

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

COREY H., LATRICIA H., ANDREW B.,)
and JASON E., by their parents)
and next friends, SHIRLEY P.,)
BEVERLY H., SHARON B. and STEPHEN E.,)
on their own behalf and on behalf)
of a class of similarly situated)
persons,)
Plaintiffs,)

vs.)

No. 92 C 3409
Judge Gettleman

THE BOARD OF EDUCATION OF THE)
CITY OF CHICAGO. PAUL G.)
VALLAS, Chief Executive Officer of)
the Chicago Public Schools, THE)
ILLINOIS STATE BOARD OF)
EDUCATION, and JOSEPH SPAGNOLO)
Illinois Superintendent of)
Education,)
Defendants.)

SETTLEMENT AGREEMENT

(January 16, 1998)

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I. INTRODUCTION

1. This Settlement Agreement ("Agreement") represents the best efforts of the Plaintiffs and the Board of Education of the City of Chicago ("Chicago Board") to ensure that children with disabilities enrolled in the Chicago Public Schools are educated in the least restrictive environment ("LRE").

2. This Court has not made any findings of fact or conclusions of law regarding the merits of Plaintiffs' claims against the Chicago Board. This Agreement is not an admission of liability in this or any other action by the Chicago Board, or by its successors, liability having been denied expressly.

3. The Plaintiffs and Chicago Board believe that this Agreement is consistent with the requirements of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.*, and its implementing regulations; Section 504 of the Rehabilitation Act ("Section 504"), 29 U.S.C. § 794, and its implementing regulations; the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*, and its implementing regulations; the Fourteenth Amendment to the United States Constitution; and Section 1983 of the Civil Rights Act ("Section 1983"), 42 U.S.C. § 1983, and that it fairly and completely addresses Plaintiffs' claims against the Chicago Board.

4. The Plaintiffs and Chicago Board have negotiated in good faith, and have consented to the entry of this Agreement as an order and judgment of the Court.

II. JURISDICTION AND PROCEDURAL HISTORY

5. This Court has jurisdiction over this action pursuant to the IDEA, Section 504, the ADA, the Fourteenth Amendment to the United States Constitution, Section 1983, and 28 U.S.C. §§ 1331 and 1343(3).

6. Plaintiffs' Complaint in this action, which was filed on May 22, 1992, and amended on June 18, 1992 and February 10, 1997, alleges that Defendants, the Chicago Board and the Illinois State Board of Education ("State Board"), have a practice and policy of unnecessarily educating children with disabilities separately from their nondisabled peers and which unnecessarily excludes them from the schools they would attend if they were not disabled. The Complaint further alleges that, in those situations where Defendants place children with disabilities together with nondisabled children in general education classrooms, Defendants have a practice of denying the children with disabilities the services they need to succeed in a regular education setting. Plaintiffs claim that these alleged practices and policies violate Plaintiffs' rights under the IDEA, Section 504, the ADA, and the Fourteenth Amendment to the United States Constitution.

7. On June 18, 1992, Plaintiffs filed a motion for class certification, seeking certification of the class of all children who are or will be classified by the Chicago Board as having a disability and

who are therefore subject to Defendants' alleged practice and policy of failing to educate children with disabilities in the LRE appropriate to their needs.

8. On July 6, 1992, the Chicago Board filed a Motion to Dismiss and a memorandum in support thereof; on July 14, 1992, the State Board filed a Motion to Dismiss.

9. After the parties conducted discovery and submitted briefs relating to the pending motions, the Court issued a decision on February 1, 1993, granting Plaintiffs' motion for class certification and denying Defendants' motions to dismiss.

10. The parties have conducted discovery directed at the merits of the case, which included depositions and document requests.

11. On August 25, 1994, the parties filed an agreed order to use joint experts, and the joint experts analyzed data supplied by the parties and visited sixty schools.

12. Since January, 1995, the Plaintiffs and Chicago Board have been involved in extensive settlement negotiations.

III. PURPOSE

13. All obligations contained in this Agreement shall be interpreted in a manner that is consistent with the following principles:

- a. The requirement that children be educated in the LRE is mandated by law. Additionally, educational research demonstrates that (i) contact between children with and without disabilities has positive social effects for both groups; and, (ii) most children with disabilities, when provided with appropriate supports in the general education setting, will be better able to master the general education curriculum.
- b. The Plaintiffs and Chicago Board intend this Agreement to (i) provide students, both with and without disabilities, positive school experiences, (ii) help students with disabilities attain high levels of academic achievement, (iii) enable schools to value and actively include students with disabilities in their school communities as appropriate, (iv) increase the number of students with disabilities attending their home schools with appropriate supports, (v) increase the number of students with disabilities participating in general education settings with appropriate support, (vi) ensure that students with disabilities receive the supports needed for them to perform successfully in the LRE, and (vii) provide students with disabilities with the tools they will need as adults to have meaningful employment and education, to live as independently as possible, and to be integrated into their communities.
- c. Each school's entire staff -- general and special educators, administrators, and related

service providers and support personnel -- is responsible for the education of all of the school's students. Every student has a unique combination of abilities and needs, and may require individual assistance at various times to achieve important educational outcomes. In order to meet the needs of all its students, each school must have at least the following available: (i) informal assessment of individual students to suggest ways for improving and modifying instruction; (ii) strategies to modify unacceptable student behavior; (iii) collaboration between general and special education teachers, administrators, support staff and parents; (iv) access to support services; and (iv) effective staff development.

- d. The Chicago Board shall conduct a case study evaluation when informal assessment and strategies will not be or have not been effective in addressing a student's needs and there is a suspicion of a disability that requires the provision of services. A central purpose of the case study evaluation shall be to examine the student's learning style and identify teaching strategies that will enable the child to be successful in school.
- e. Once the student's individualized needs have been determined by the Individualized Education Program ("IEP") team, the team shall determine the setting in which the student's needs can be met. In determining the setting, the team must begin by considering the provision of services in the general educational classroom with appropriate supports. Having a specific academic performance level shall not be a prerequisite to successful participation by a child with a disability in a general educational setting. A child's disability label shall never be the sole factor in selecting an educational setting.
- f. A student with a disability who, even with supports, cannot be successful in a full-time general education setting may receive services for some or all of the day in a specialized education setting. Interaction with nondisabled children shall, however, always be provided to the maximum extent appropriate.
- g. Where a student with a disability, despite the provision of supplemental aids and services, is so disruptive in all or part of a general education setting that he or she significantly impairs the education of other students, full-time placement of the student in the general education setting is not appropriate.
- h. Most students with disabilities will be able to participate in the standardized testing program, with appropriate accommodations and adaptations as needed. The performance of all other students with disabilities will be determined through alternative assessments.
- i. Fiscal and educational planning for educating children with disabilities in each local school, including plans for staff training, shall be school-based, and shall involve the

principal, teachers, parents, and the local school council, consistent with the intent and provisions of the Illinois School Code. Permitting schools flexibility in using funds and personnel, with appropriate safeguards for meeting the needs of students with disabilities, will help to promote the goals of this Agreement.

IV. BOARD OF EDUCATION OF THE CITY OF CHICAGO

A. Administrative Structure

14. The Chicago Board shall be responsible for ensuring the implementation of this Agreement. To promote full implementation, the Chief Specialized Services Officer ("CSSO") shall report to the Chief Executive Officer ("CEO"). All Chicago Public School Central Office employees whose primary responsibilities pertain to the education of children with disabilities shall be in a direct supervisory line to the CSSO.

B. Policies

15. *Generally.* All Chicago Board policies, current and future, shall promote the education of students with disabilities in the LRE.

16. *Development and Implementation.* All Chicago Board committees and individuals responsible for policy development or implementation shall consider the direct and indirect impact such policies may have on students with disabilities and their education in the LRE, and shall ensure that the policies, and their implementation, are consistent with federal and state law, and with this Agreement. To this end, the CSSO or designee shall be included or consulted (i) in the development of new or continuing policies; and (ii) prior to the printing of new or revised relevant materials.

C. Measurement of Student Achievement

17. *Learning Outcomes.* The Chicago Board shall develop procedures regarding learning outcomes for children with disabilities which is consistent with this Agreement. The procedures will provide guidelines by which each IEP team will:

- a. Determine the extent to which an individual student will be expected to meet the system-wide learning outcomes, such as the Chicago Academic Standards, or be exempted from system-wide learning outcomes and be required to meet alternative specified learning outcomes; and
- b. Determine alternate learning outcomes, when appropriate, if a child is exempted from some or all system wide learning outcomes.

18. *Testing.* The Chicago Board shall develop procedures for testing students with disabilities which is consistent with this Agreement. The procedures shall include, but not be limited

to, guidelines by which each IEP team will determine:

- a. whether an individual student will participate in standardized testing, or be exempted from standardized testing and have his or her performance evaluated through specified alternative assessments;
- b. whether an individual student requires standardized testing accommodations; and
- c. whether the student's standardized test results and/or alternative assessments shall be a part of the student's individualized promotion standard.

The procedures shall also include a range of suggested alternative assessments that IEP teams can use when exempting a child from standardized testing.

19. **Promotion.** Chicago Board's policy for nondisabled students who fail to meet promotion standards at certain grades will apply to students with disabilities who fail to meet their individualized promotion standard, provided that the student's IEP sets forth appropriate services, that those services were provided, and that all procedural safeguards have been met.

20. **Reporting Test Results.**

- a. Starting in the 1997-1998 school year, the Chicago Board shall publicly report school level and system-wide test results on the Iowa Test of Basic Skills (Iowa) and the Test of Achievement and Proficiency (TAP) as follows:
 - (1) The group of students comparable to the group which was included in such reporting for 1996-1997;
 - (2) The group of students with disabilities who took the test with no or minor accommodations; and
 - (3) The combination of students identified in ¶¶ 20(a)(1) and 20(a)(2) above.
- b. If the Iowa or TAP are re-normed based upon more recent national norms, as long as the Chicago Board continues to use longitudinal data based on test results prior to the renorming, the Chicago Board will continue to report according to the process described in ¶ 20(a). Otherwise, the Chicago Board will report according to the process described in ¶ 20(c).
- c. If the Chicago Board implements a new system-wide testing program in the future, it shall publicly report school level and system-wide statistics as described in ¶¶ 20(a)(2) and 20(a)(3).

- d. The test results of all students identified in ¶¶ 20(a) and 20© will be reported at the same time.

21. *Quality Review.* Chicago Board's comprehensive system of review, evaluation, and analysis of school performance (105 ILCS 5/34-3.4) shall include quantitative and qualitative assessment of how well each school is addressing the needs of students with disabilities, the extent to which students with disabilities are educated in the LRE, and recommendations addressing the goals of this Agreement.

22. *Nonperforming Schools.* Plans developed by the Chicago Board for schools that have been determined to be nonperforming under the criteria of 105 ILCS 5/34-8.3(a) shall be consistent with the needs of students with disabilities and with the terms of this Agreement.

D. School-Based Intervention Process

23. *Development of Process.* Within six school years from the execution of this Agreement, each elementary school shall utilize a curriculum-based, informal, problem-solving assessment process for students who are at risk of academic failure or who are having behavior difficulties (such as School-Based Problem Solving). The process shall include four levels. Levels 1 and 2 involve informal meetings between teachers and school staff wherein teachers and school-based problem solving facilitators shall utilize informal strategies to assist students. The more formalized assessment process at Level 3 shall include collecting data, and the development of interventions based on this data. Such assessments shall involve the parent, and shall focus on the student's educational performance, learning patterns, and social-emotional development. Assessments may include tests, observations, records of performance or any techniques aimed at gathering pertinent information. The Level 3 process may build upon the IAT process currently in place at each school. At Level 4, a child is evaluated and services determined pursuant to the requirements of the IDEA.

24. *Written Recommendations.* The Level 3 assessment process shall lead to a written document containing recommendations for instructional strategies and supports that are likely to succeed in remediating or accommodating the problems that prompted the assessment. The document shall also state the person(s) involved in the informal assessment process; the person(s) responsible for implementing the strategies; the time table for review and strategy revision; and any assistance and professional development that will be provided for the teacher. The document shall be made part of the child's record and a copy of it shall be forwarded to the parent.

25. *Review of Recommendations.* The assessment team members at Level 3 shall set a meeting date within two months to consider whether the recommendations have been implemented, whether they have been effective, and what the next steps should be. The school shall inform the parent of the results of the meeting.

26. *Referral for Case Study Evaluation.* If those persons conducting the assessment believe that instructional strategies and supports are not likely to succeed, they shall document this

conclusion in writing and shall immediately initiate a full case study evaluation by sending a written request to the principal and the school's special education case manager.

27. *Optional Nature of the Process.* No child perceived to need special education services must first go through the school-based intervention process. A referral for a case study evaluation pursuant to the IDEA may take place at any time before or during the first three levels of involvement. At the time of involvement in Level 3 of the process (by parent or any other person), the Chicago Board must give the parents, in writing: (i) an explanation of the difference between the school-based intervention process and a case study evaluation; (ii) an explanation of their right to immediately request a case study evaluation; and (iii) an explanation of their right to request mediation and/or a due process hearing if the Chicago Board refuses their request for a case study evaluation. The Chicago Board retains its right to refuse a request for a case study evaluation by notifying the parent in writing of the basis for the refusal and of the procedural safeguards afforded to the parents.

28. *Training.* From the date of this Agreement and continuing for six years, at no cost to the local schools, the Chicago Board shall offer training regarding the school-based problem solving process, including, but not limited to, curriculum-based assessment, assessment of classroom learning environment, and behavior management and assessment.

E. Development and Implementation of Individualized Educational Programs

29. *IEP Content.* By February 1, 1998, the Chicago Board shall develop a new IEP form that shall include the following:

- a. description of student's current achievement and its relation to the general curriculum;
- b. description of special education, related services, and program modifications necessary for the student to participate in the academic, non-academic, and extracurricular components of the general education program;
- c. statement of measurable annual goals, including benchmarks, related to the student's ability to learn and master the system-wide learning outcomes to the maximum extent appropriate, and/or the alternative outcomes the student shall be expected to meet;
- d. justification of extent to which the student is not being educated with nondisabled students;
- e. statement of whether the student shall participate in standardized testing and the supports and modifications needed for such participation; and

- f. if the student is exempted from standardized testing, specification of alternative assessments.

By September 1, 1998, the Chicago Board shall complete the training on and begin the use of the new IEP form.

30. **General Educator Participation.** Prior to September, 1998, the Chicago Board shall encourage local schools to include at least one general education teacher at each IEP meeting; and thereafter, consistent with the IDEA, shall require a general education teacher to attend each IEP meeting.

31. **IEP Report Card.** The Chicago Board shall develop an IEP Report Card to notify parents regarding each student's progress in meeting his or her IEP annual goals, and the extent to which the special education and supports identified on the IEP are being provided. The IEP Report Card shall be distributed at the same time as the general report cards, be provided as supplement or alternative to the student's report card, and be discussed with the parent twice each year on report card pick-up days. If a teacher believes that changes in the student's IEP may be necessary, a notice to the parent for a future IEP conference date shall also be enclosed.

32. **Management of Service Delivery.** The Chicago Board shall implement an electronic system for managing the provisions of related services and identifying any discrepancies between services required in the IEP and services provided which may need correction.

F. School-based Service Delivery System

33. **Selection.** During the 1997-98 school year, the twenty-eight (28) schools already identified through the Education Connection Program will receive a Design Grant to design an LRE Plan with implementation to begin during the 1998-99 school year. For each school year during this Agreement, after the 1997-1998 school year, the Chicago Board shall select additional schools to receive Design Grants. The number of schools to be given Design and LRE Grants in each year of this Agreement, and the amounts of said grants, shall be determined by agreement between the Plaintiffs and the Chicago Board following final judgment of this case. The Chicago Board shall establish criteria for selecting schools to apply for a Design Grant. The criteria shall include such factors as geographical balance, elementary and high school balance and schools with a broad range of service delivery models. The criteria shall also include factors by which the Office of Specialized Services may require the participation of a school in this process.

34. **Overview.** The local school shall assess its current service delivery system, and design and implement a plan for educating students with disabilities in the LRE. To this end, the school shall complete an application for a Design Grant that will enable it to design an LRE Plan. Upon approval of its LRE Plan, the school shall receive an LRE Grant for the implementation of its LRE Plan. The Chicago Board shall provide an LRE Catalog, described in ¶¶ 45-49, and other information and assistance, for schools to utilize during both the design process and the

implementation process.

35. **Instructions for Design Grant Applications and LRE Plans.** The Chicago Board shall provide to each principal and local school council a booklet that describes the process for requesting an LRE Design Grant and submitting an LRE Plan. The booklet shall include (i) self-analysis instruments to assess the school's current compliance with LRE mandates, (ii) guidelines for the Design Grant applications and the LRE Plans, and (iii) examples of high quality LRE Plans. The format which the Chicago Board creates for the LRE Plan shall, wherever possible, follow the School Improvement Plan ("SIP") format as set forth in School Improvement Plan for Advancing Academic Achievement: Recommended Guidelines and Format.

36. **LRE Teams.** One team for each region will be established to review and initially approve each school's Design Grant application and LRE Plan, and monitor each school's implementation of its LRE plan.

- a. **Composition.** The LRE Team will be composed of a diverse group of Chicago Board general and specialized services staff and other individuals who will consult with outside experts knowledgeable about the education of students with disabilities in the LRE.
- b. **Training.** Chicago Board shall provide to each LRE Team the training necessary to carry out its duties under the agreement.

37. **Content of Design Grant Application.** The application for a Design Grant shall include the following components:

- a. brief description of the school's current configuration of services, and general direction the school would like to pursue to reach the goals and requirements of this Agreement;
- b. short statement of any major problems school has that could be a barrier to the realization of this direction and that will be addressed in the LRE Plan;
- c. identification of approved resource(s) from the resource catalog described in ¶¶ 45-49 that will be used to develop the LRE Plan, and the general nature of the assistance that will be obtained from these resources; and
- d. a budget that includes approximate number of resource hours of assistance and related resource costs.

The Design Grant shall be submitted by the principal after consultation with and approval by the LSC, except when the school was selected by the Office of Specialized Services, LSC approval is urged but not required.

38. **Approval of Design Grant Applications and LRE Plans.** Chicago Board's Implementation Plan shall include a procedure for the LRE Teams to use in reviewing Design Grant applications and LRE Plans. The procedure shall include (i) time frames in which the LRE Team must complete its reviews, (ii) criteria which the LRE Team must use in deciding whether to approve Design Grant Applications and LRE Plans, and (iii) criteria which the LRE Team must use in assessing schools' progress in implementing LRE Plans. All criteria for LRE Team approval of Design Grant Applications and LRE Plans shall be subject to Plaintiffs' approval and shall be directly related to the purposes of this Agreement. All LRE Plans reviewed by the LRE Team must be submitted to the Monitor for final approval as per ¶ 76(d). Schools will receive a second year of funding upon the LRE Team's and Monitor's approval of a report from the school containing (i) an assessment of the first year of implementation of the LRE Plan, (ii) revisions of the LRE Plan, if any, (iii) an updated budget for the second year of implementation, and (iv) written approval of the revisions and budget from the school's local school council, except when the school was selected by the Office of Specialized Services. The LRE Team may conditionally approve LRE Plans which involve the use of special education personnel in ways which further the purpose of this Agreement but which will require a waiver or variation from the Illinois State Board of Education. In such instances, the Chicago Board shall apply for a waiver or variation in a timely fashion, and the school shall be notified that any approval is conditioned upon Illinois State Board of Education approval.

39. **Grant Awards.** After a school's Design Grant Application has been approved, the Chicago Board shall provide the school with a one-time Design Grant. After a school's LRE Plan has been approved, the Chicago Board shall provide the school with an LRE Grant for each of two years. The Chicago Board may not direct local schools to make any specific use of the monies from the Design Grant or the LRE Grant, other than to direct schools to comply with ¶¶ 40 and 42.

40. **Permitted Uses of Design Grant.** The local school shall use the Design Grant to purchase assistance (from resources in the catalog described in ¶¶ 45-49) in designing its LRE Plan. The school may also use the grant to pay for technical assistance in planning for and carrying out IEP meetings, in designing a system of school-based intervention, and in informally assessing students. Up to 30% of the Design Grant may be paid to an existing staff person to take on the added responsibility of coordinating the design of the LRE Plan, including: collecting information, communicating with resource persons identified in the catalog, communicating with local school council, staff, and parents, and writing or supervising the writing of the LRE Plan. The Design Grant may also be used for substitutes, extended day and professional materials needed to carry out the provisions of this paragraph. The monies may only be used for the purposes defined by this paragraph. The monitor can approve an increase of the percentage to be used to pay existing staff persons.

41. **Contents of LRE Plan.** Upon approval of the Design Grant application, the school will initiate the design of its LRE Plan. The principal shall design the Plan in consultation with experts, the local school council, all categories of staff, parents, community residents, and, at the high school level, students with and without disabilities. The local school council shall approve in writing all LRE Plans before submission, except when the school was selected by the Office of Specialized

Services. In such instances, LSC approval is urged but not required. The LRE Plan need not repeat information already contained in the school's School Improvement Plan ("SIP"); if the LRE Plan refers to the SIP, the SIP shall be attached. Each completed LRE Plan shall include the following components:

- a. **Vision-Mission-Philosophy.** This section will contain the school's vision, mission, and philosophy, with particular consideration to the inclusion of students with disabilities in the school community.
- b. **Analysis of Current Conditions.** This section will contain an analysis of the extent to which the school's current service delivery system serves children in the LRE and is based on effective LRE strategies. This analysis shall utilize quantitative data (supplied by the Central Office), information contained in the amended School Report Card, information and data gathered by the school, and data on the performance of students with disabilities. The analysis shall include:
 - (i) the extent to which students residing within the school's attendance are not attending the school;
 - (ii) the extent to which students with disabilities are currently participating in all aspect of the school, including academic and non-academic classes, extra-curricular activities, and testing;
 - (iii) the methods currently employed when students with disabilities participate with their peers without disabilities;
 - (iv) an examination of the use of school-based intervention and behavior management strategies; and
 - (v) an examination of the school's implementation of the elements describe in the Self-Analysis Guide for Children First, as described in School Improvement Plan for Advancing Academic Achievement: Recommended Guidelines and Format.
- c. **Establishing Goals, Plans, and Monitoring Progress.** Based on the school's analysis of current conditions, this section will set forth the school's plan for (i) creating an effective service delivery system, (ii) educating all of its students in the least restrictive environment, and (iii) analyze the appropriate ways in which the school might alter its service delivery system so that it might appropriately educate students residing within the school's attendance area who are attending a different school. The Plan shall also contain strategies for meeting target dates and strategies for addressing anticipated problems in implementation, such as resistance from parents or staff.

- d. **Budget.** In this section, the school shall set forth all costs paid out of the Implementation Grant. Further, the school shall describe how all staff associated with educating children with disabilities shall be utilized, including staff allocated pursuant to ¶ 56.
42. **Permitted Uses of LRE Grant.** The LRE Grant shall be used in the following manner:
 - a. for LRE training and professional development for staff, local school council members, and other members of the school community (at least 25% of the Grant);
 - b. for acquiring technical assistance in implementing the LRE Plan, in evaluating the implementation of the LRE Plan, and in planning for future years; and
 - c. for employing consultants to directly assist in the classroom, or to advise classroom teachers, in a manner which facilitates the goals of the school's LRE Plan.

The LRE Grant may also be used for substitutes, extended day and professional materials needed to carry out the provisions of this paragraph. The monies may only be used for the purposes defined by this paragraph.

43. **LRE Plan Implementation.** The principal shall be responsible for implementing the Plan in accordance with its components. All consultants hired by the school through the resource catalog to assist in creating or implementing the LRE Plan shall report to the principal.

44. **Principal's Report for Use in SIP Development.** By April 1 of each year, the principal of every Chicago Public School shall ensure that the LSC receives, for consideration during the SIP development process, a brief report that includes: the school's use of the school-based problem solving or IAT process; the types of instructional strategies utilized and their success; current LRE configurations of service delivery; and any suggestions for improvement.

H. Resource Catalog

45. **General.** The Chicago Board shall develop and print a Catalog of Resources for Educating Children in the Least Restrictive Environment ("Catalog"). The Catalog shall contain the names of and information about (i) persons who are knowledgeable about LRE and available to assist schools on LRE-related issues and (ii) model schools both within and outside of the Chicago Public Schools. The Chicago Board shall distribute and provide on-line access to the Catalog to at least the principals and local school councils who are in the planning or implementation phases. A copy of the Model Program section of the Catalogue will be distributed to all principals and local school councils.

46. **Criteria for Including Persons in the Catalog.** Individual persons listed in the Catalog shall have knowledge and experience in areas that include: informal intervention; behavior

management; LRE Plan design; curricular adaptations, modifications, and options (e.g., parallel curriculum and alternative curriculum); social interaction between disabled and nondisabled students (through such strategies as peer supports and peer tutoring); educational methodology (e.g., cooperative learning); staff usage and configuration of services; technology options in communications, motor and/or medical areas; LRE strategies as they relate to IEP development; accommodating students needing bilingual special education services, gifted and talented students, and/or students with attention deficit disorder; or parental involvement in LRE issues.

47. *Model Program Criteria.* The Catalog shall also include descriptions of schools (local, state, national) that have model service delivery systems in which children with disabilities participate effectively in the general educational program. The Catalog shall provide the name, address, and phone number of a contact person at each school listed.

48. *Resource Recruitment and Selection.* In order to locate resources for the Catalog, the Chicago Board shall issue a call for (i) persons with the knowledge and experiences referred to in ¶ 46 and (ii) model schools. A diverse team of persons, including individuals suggested by Plaintiffs and individuals who are not employees of CPS, knowledgeable about LRE issues, shall select applicants for inclusion in the Catalog. Plaintiffs shall be given adequate opportunity to review information about Catalog candidates prior to their inclusion in the Catalog and veto their inclusion. The Catalog shall describe each approved resource person's education, areas of expertise, and experience, and shall identify specific types of assistance the person is qualified to provide. The Catalog shall also describe a process for schools to seek approval of resources that have not yet been approved. The Catalog shall be completed May 17, 1998, except that the contents of the Catalog shall be made available to schools which are in the LRE Plan design phase prior to the Catalog's completion.

49. *CPS Staff in Catalog.* The Chicago Board shall develop procedures for the inclusion of qualified CPS local school staff in the Catalog. Local school staff members must get approval from their principal to be included in the Catalog. The principal must also approve the specific dates and hours which the local school staff member proposes to serve as a resource person, and the local school staff member may work up to twelve school hours a month as a resource person. Schools will pay for the use of local school staff. The fee for school hours shall be paid to the local school at which the resource person regularly works to cover all necessary substitute pay. Fees for after-school hours shall be payable to the resource person.

I. Strategies for Specific Populations of Students with Disabilities

50. *Magnet, Optional, Charter, Vocational, and Gifted Programs.* To ensure that students with disabilities have an equal opportunity to apply to, be selected for, and be educated in magnet, optional, charter, vocational, and gifted programs, the Chicago Board shall establish procedures which:

- a. utilize recruiting methods, testing methods, and admission criteria which do not

discriminate on the basis of disability; and

- b. provide for supports necessary for children to participate in the program, unless the IEP team of an individual child determines that such supports cannot be provided feasibly within that setting.

51. *Expansion of Vocational Education Services.* The Chicago Board shall ensure that vocational education programs are available to students with disabilities, and the program will be modified, if appropriate, to meet the student's needs.

52. *Pre-school Services.* The Chicago Board shall educate young children in pre-school settings with their non-disabled peers to the maximum extent appropriate. The IEP Team shall make this determination based upon the needs of each student and not upon the availability of program services in public schools.

53. *Emotional/Behavioral Services.* In order to increase collaboration between social service/child welfare agencies and local schools, the Chicago Board shall continue to dialogue with agencies that are successfully collaborating with local schools. The Chicago Board shall prepare a brochure for local schools describing successful collaborations and advising how to recruit agencies for collaboration.

54. *Special Day/Residential Schools.* For every child placed in a special day or residential school, consideration shall be given at annual IEP meetings, or at the request of the parent or child, to less restrictive settings. The LRE Plan for each CPS special day school shall include the steps the school will take to increase the opportunities for its students to participate in activities with nondisabled students.

J. Allocation of Funds to Local Schools

55. *Design and LRE Grants.* In FY 98 and in each subsequent year covered by this Agreement, the Chicago Board shall use an amount of money that includes: (a) an amount equal to at least 60% of its FY 98 increase of IDEA Part B flowthrough monies ("IDEA funds") and (b) any REI or Project Choices grants it receives, to fund the Design and LRE Grants. The Chicago Board will not be expected to use any monies other than the IDEA funds and any Illinois State Board of Education funds, such as REI and Project Choices, that are for the purpose of supporting education in the least restrictive environment, to fund these grants.

56. Allocation of Special Education Staff

- a. Chicago Board shall allocate the Special Education staff pursuant to its process for calculating student - special education teacher/aide ratios. The process determines the number of staff approved for each school to provide special education services based on the number of students with disabilities currently attending or projected to

attend the school, weighted by the nature and severity of disability along with the LRE setting. The calculations done pursuant to this process will result in student-teacher/aide ratios that are at least equivalent to the maximum ratios established in 226 Ill. Admin. Code § 225.

- b. By February of the year in which a school is designing its first LRE Plan, and in April of each of the two years of implementation, the Chicago Board shall provide to each school projected staff allocation based on the process described in ¶ 56(a). The Chicago Board, at the end of a semester or when unusual circumstances arise, may utilize the process to increase or decrease the allocation of staff due to changes in the number, nature or severity of students with disabilities at the school, or the amount of special education services required to meet their individual needs.
- c. The Chicago Board shall provide each school with the flexibility to determine the manner in which its Special Education staff will provide the services required to meet the needs of each student as indicated by their IEPs in the LRE. A school may decide to use its staff allocation to hire other personnel so long as the services required by each student's IEP are met, subject to ¶ 56(d). The number of staff allocated through this process shall not cause the number of staff allocated to the school pursuant to other system-wide personnel distribution formulas to be reduced.
- d. The Chicago Board shall ensure that each school has a sufficient number of staff to implement the special education services required by each student's IEP. The priority of special education staff assigned to local schools shall be to implement the IEPs of students with disabilities and have a substantial and direct benefit for children with disabilities. This provision does not preclude special education staff from team teaching with a general education teacher, from working with the nondisabled students in that classroom, from consulting with general education teachers to address the needs of students at risk of being identified as a student with disabilities, or from engaging in similar activities that impact or directly benefit students at risk of being identified as a student with disabilities.
- e. The Chicago Board shall not use the process for allocating special education staff in a manner that provides a disincentive for educating students in the LRE.
- f. Special education staff shall have the same opportunities as general education teachers to participate in the development of school-wide planning activities related to the education of students. These activities include, but are not limited to, the participation on committees designed to implement Chicago Academic Standards & Framework; committees to develop the School Improvement Plan for Academic Achievement; and staff development activities.
- g. Chicago Board shall document and monitor the allocation and use of Special

Education staff.

- h. Chicago Board shall consult with the monitor as it implements and refines this process or apprise the monitor of changes to the process.

57. *Impact on Other Resources Available to the Local School.* The granting of Design Grants and Implementation Grants and the allocation of staff pursuant to ¶ 56 to local schools according to the requirements of this Agreement shall not adversely affect the school's receipt of other funds or staff. The Design and Implementation Grants and the allocation of staff pursuant to ¶ 56 are to supplement rather than supplant the noncategorical and categorical funds provided by the Chicago Board to the local schools. Receipt of the Design and/or Implementation Grants shall not impact a school's eligibility to receive any additional grants for which they may apply to public or private sources.

K. LRE School Report Card

58. Annually, the Chicago Board shall provide an addendum to the School Report Card that will provide demographic data regarding students with disabilities relevant to each school, including, number of students with disabilities who reside in the school's attendance area but who attend other schools, number of students with disabilities who attend the school but reside in other schools' attendance area, LRE configuration of services, graduation rate, student performance on standardized tests, and, to the extent available, attendance rates, and suspension/expulsion rates.

L. Complaints

59. The Chicago Board shall establish a standardized process for Specialized Services staff to log the receipt and document the resolution of complaints related to the provision of services in the LRE. As part of this system, staff will accept complaints by telephone or letter, taking actions to resolve the complaints and making referrals to the Department of Implementation Monitoring when the staff person cannot resolve the complaint. All complaints shall be acted on within two school days of receipt. The written log shall be preserved by the Chicago Board for a minimum of one year. The Chicago Board shall not take any retaliatory actions against individuals filing complaints.

M. Personnel

60. *Sufficient Staff* The Chicago Board shall ensure that each school has special education staff, paraprofessional staff, and related services sufficient to provide students with disabilities an education in the LRE, including staff to provide services identified on every student's IEP, to conduct formal and informal assessments, and to participate in IEP meetings. In areas where the Chicago Board has been unable to hire the requisite personnel because of chronic staff shortages, such as speech/language, the Chicago Board will not be considered to be out-of-compliance with this paragraph if the Chicago Board has made reasonable efforts to hire or contract for the requisite

personnel.

61. *Request for Related Services.* Within three months from the execution of this Agreement, the Chicago Board shall E-mail all principals the procedures they should follow to request additional related service providers. The Chicago Board shall act on every application within 30 days, either by providing the requested personnel or by providing a written explanation for the refusal to the principal, and shall keep copies of all requests and responses.

N. Training

62. The Chicago Board shall ensure that, by the termination date for this Agreement, all Central Office staff who provide monitoring, direct services, or training that has a direct impact on the education of children with disabilities have training in educating children in the LRE.

O. Dissemination of Information Concerning Agreement

63. Deleted

64. *Parents.* The Chicago Board shall disseminate to parents of children with disabilities a written explanation of the terms of this Agreement through a letter written in appropriate languages and modalities. The letter shall also inform parents how they may obtain a copy of the document described in ¶ 66.

65. *Staff.* The Chicago Board shall communicate the terms of this Agreement to staff through an article in the Chicago Educator. The letter shall also inform staff members how they may obtain a copy of the document agreement described in ¶ 66.

66. *Principals and LSC Members.* The Chicago Board shall disseminate to principals, LSC members, and all agencies on the Specialized Services mailing list a detailed document explaining the terms of this Agreement. The document shall describe the obligations and time lines. The Chicago Board shall collaboratively develop this document with Plaintiffs and the Monitor.

67. *Time Frames.* The documents referenced in ¶¶ 64-66 shall be disseminated April 15, 1998.

68. *Public Meetings.* The Chicago Board shall hold two public meetings during each of the first two years of the Agreement to explain the terms of the Agreement to any interested persons. The meetings shall be geared towards parents of children with disabilities and advocates for children with disabilities. The Chicago Board shall publicize the meetings well in advance of the meeting date. Plaintiffs' attorneys shall be invited to participate in all meetings.

P. Waivers

69. For any state requirement which the Monitor concludes has a negative direct or indirect impact on educating children with disabilities in the LRE, the Chicago Board shall seek from the state a waiver of the requirement, if allowable by law, or approval of an alternative method for fulfilling the requirement which does not have the negative impact.

V. IMPLEMENTATION PLAN

70. *Development of Implementation Plans.* Within 60 days of the appointment of a Monitor pursuant to ¶ 73, the Chicago Board shall develop and submit an initial Implementation Plan to the Monitor regarding the school-based service delivery system and the awarding of LRE and Design Grants. Within 120 days of the appointment of the Monitor, the Chicago Board shall submit to the Monitor and the Court a final Implementation Plan for implementing this Agreement. The Plan shall be a comprehensive blueprint of how the Chicago Board shall satisfy their obligations under this Agreement.

71. *Plan Approval.* The Court shall approve the final Implementation Plan. During the plan development and plan approval process, the Chicago Board shall work collaboratively with the Monitor with the goal of submitting a plan that meets with the Monitor's approval. The Chicago Board shall provide the Plaintiffs drafts of the plan as they are provided to the Monitor, and the Plaintiffs shall have input into the development of the plan. Within 30 days of the Chicago Board's submission of the final Implementation Plan to the Court, the Monitor shall submit a report to the Court regarding its appropriateness. This report will include the Monitor's opinions regarding whether the plan conforms with this Agreement, recommendations for any changes, and the basis for any recommendations.

72. *Plan Amendment.* All amendments to the Plan must be approved by the Monitor and may be initiated by either the Chicago Board or the Monitor. Whenever the Chicago Board (or the Monitor) wishes to change an approved implementation plan, the Chicago Board (or the Monitor) shall notify, in writing, the Plaintiffs and the Monitor (or the Chicago Board) of the proposed change(s). The Plaintiff and the Chicago Board shall have 14 days from the receipt of the Chicago Board's (or the Monitor's) notification in which to provide the Chicago Board and the Monitor with comments and objections. Within 21 days of the receipt of the Chicago Board's (or the Monitor's) notification, the Monitor shall notify the parties of his/her approval or disapproval of the proposed change(s). Upon receiving the Monitor's notice, any party may submit the matter to the Court for review. The Chicago Board shall implement a change approved by the Monitor within 10 days of the Monitor's notice of approval.

VI. COURT-APPOINTED MONITOR

73. *Initial Appointment of Monitor.* Taking into consideration any recommendations of the parties, the Court shall appoint a Monitor to be utilized by the Court as soon as possible after the

entry of this Agreement.

74. *Appointment of Replacement Monitor.* If, at any time, the Court determines that the Monitor has not or will not substantially fulfill the Monitor's duties under this Agreement or that the Monitor is no longer fit to carry out such duties, the Court shall appoint a replacement Monitor. All parties shall have the opportunity to suggest candidates for a replacement Monitor to the Court.

75. *Qualifications.* The Monitor should be familiar with applicable federal and Illinois statutes and regulations affecting children with disabilities, and have significant experience relevant to carrying out the duties enumerated in ¶ 76.

76. *Monitoring Powers and Duties.* The Monitor shall monitor the implementation of this Agreement, and shall take any reasonable steps necessary to ensure compliance with this Agreement. Specific duties shall include, but not be limited to, the following:

- a. **Communications with the Court.** The Monitor shall advise the Court in a manner and in accordance with a timetable determined by the Court.
- b. **Data Collection.** The Monitor may direct the Chicago Board to carry out specific studies relevant to monitoring the implementation of this Agreement.
- c. **Policies and Procedures.** The Monitor shall review and have the opportunity to suggest changes consistent with this Agreement on any new or revised Chicago Board policy, procedure or initiative relating to serving students with disabilities in LRE, prior to implementation or Board approval. If the Chicago Board must approve a policy, procedure or initiative before the Monitor has an opportunity to review, any comments or suggestions will be considered at the next Board meeting.
- d. **Approval of LRE Plans.** No local school LRE Plans shall be implemented without the Monitor's approval. The Monitor has twenty-one (21) days within which to approve or reject a school's LRE Plan. If the Monitor fails to notify a school regarding approval or rejection of its LRE Plan within twenty-one (21) days, the school may implement the Plan. If the Monitor rejects any LRE Plan, he/she must provide a basis for the rejection in writing to the appropriate LRE Team.
- e. **Resource Catalog.** All persons listed in the Resource Catalog shall be approved by the Monitor.
- f. **Progress Reports.** The Monitor shall review and assess all progress reports, follow up with requests for additional information, if necessary, and provide assessments of progress to all parties upon request.
- g. **Notice of Lack of Cooperation.** If the Monitor believes that the Chicago Board has

failed to fulfil its duties pursuant to the terms of this Agreement or with the Implementation Plan, the Monitor shall address such concerns to the Chicago Board and attempt to resolve them before notifying the Court. If such attempts fail, the Monitor shall notify Plaintiffs' counsel and the Court of the Chicago Board's deficiencies in fulfilling its duties pursuant to this Agreement or the Implementation Plan.

- h. **Systemic Complaints.** The Monitor shall inquire into any complaints from Plaintiffs' counsel concerning the implementation of this Agreement. Such complaints shall be limited to systemic issues and may not be used to resolve individual complaints.
- i. **Resolve Disputes.** The Monitor shall resolve disputes among the parties, if possible.
- j. **Act in a Timely Fashion.** Where no specific deadline is stated, the Monitor shall act in a timely fashion, consistent with the purposes of this Agreement.

77. Compliance Criteria. The Monitor shall, with the advice of the Plaintiffs and Chicago Board, specify criteria for assessing the Chicago Board's progress in implementing the terms of this Agreement.

78. Content of Progress Reports. The Chicago Board shall provide regular reports of its progress in meeting the terms of this Agreement according to a schedule and in such detail as prescribed by the Monitor, with the advice of the Plaintiffs and Chicago Board.

79. Access. The Chicago Board shall provide the Monitor with reasonable access to all data, information, personnel, records, and programs necessary to monitor this Agreement.

80. Communication With Monitor. The Court, the Plaintiffs' attorneys, and/or the Chicago Board may communicate with the Monitor without notice to the parties.

81. Consultants. The Monitor may retain such consultants, experts, or other personnel as may be reasonably required to assist the Monitor in carrying out his/her responsibilities under this Agreement. The Plaintiffs and Chicago Board shall, if possible, jointly recommend three candidates to the Monitor as possible consultants. If the Plaintiffs and Chicago Board are unable to jointly agree on candidates, each party shall submit up to three candidates' names. The Consultant should: (i) have significant practical or field experience in designing and implementing services for students with disabilities in the LRE in urban settings; (ii) be familiar with applicable federal and Illinois statutes and regulations; and (iii) have significant experience relevant to assist the Monitor carry out the duties enumerated in ¶ 76. Payment of any expenses incurred by such consultants are included in the yearly amount reflected in ¶ 82 and the Chicago Board shall not be expected to pay any costs exceeding those reflected in ¶ 82.

82. Monitor's Expenses. The Chicago Board shall assume the costs associated with the

Monitor including, but not limited to, fees and expenses of the Monitor (e.g. for site visits, administrative costs, hiring of additional personnel, etc.), report writing, consultation with various parties or this Court and resolution of disagreements. The maximum yearly cost to the Chicago Board for Monitor expenses shall be \$170,000.

83. *Cooperation with Monitor.* The Chicago Board shall cooperate fully with the Monitor. Any failure to cooperate shall trigger the Monitor's obligations under ¶ 76(g).

VII. OTHER PROVISIONS

84. All costs assumed by the Chicago Board pursuant to this Agreement may be subject to apportionment in the event that any other party to this lawsuit settles with the Plaintiffs or is found to be liable to the Plaintiffs.

85. *Attorneys Fees.* The settlement of attorneys fees will be covered by separate agreement. If the Plaintiff and Chicago Board are unable to settle regarding attorneys fees, either party may seek the Court's intervention.

86. *Length of Agreement.* The duration of this Agreement is eight years from the date of entry of the Agreement by the Court. Except where otherwise specified, all obligations contained herein are also for eight years.

87. *Support for Agreement.* Neither the Chicago Board nor the Plaintiffs believe that the entry of this Agreement in any way violates any Federal law. All parties agree they will fully support the approval and implementation of this Agreement and will not directly or indirectly challenge or attack the terms of this Agreement.

88. *Class Notice.* The Plaintiffs and Chicago Board shall agree on a form of class notice and jointly submit to the Court a motion for its approval.

89. *Modifications.* Either the Plaintiffs or the Chicago Board may submit a motion to this Court to modify this Agreement.

90. *Resolution of Disputes.* If disputes arise between the Plaintiffs and the Chicago Board regarding compliance with this Agreement, the parties shall use all reasonable means to resolve the disputes prior to seeking the involvement of this Court, including discussions with the Monitor. If the parties are unable to resolve the dispute with the help of the Monitor, the matter may be submitted to this Court for further orders.

91. *Binding Provision.* This Agreement is binding on the Chicago Board and on all of its successors. Reorganization of the Chicago Board shall not in any way interfere with the obligations contained herein.

92. **Primacy of Settlement Agreement.** Chicago Board must seek relief from this Court from any state court order that would require action contrary to this Agreement. Only this Court, the Monitor, or another person or entity appointed by the Court shall have the authority to determine compliance with this decree. Nothing in this Agreement is intended to create an independent cause of action, right, or liberty or property interest under state law.

IX. DEFINITIONS

93. When used in this Agreement, the following terms shall have the following meanings:

- a. "Special Education" has the same meaning as it has in the IDEA and its implementing regulations.
- b. "Related Services" has the same meaning as it has in the IDEA and its implementing regulations.
- c. "Least Restrictive Environment" ("LRE") has the same meaning as it has in the IDEA and its implementing regulations.
- d. "Board of Education of the City of Chicago" ("Chicago Board") is a defendant herein and has the responsibilities set forth in the Illinois School Code, 105 ILCS 5/1-1 et seq., and is the same entity as the Chicago School Reform Board of Trustees.
- e. "Chief Specialized Services Officer" ("CSSO") is the highest ranking person charged with the operation of services for children with disabilities in the administrative structure of the Chicago Board.
- f. "Chief Executive Officer" ("CEO") has the same meaning as it has in 105 ILCS 5/34-3.3(b), through June 30, 1999. Thereafter, CEO means the highest ranking person in the administration of the Chicago Public Schools.
- g. "Chicago Public Schools Central Office" or "Central Office" includes all persons employed by the Chicago Board who are not assigned to local schools, including regional office personnel.
- h. "Illinois State Board of Education" ("State Board") is a defendant herein and has the responsibilities set forth in the Illinois School Code, 105 ILCS 5/1-1 et seq.
- i. "Policies" includes all policies, procedures, initiatives, and directives.
- j. "General education program" is the program in which a child with a disability would be educated if not disabled.


- k. "Supports" include, but are not limited to, related services, aides, modifications, adaptations, and accommodations.
- l. "Region" means one of a fixed number of geographical administrative subdivisions within the Chicago Public School system.
- m. "Office of Specialized Services" refers to the office within the Chicago Public School system that administers the delivery of services to students with disabilities.
- n. "Department of Implementation Monitoring" refers to the department within the Office of Specialized Services which investigates complaints from parents and staff and receives notices for due process hearings.
- o. "School Improvement Plan" refers to the local school improvement plan developed and implemented at each attendance center, as delineated in Section 34-2.4 of the Illinois School Code, 105 ILCS 5/34-2.4.
- p. "IDEA Flowthrough Increase" means the amount of funds received by the Chicago Public Schools pursuant to IDEA Part B in FY 98 in excess of the amount received in FY 97.
- q. "Home school" refers to the school the student would attend if he/she was not disabled.

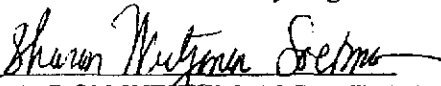
X. RULES OF CONSTRUCTION

- 94. The term "direct or indirect impact" shall be broadly construed wherever it is used.

The following signatures of the parties indicate the parties consent to the form and content of this Agreement:

FOR PLAINTIFFS

By 
JOHN S. ELSON
Northwestern University Legal Clinic


SHARON WEITZMAN SOLTMAN
Attorney for Plaintiffs

CHICAGO SCHOOL REFORM BOARD OF
TRUSTEES OF THE CITY OF CHICAGO

By *Gery J. Chico*
GERY J. CHICO
Its President

ATTEST:
Norma L. Tsuhako
NORMA L. TSUHAKO
Secretary

Authority: Board Report No. 97-0924-AR3 and 98-0128-AR7
Date: September 24, 1997 and January 28, 1998

APPROVED AS TO LEGAL FORM
Marilyn F. Johnson
MARILYN F. JOHNSON
Attorney
BOARD OF EDUCATION OF
THE CITY OF CHICAGO