCIS Refresher Training within the two-year period preceding the last date of each four-month reporting period. Defendants shall provide these reports to Plaintiffs within 30 days after the last date of each reporting period. The first reporting period will end on December 31, 2015 and the report will be provided to Plaintiffs by January 30, 2016. The final reporting period will end on April 30, 2018 and the report will be provided to Plaintiffs by May 30, 2018.

5. By December 15, 2015, and annually thereafter, DOE will provide to Plaintiffs a report showing the number of staff assigned to each Designated Site and the number of students enrolled at each Designated Site as of October 31 of that year.

F. DOE PUBLISHING

1. By November 1 of each year, DOE shall publish on its website the name(s) of and contact information for individual(s) who coordinate the provision of TCIS Training.

G. FDNY REPORTING

1. FDNY shall provide to Plaintiffs semi-annually, six-month data reports containing the number of calls to EMS and the number of EMS transports from the street addresses that correspond to schools and associated with the dispatch code "EDP" or any other dispatch code implemented during the Stipulation Period that refers to persons with behavioral, emotional or psychiatric issues during the six-month period. If the number of incidents for a street address that corresponds to a school is between one and three, FDNY will report only that the number is between one and three.

2. The first data reporting period will be from January 1 to June 30, 2015. The final data reporting period will be from January 1 to June 30, 2018. The data shall be provided to Plaintiffs within 60 days after the end of each six-month data period.

III. MONETARY AGREEMENT

1. Plaintiffs' claims for damages have been resolved, subject to the Court's approval of Plaintiffs' Infant Compromise applications.

2. This Stipulation and Order of Settlement does not resolve Plaintiffs' claims for reasonable attorneys' fees and costs. Plaintiffs must make a demand for attorneys' fees within 45 days of the date of entry of this Stipulation and Order of Settlement. The parties shall make good-faith efforts to reach an agreement as to the amount of attorneys' fees and costs. If the parties are unable to reach agreement, they will proceed in accordance with the Court's direction.

Plaintiffs' deadline for seeking attorneys' fees shall be governed by the terms of this paragraph and any subsequent order of the Court.

3. Plaintiffs' right to seek attorneys' fees for any work performed after entry of this Stipulation and Order of Settlement is limited to reasonable fees totaling no more than \$110,000 for the entire Stipulation Period. However, this limitation shall not apply to any time spent on a successful enforcement motion, including a motion to extend the Stipulation Period. The parties shall make good-faith efforts to reach an agreement as to the amount of attorneys' fees for any work performed after entry of this Stipulation and Order of Settlement. If the parties are unable to reach agreement, they will seek a judicial conference.

IV. ADMINISTRATION OF STIPULATION AND ORDER OF SETTLEMENT

1. This Stipulation and Order of Settlement may be executed in counterparts, and exchanged by facsimile or email.

2. This Stipulation and Order of Settlement shall be binding on Defendants and any of their employees, agents, representatives, officers, assigns, or successors in interest, as well as on Plaintiffs.

3. This Stipulation and Order of Settlement is solely for the purpose of settlement, and does not reflect the positions of the parties in any other judicial or administrative action or proceeding. Any party may use this Stipulation and Order of Settlement in connection with any subsequent action or proceeding pertaining to this Stipulation and Order of Settlement. In addition, during the Stipulation Period, any party may seek to admit this Stipulation and Order of Settlement in other, future litigation concerning incidents and/or issues similar to those at issue here.

4. The parties to this Stipulation and Order of Settlement shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Stipulation and Order of Settlement prior to bringing such matters to the Court for resolution.

5. If at any time beginning one year after the entry of this Stipulation and Order of Settlement and prior to the expiration of this Stipulation and Order of Settlement, Plaintiffs believe Defendants have failed to comply with the terms of this Stipulation and Order of Settlement, the parties shall make good-faith efforts to meet and confer before the filing of a motion or otherwise contacting the Court regarding the alleged noncompliance with the terms of this Stipulation and Order of Settlement. In particular, Plaintiffs shall provide written notice to Defendants, detailing specific evidence of non-compliance with specific term(s) of this Stipulation and Order of Settlement. Within 14 days of such written notice, Defendants shall provide a written explanation detailing how they have cured/complied with the particular term(s) of the Stipulation and Order of Settlement. In the event that Plaintiffs continue to believe in good faith that there is a compliance problem, Plaintiffs may then provide written notice within seven days of receipt of Defendants' written explanation requesting an in-person meeting. Within 14 days of such request, or upon an alternatively agreed-upon time, Plaintiffs and Defendants shall meet in person to discuss any remaining compliance issues and work in good faith to address the issues. If the parties cannot agree on a resolution of the issues, Plaintiffs may make an application to the Court within 21 days of the meeting seeking appropriate relief.

6. If at any time after entry of this Stipulation and Order of Settlement and prior to its expiration, Plaintiffs believe that there have been one or more transports of students from schools to hospital emergency rooms for an emotional/psychological condition in situations that do not satisfy the standard for such emergency transports, Plaintiffs may notify Defendants and

provide releases from the parent or guardian for the records of each student who has been the subject of such transport. Defendants will then make good-faith efforts to investigate the incident(s) and report their findings to Plaintiffs.

7. Nothing herein shall bar Plaintiffs from participating in any other lawsuit alleging one or more inappropriate calls to 911 and/or transports from schools to hospital emergency rooms in response to a behavioral crisis arising from an emotional/psychological condition, provided such incident(s) occurred after the entry of this Stipulation and Order of Settlement, and provided that during the Stipulation Period, in any lawsuit concerning such incident(s), each Plaintiff may not challenge any of the provisions of this Stipulation and Order of Settlement and may only seek: (a) damages; (b) injunctive relief that is limited to his/her individual circumstances; and (c) costs and fees.

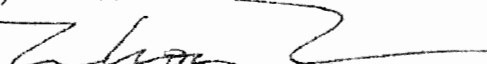
8. Throughout the Stipulation Period the United States District Court for the Southern District of New York shall retain jurisdiction to enforce the terms of this Stipulation and Order of Settlement upon the filing of an appropriate motion by any party. The parties shall request that the Court indicate in the docket that it is retaining jurisdiction over this Stipulation and Order of Settlement. Upon the finding of good cause shown, the Court may grant such relief as it deems just and proper, including but not limited to: (a) extending the term of the Stipulation of Settlement, in whole or in part; (b) modifying the Stipulation of Settlement by, *inter alia*, modifying the definition of Stipulation Period, requiring more record-keeping, training, monitoring and/or policy changes; and/or (c) holding the parties in contempt for their noncompliance. If the Court extends the term of the Stipulation of Settlement and/or orders additional relief, the Court may award Plaintiffs reasonable attorneys' fees and costs for their noncompliance application.

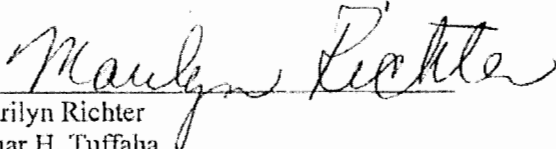
9. The parties shall sign all documents necessary to provide Magistrate Judge James L. Cott with jurisdiction over this matter.

Dated: New York, New York
December 12, 2014

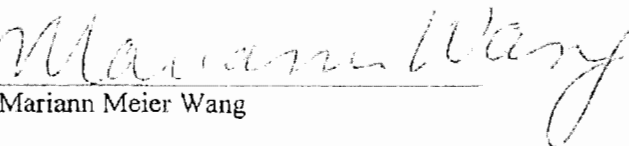
Legal Services NYC
Attorneys for Plaintiffs T.H., J.H., K.J., J.R.,
C.J., J.M., Y.P., N.R., M.E., D.E., T.W., A.A.,
A.D., S.D., N.C.R., C.R., I.S., Q.A., R.M.T.,
and R.T.
349 E. 149th Street
Bronx, New York 10451
(718) 928-3723

ZACHARY W. CARTER
Corporation Counsel of the City of New York
Attorney for Defendants
100 Church Street, Room 2-180, 2-113
New York, New York 10007
(212) 356-2083, 0896

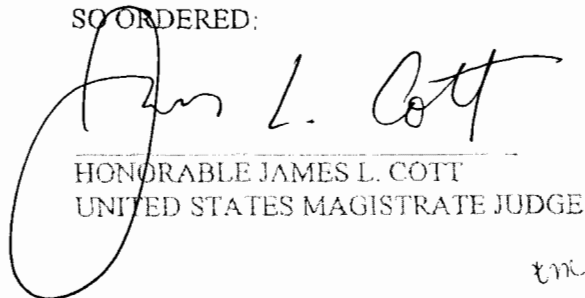
By: 
Christopher D. Lamb
Nancy Bedard
Tara Foster
Nelson Mar
Nanette Schorr

By: 
Marilyn Richter
Omar H. Tuffaha
Assistants Corporation Counsel

Cuti Hecker Wang LLP
Attorneys for Plaintiffs K.P. and W.P.
305 Broadway, Suite 607
New York, New York 10007
(212) 620-2063

By: 
Mariann Meier Wang

SO ORDERED:


HONORABLE JAMES L. COTT
UNITED STATES MAGISTRATE JUDGE

Signed: December 15, 2014

ENC

T.H., et al. v. Fariña, et al. (13 Civ. 8777)

Exhibit A to the Stipulation and Order of Settlement

SECTION I

When a student engages in behavior that poses a substantial risk of serious injury to the student or others, schools must determine the appropriate way to manage the behavior and whether the situation can be safely de-escalated by school staff as set forth below. In such situations, the following procedures must be followed:

- 1) The principal/designee must be notified of the situation and must attempt to reach the parent.¹ The parent must be given an opportunity to speak by telephone or in person with his/her child where safety considerations permit and where it will not interfere with school staff's efforts to de-escalate the situation.
- 2) Every effort must be made by responding school staff to safely de-escalate the behavior where possible using strategies and interventions for addressing behavioral crises and the in-school and community resources identified in the school's Crisis De-escalation Plan. If the classroom teacher or the responding staff member is unable to de-escalate the behavior, the teacher/staff member should seek assistance from staff members trained in crisis de-escalation. The teacher/staff member may also seek assistance from other appropriate staff and resources including the assistant principal, dean, a member of the school's Crisis Intervention Team, a member of the Building Response Team, a guidance counselor, School-Based Mental Health Clinic ("SBMH") or a School-Based Health Center with mental health services ("SBHC") if there is one on-site, or the Crisis Mobile Response Team if available in the borough.
- 3) However, where a student's behavior poses an imminent and substantial risk of serious injury to himself or others and the situation cannot be safely addressed by school staff or the support services set forth above, the principal/designee must call 911. In such situations where it is not practicable to contact the principal/designee, the responding staff member must call 911 and immediately thereafter notify the principal/designee.
- 4) When 911 is called, the principal/designee must immediately attempt to reach the parent to notify him/her that 911 was called.
- 5) If the parent has arrived at the school and it will not interfere with the proper discharge of the on-scene 911 responders' duties and responsibilities, the parent must be given an opportunity to speak to the 911 on-scene responders and the student. If the parent has not arrived at school but has been reached by phone, the parent must be given an

¹ "Parent" means the student's parent or guardian or any person in a parental or custodial relationship to the student, or the student if s/he is an emancipated minor or is 18 or older.

opportunity to speak to the on-scene 911 responders and the student if it is feasible and it will not interfere with the proper discharge of the on-scene 911 responders' duties and responsibilities

- 6) If the parent requests that his or her child not be transported to the hospital, the on-scene 911 responders will obtain relevant information from DOE staff, the parent, and others as appropriate and determine whether the parent's request may be honored in accordance with FDNY policies and procedures for Refusal of Medical Assistance.
- 7) If it is determined that the student does not require emergency treatment and/or transport, school officials and the parent shall discuss appropriate immediate next steps, including but not limited to whether the student should be returned to class.
- 8) If the school staff is unable to contact the student's parent, the on-scene 911 responders will obtain relevant information from DOE staff and others as appropriate and then determine whether the student requires emergency medical treatment and/or transport. If it is determined that the student will be transported to the hospital, school staff must accompany the student. If the parent does not arrive by the end of the staff member's school day, the staff member must contact the principal/designee.
- 9) In no circumstance should 911 be called or employed as a disciplinary response or disciplinary measure because of a student's behavior. Furthermore, 911 should not be used in lieu of or as an alternative to de-escalation strategies or resources, where such strategies and resources can be safely used to address the crises as set forth in 2 above.
- 10) Schools may not request or require a mental health clearance letter as a condition of a student attending or returning to school.
- 11) Following any behavioral crisis, school staff should meet with the parent (and the student where appropriate) to discuss appropriate positive behavioral supports and interventions for the student.

SECTION II

Each school's Crisis Response/Prevention Education/Intervention Team (Crisis Intervention Team) must complete a Crisis De-Escalation Plan as part of its Consolidated School and Youth Development Plan. Such plan must include:

- 1) Strategies for de-escalating behavioral crisis situations.
- 2) Identification of locations in the school building in which students in crisis may be safely isolated from others.
- 3) Identification of school staff trained in de-escalation techniques.

- 4) Identification of in-school and community resources that are available to the school and parents (e.g., mental health clinics, mobile crisis teams, facilities that provide urgent/same-day mental health assessments).
- 5) Description of how crisis de-escalation and response protocols are communicated to school staff.

SECTION III

- 1) The principal/designee must file an Online Occurrence Reporting System Report (“OORS Report”) within 24 hours of the incident for all school-related incidents in which 911 was contacted for a student. Upon request, parents have the right to receive a copy of their child’s occurrence report in accordance with Chancellor’s Regulation A-820 and the Family Educational Rights and Privacy Act (“FERPA”).

SECTION IV

- 1) Each Crisis Intervention Team must conduct an orientation for all school staff, including non-instructional staff, within the first two months of the school year. The orientation session must include a presentation of the policies and procedures set forth in this Regulation and the school’s Crisis De-Escalation Plan. Additionally, within the first two months of the beginning of the school year, the policies and procedures set forth in this Regulation and the Crisis De-escalation Plan must be discussed at a School Safety Committee meeting at which an in-house School Safety Agent Level III/designee was present.