

C/M

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ AUG 25 2005 ★
P.M. _____
TIME A.M. _____

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CITY OF NEW YORK; BOARD OF EDUCATION
OF THE CITY SCHOOL DISTRICT OF THE CITY
OF NEW YORK/NEW YORK CITY DEPARTMENT
OF EDUCATION; JOEL KLEIN, in his official capacity
as Chancellor of the city school district of the city of
New York; and ALAN SIEGEL, in his official capacity
as Principal of Lafayette High School,

04 CV 2248 (CBA)

STIPULATION

Defendants.

WHEREAS, on June 1, 2004, Plaintiff, the United States of America, filed a complaint alleging that Defendants, the City of New York ("the City"), the Board of Education of the City School District of the City of New York/New York City Department of Education ("NYCDOE"), Chancellor Joel Klein, and Lafayette High School Principal Alan Siegel, had deprived Asian students at Lafayette High School ("LHS") of the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution and had deprived English Language Learner ("ELL") students of equal educational opportunities in violation of the Equal Educational Opportunities Act of 1974 ("EEOA"), 20 U.S.C. § 1701 et seq.;

WHEREAS the parties entered into a Consent Decree to resolve the United States' claims against the Defendants without an adjudication of facts or law and according to terms set forth therein;

WHEREAS the Consent Decree was entered as an order of the Court on June, 22, 2004, and remains in effect until August 30, 2007, unless the parties consent to extend the Consent Decree in whole or part, or the Court determines, on a motion by the United States, that the Defendants have failed to substantially comply with one or more paragraphs of the Consent Decree; and

WHEREAS the parties now consent to the extension of certain provisions of the Consent Agreement as set forth below. It is therefore STIPULATED, AGREED and ORDERED that:

1. **Extension of Section IV, Paragraphs B.2 and B.3 of the Consent Decree.** The term of Section IV, Paragraphs B.2 and B.3 of the Consent Decree ("Paragraphs B.2 and B.3"), which govern the placement of ELL students at LHS in appropriate English-as-a-Second-Language and bilingual classes, shall be extended for one (1) year beyond the current term of the Consent Decree, as set forth in Section I, Paragraph A of the Consent Decree. Paragraphs B.2 and B.3, therefore, shall remain in effect until August 30, 2008. These paragraphs specifically provide:

B. **Class Placement**

- ... 2. The NYCDOE shall ensure that each ELL student is placed in the appropriate ESL and bilingual classes, if the student is to take a bilingual class, within ten (10) school days of the student's enrollment or within ten (10) school days of the start of the school year, whichever is later.
3. In complying with paragraph IV.B.2, above, the NYCDOE shall ensure that (a) each ELL student in a bilingual education class at LHS is taught in a non-English language that the student understands; and (b) each ELL student is placed in the appropriate level ESL class as indicated by the student's score on the [Language Assessment Battery Revised test ("LAB-R")], the New York State English as a Second Language Achievement Test ("NYSESLAT"), and any other test used to place ELL students among ESL levels. The NYCDOE shall ensure that if an ELL student is placed in a manner that contradicts the foregoing obligations, the student is

assigned to an appropriate ELL program class, or to the appropriate level ESL class, within three (3) school days from the date when the discrepancy is identified. The NYCDOE also shall ensure that LHS identifies a staff member responsible for ensuring that the foregoing obligations are met and that each teacher of a bilingual class at LHS is instructed to notify the designated staff member immediately if a student is placed in his or her class but does not speak the foreign language of instruction. The parties agree that Mandarin-speaking students who do not understand Cantonese should not be placed in a bilingual class where oral instruction is provided in Cantonese, and that Cantonese-speaking students who do not understand Mandarin should not be placed in a bilingual class where oral instruction is provided in Mandarin.

2. **Continuing Applicability of Other Provisions of the Consent Decree.** During the extended term of Paragraphs B.2 and B.3. the following paragraphs of the Consent Decree shall remain in effect with respect to Paragraphs B.2 and B.3:

- A. Section I, Paragraph B, governing the extension of any provision of the Consent Decree;
- B. Section I, Paragraph C, setting forth the procedure regarding any motion to enforce, modify or extend the Consent Decree filed by the United States;
- C. Section III, Paragraphs A.2, A.7 and A.8, governing the Compliance Plan and modifications to the Compliance Plan;
- D. Section III, Paragraphs B.1 and B.3, authorizing the United States and its consultants reasonable access to LHS and NYCDOE personnel to monitor compliance, and ensuring NYCDOE's cooperation with the United States' compliance review;
- E. Section VI, Paragraphs A.1 and A.2, requiring the Defendants to provide compliance data to the United States on November 1 and May 1 of each academic year;
- F. Section VI, Paragraph C, permitting the United States to request reasonable clarification of, or supplementation to, reports provided by the Defendants; and
- G. Paragraph VIII in its entirety, except as altered by agreement of the parties, regarding the sending of notices, submissions and demands.

3. Nothing in this stipulation shall be construed to prohibit or prevent the parties

from agreeing, subject to the Court's approval, that the provisions identified in paragraphs 1 and 2 above will terminate at a time other than August 30, 2008.

By the signatures of their counsel on this page, the parties stipulate and agree to the foregoing provisions, and request the entry of this Stipulation by the Court.

For the United States:


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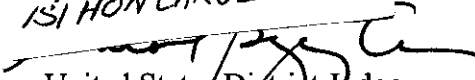


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Date: August 11, 2005

ORDERED, this 23 day of August 2005.

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HON CAROL BAMON

United States District Judge