



CW-NY-002-004

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

*rec'd October 15, 1993
Michael A. Telese
Chief, U.S.D.J., W.D.N.Y.*

J.G., by his mother and next friend,
Mrs. G., et al.,
Plaintiffs,

v.

THE BOARD OF EDUCATION OF THE ROCHESTER CITY
SCHOOL DISTRICT, et al.,
Defendants.

STIPULATION
AND ORDER ON
MOTION
FOR ENFORCEMENT
AND FURTHER
RELIEF

Civil Action
No. 81-173T

Findings of Fact

1. On August 16, 1983, a Stipulation to Entry of Judgment was entered into by the parties to this action and filed with this Court. The provisions of this Stipulation were incorporated into a Consent Judgment that was entered on September 6, 1983.

2. In November 1, 1989 a Modified Stipulation to Entry of Judgment was agreed to by the parties to this action. The provisions of this Stipulation were incorporated by the Court into the Consent Judgment.

3. In October, 1991, plaintiffs' attorneys notified defendants of several areas covered by the consent judgment where non-compliance had increased substantially.

4. Plaintiffs' attorneys identified the following areas of non-compliance during their monitoring:

a. Referrals to the Committee on Special Education (CSE) of children with suspected disabilities were not completed within the time provisions required by law and agreed to in the Consent Judgment. The monitoring reports show that in the 1992-1993 school year, 4,400 referrals to the Committee on Special

(1)

92

Education were made and in 72% of such referrals a determination of the Committee on Special Education as to whether the child needed special educational services was not completed in a timely manner and of that percentage at least 52% were not completed for a reason which is not permissible under the Consent Judgment and the applicable federal and state regulations.

b. Individualized Educational Programs (IEPs) developed at the Committee on Special Education meetings are not consistently implemented at the building level. Monitoring by plaintiffs' counsel and the District's self-review showed that some students were not provided with the full educational program contained in their IEPs including failures to provide mainstreaming, alternative testing, and the complete instructional program required by their IEPs. This problem was especially significant for students with disabilities who were to be receiving their instruction in general education classes.

c. Efforts by Special Instructional Services (SIS) staff to enforce compliance with the provisions of the Consent Judgment often have not been successful. Violations identified by central office staff are often not corrected at the building level. Compliance plans requested of buildings by SIS staff contain excuses rather than constructive plans to resolve site-level compliance issues.

d. Students with disabilities in certain instances do not have access to the full range of programs and equipment, such as laboratories and computer rooms, which are available to general education students.

e. Disciplinary procedures agreed to in the Michael T. consent judgment and incorporated into the J.G. consent judgment are not being fully implemented.

5. In November, 1991, both parties began negotiations in good faith to improve compliance.

6. As a result of nearly two years of negotiations, during which defendant's employees met repeatedly with the plaintiffs' attorneys to cooperatively identify compliance problems and design strategies to correct identifiable problems, both parties now agree to the following plan to remedy compliance problems identified by plaintiffs' counsel and by the defendant's self-review.

7. The additional provisions as set forth in appendices A through E attached hereto shall supplement the provisions of the current consent judgment and unless expressly stated otherwise the provisions of the consent judgment shall remain in effect.

IT IS THEREFORE STIPULATED AND AGREED by the attorneys for parties hereto and the Superintendent of Schools, that the school district agrees to the attached provisions, subject to the approval of the Court:

1. That the School District commits to provide those resources reasonably calculated to carry out the goals and objectives of the provisions as set forth in appendices A through E attached hereto.

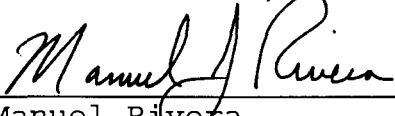
2. That the plaintiffs' attorneys shall continue to monitor the defendant and the Court shall retain jurisdiction over this matter for a period of an additional three years from the date of the entry of this Stipulation and Order.

3. That attorneys fees in the amount of \$60,679.50, unless otherwise stipulated by the parties or determined by the Court, shall be paid to Monroe County Legal Assistance Corp. in full settlement of attorney's fees claims through September 5, 1993.

4. That if attorney's fees for future monitoring and compliance activities are incurred, they shall be paid on a monthly basis for time spent at the prevailing rate for attorney's with similar experience in the community. If defendant, disagrees with the time spent or with the rate charged, the parties will discuss the issues raised. If the parties, are unable to reach an agreement than the parties will submit the issues to the Judge by letter.


5. The terms of this Motion shall be incorporated in an Order and Judgment of the Court.

Dated: October, 15 1993



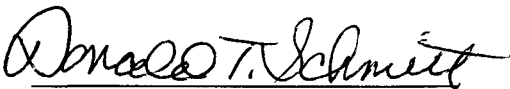
Manuel Rivera
Superintendent
Rochester City Schools

Dated: October, 15 1993



Bryan D. Hetherington, Esq.
Kathryn Smolarek, Esq.
Monroe County Legal Assistance Corp.
87 N. Clinton Avenue
Rochester, NY 14604
Tel.: (716) 325-2520

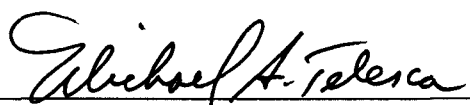
Attorneys for Plaintiffs



Donald T. Schmitt, Esq.
Acting Counsel
Rochester City Schools
131 West Broad Street
Rochester, NY 14614
Tel.: (716) 262-8412
Attorney for Defendants

SO ORDERED:

DATED: October 15, 1993



Hon. Michael A. Telesca
Chief Judge
United States District Court
Western District of New York

Appendix A

Referrals

1. Staff development will be provided through faculty meetings, citywide meetings, and Superintendent Conference Days for all general educators regarding the indicators of educational disabilities.

2. Evaluation and reporting forms used by Student Support Services staff will focus on student potential and strengths with an emphasis on the provision of services necessary to keep a child in general education classes. Any change or substitution in the current reporting forms shall be approved by the plaintiffs' counsel prior to implementation.

3. Sufficient release time will be provided for staff development for Student Support Services managers and team members to ensure they possess the knowledge and skills necessary to function as student support teams.

4. Sufficient release time will be provided for discipline specific staff to ensure they possess the knowledge and skill necessary to function in the changing role of "diagnostic staff".

5. Adequate Student Support Services staff will be provided in the schools to ensure that sufficient support services are provided to at risk students, general education and special education teachers with the emphasis on maintaining students in general education classes.

6. Adequate staff will be provided to ensure that referrals to the Committee on Special Education are processed and completed in a timely manner.

7. Sufficient district staff development will be provided to refine diagnostic and identification processes to assure nondiscrimination on basis of ethnicity and culture.

Appendix B

Compliance and Accountability

1. Individualized Educational Programs (IEP) for students with disabilities will be fully implemented by the building sites. The building principal as instructional leader will be responsible for compliance.

2. The defendant commits to providing sufficient reserve classrooms at the elementary, middle and senior level to ensure that students are not waiting for special education placements within the District.

3. To facilitate school-site ownership and compliance, the Superintendent or his or her designee will develop explicit expectations and consequences for non-compliance.

4. Districtwide student accountability measures will include achievement of students with disabilities.

5. Individual school-site administrators in conjunction with school based planning teams will develop and submit to the Superintendent individual site plans to insure compliance with federal and state laws and the provisions of the J.G. consent decree.

6. The defendant will establish procedures for effective internal compliance monitoring with sufficient allocation of resources.

7. Parties agree to develop a plan for compliance monitoring

which will be included as an attachment by December 15, 1993.

8. Adequate Special Instructional Services administrators and staff will be provided to fulfill their role in providing instructional leadership, training for buildings, technical assistance, and monitoring.

Appendix C

Discipline

1. Procedures will be developed whereby paraprofessionals required by the Michael T. consent decree will be provided within 5 days to any student who the CSE decides needs the additional support.

2. School administrators will, in conjunction with the Student Support Team, develop a plan to return a student to their school after a suspension. The plan developed will be presented to the Committee on Special Education (CSE).

3. Short term suspension procedures provided in J.G. and Michael T. shall be followed at the building level. The principal as instructional leader will be responsible to ensure that mandated short term suspension meetings and IEP meetings are held as required.

4. Parties will no later than December 15, 1993 revise the school based procedures required by Michael T.

5. CSE members shall require that the procedures of Michael T. are followed at the building site, and shall recommend no change in placement inconsistent with the provisions of Michael T.

6. Sufficient inservice time will be made available to instruct CSE, building administrators and building staff as to the

philosophy and requirements of Michael T.

Appendix D

Accessibility

1. School sites employing an entrance criteria will modify same to assure that students with disabilities shall have equal access to all District programs.

2. District programs shall allocate spaces at each site beginning in 1994-1995 school year for students with disabilities.

3. Recruitment procedures will be implemented to encourage students with disabilities to apply for the allocated spaces.

4. Students with disabilities will be assigned a space in general education classrooms in their school of attendance to ensure appropriate implementation of their IEPs.

5. Students with disabilities will be fully mainstreamed in accordance with their abilities and as provided by their IEPs.

6. Students with disabilities shall have access to instructional equipment and services equivalent to that available to general education students.

7. Building administrators shall schedule laboratories and arrange for the purchasing of textbooks to ensure that students with disabilities have equitable access to laboratories, computers, books and other educational supports provided to general education students.

8. Procedures for requesting a reasonable accommodation pursuant to §504 of the Rehabilitation Act and the Americans with Disability Act and a system for tracking when a reasonable accommodation has been granted or denied will be developed.

9. To ensure equal access of students with disabilities to course selection, each school will schedule students with disabilities at the same time and through the same process as their peers.

Appendix E

Inclusion

1. To ensure that most of the defendant's students will receive special education in their home schools or schools of choice, the School District will redefine catchment areas with respect to special education students for home schools and provide sufficient space for students with disabilities at each site.

2. The defendant shall develop a plan for the implementation by April 1, 1994 and the defendant shall fully implement said plan by the 1999-2000 school year.

3. The defendant will expand its school based support, including but not limited to consultant, resource teacher, and school based support team services, to both special and general education staff and students to facilitate the placement of students with disabilities in their home schools or schools of choice.

4. To provide for a more even distribution and space for students with disabilities, newly developed magnet programs shall be located in schools of traditionally low general education enrollment.

5. All new schools as well as schools undergoing a major redesigning of program or facility will be opened or re-opened with an inclusion model in place, this currently includes the new School

of the Arts, School #8, Northeast Middle School, and John Marshall Center for Learning.

6. School administrators in conjunction with school based planning teams at each school will develop plans to provide services to all children with disabilities assigned to their building as the home school or school of choice in the general education by June of 1995. The parties shall agree upon an implementation schedule which will provide for full implementation of all plans no later than the 1999-2000 school year.

7. To provide incentives to schools, monies will be made available to schools willing to implement an approved plan for educating home school students with disabilities in their site beginning in September 1994.

8. Resources shall be made available to assure sufficient support staff to District students and staff to implement the inclusion model including, but not limited to: human supports, modification of the learning environment, instructional equipment, testing modifications, and instruction in techniques necessary to remain in general education programs and meet the needs of the individual learner.

9. Service models will be developed to meet the needs of students with disabilities in the home school or school of choice for those students presently attending BOCES or agency programs.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

J.G., by his mother and next friend,
Mrs. G., et al.,

Plaintiffs,

- vs -

8]-CV-173T

THE BOARD OF EDUCATION OF THE
ROCHESTER CITY SCHOOL DISTRICT,
et al.,

Defendants.

Take notice of an Order of which the within is
a copy, duly granted in the within entitled action on the
15th day of October, 1993 and entered in the office
of the Clerk of the United States District Court, Western
District of New York, on the 14th day of June, 1994.

Dated: Rochester, New York

June 14, 1994

RODNEY C. EARLY, Clerk
U. S. District Court
Western District of New York
282 U. S. Courthouse
Rochester, New York 14614

TO: all counsel