

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
PATRICK TUYIZERE, SUK MAYA RAI,
BBT by her parent and natural guardian BIRKHA
BOLON, ALI JANAR, CHO CHO WIN, ADO
LAR, on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

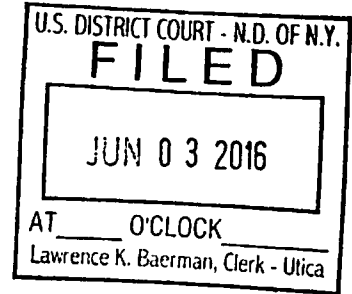
UTICA CITY SCHOOL DISTRICT BOARD OF
EDUCATION, UTICA CITY SCHOOL
DISTRICT, BRUCE J. KARAM, Superintendent
of Utica City School District, in his official
capacity,

Defendants/Third Party
Plaintiffs,

v.

MOHAWK VALLEY RESOURCE CENTER
FOR REFUGEES,

Third Party Defendant.
-----X



Index No. 15-cv-488 (DNH)(TWD)

CONSENT DECREE

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DEFINITIONS

Action means *Tuyizere, et al. v. Utica City School District Board of Education, et al.*, Index No. 15-cv-488 (DNH)(TWD), filed on April 23, 2015.

Alternative Education Program means, refers to, and includes nontraditional learning environments where students are not provided with a high school education, including, but not limited to, a high school equivalency program (otherwise known as a GED program), a program that only provides English as a second language instruction, a newcomer program, the Madison-Oneida Board of Cooperative Education Services (“BOCES”) GED program, or the Alignment of Pathways and Programs for Learners of English (“APPLE”) program.

Amended Complaint means the complaint filed by Plaintiffs in the Action on April 27, 2015.

Board of Education means the Utica City School District Board of Education.

Consent Decree means the agreement between the Parties in the Action and the Third Party Action to resolve both matters that is entered and so ordered by this Court.

Defendants or Third Party Plaintiffs mean the Utica City School District Board of Education, Utica City School District, and Bruce J. Karam, Superintendent of Utica City School District, in his official capacity.

District means the Utica City School District.

Effective Date means the date the Court signs and enters the Consent Decree.

English Language Learner or ELL means an individual who is not a native English speaker and is unable to communicate fluently in English.

Opt-Out Form means the document, included as Exhibit E of this Consent Decree, which permits an individual to affirmatively state, in sum and substance, whether he or she would like to remain in an Alternative Education Program rather than transfer to high school.

Parties means the Plaintiffs, Defendants/Third Party Plaintiffs, and the Third Party Defendants in the Action and the Third Party Action.

Plaintiffs mean Patrick Tuyizere, Suk Maya Rai, BBT by her parent and natural guardian Birkha Bolon, Ali Janar, Cho Cho Win, and Ado Lar.

School-Age Eligible means a person who is over five and under twenty-one years of age.

Third Party Action means *Utica City School District Board of Education, et al. v. Mohawk Valley Resource Center for Refugees*, Index No. 15-cv-488 (DNH)(TWD), filed on May 19, 2015.

Third Party Complaint means the complaint filed by Defendants/Third Party Plaintiffs in the Third Party Action on May 19, 2015.

Third Party Defendant or Refugee Center means the Mohawk Valley Resource Center for Refugees.

Waiver Form means the document, included as Exhibit D of this Consent Decree, which permits an individual to affirmatively state, in sum and substance, whether he or she would like to enroll in an Alternative Education Program rather than high school.

INTRODUCTION

The Parties to this Consent Decree, by their attorneys, hereby stipulate and agree as follows:

WHEREAS, plaintiffs Patrick Tuyizere, Suk Maya Rai, BBT by her parent and natural guardian Birkha Bolon, Ali Janar, Cho Cho Win, and Ado Lar (“Plaintiffs”) filed the Amended Complaint beginning the Action;

WHEREAS, defendants Utica City School District Board of Education, Utica City School District, Bruce J. Karam, Superintendent of Utica City School District, in his official capacity, (“Defendants” or “Third Party Plaintiffs”) denied the Plaintiffs’ allegations and filed a Third Party Complaint beginning the Third Party Action against the Third Party Defendant, the Mohawk Valley Resource Center for Refugees (“Refugee Center”);

WHEREAS, the Refugee Center denied the Defendants/Third Party Plaintiffs’ allegations;

WHEREAS, there has been no finding of liability by this Court or any other court; and

WHEREAS, the Parties desire to avoid costly and protracted litigation, have conferred on the matter, and have voluntarily agreed, as indicated by the signatures of counsel below, to resolve the Action and the Third Party Action without adjudication of facts or law and according to the terms set forth herein.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, and the Parties do hereby stipulate and agree, as follows:

I. COMPLIANCE WITH EDUCATION LAWS

1. As required by New York Education Law § 3202(1), Defendants shall provide any person who is aged 16-20, resides in Utica, and has not received a high school diploma, with the opportunity to attend Thomas R. Proctor High School (“Proctor High School”).
2. As required by the Equal Educational Opportunities Act (“EEOA”), the Board of Education and the District shall take appropriate action to overcome language barriers that impede equal participation by ELLs aged 16-20 in its instructional programs. *See* 20 U.S.C. § 1703(f). The Board of Education and the District shall comply with all requirements of the EEOA. *See* 20 U.S.C. § 1703, *et seq.*

II. NOTICE TO IMMIGRANTS ELIGIBLE FOR HIGH SCHOOL

1. Within 15 days of the Effective Date of this Consent Decree, the Refugee Center shall provide to Defendants and Plaintiffs’ counsel an up-to-date list of School-Age Eligible immigrants who, during the last 4 years, entered the doors of the Refugee Center seeking services. This list shall include each School-Age Eligible immigrant’s name, age, native language, last known address, last known telephone number, and his or her parents’ or guardians’ names.
2. Within 90 days of the Effective Date of this Consent Decree, Defendants shall perform a one-time review of the list created by the Refugee Center pursuant to Section II. 1. This one-time review shall conclude with the following mailing:

- a. Defendants shall mail to each individual aged 16-20 indentified on the Refugee Center's list whose last known address is in Utica and who is not enrolled at Proctor High School or a graduate of Proctor High School two letters and Waiver Forms, one in the individual's native language and one in English, and a prepaid postage envelope with a return address to the District's administrative office. The English language version of this letter is attached as Exhibit C, and Defendants shall use this letter in their mailings.
 - b. In the letters, Defendants shall inform each individual of his or her right to attend Proctor High School, provide contact information for the District and instructions on how to enroll in Proctor High School. Defendants shall request that any individual who declines to attend Proctor High School sign and return to the District the enclosed Waiver Form.
3. Within 60 days of the Effective Date of this Consent Decree, Defendants shall attempt to place posters with text identical to the text in Exhibit H to this Consent Decree at the locations specified in Section II. 6 of this Consent Decree.
 - a. Each poster shall provide notice in English and the 5 most commonly spoken languages at Proctor High School.
 - b. If a representative from any location specified in Section II. 6 of this Consent Decree refuses to allow the display of the posters, the Defendants shall inform Plaintiffs' counsel within 7 days of said refusal, and Defendants shall be deemed in compliance with Section II. 3 of this Consent Decree with respect to that location.

4. Beginning 60 days after the Effective Date of this Consent Decree, the Defendants shall distribute the flyers attached as Exhibit G to this Consent Decree to the locations specified in Section II. 6 of this Consent Decree. Defendants shall distribute these flyers by placing 300 flyers at the first four locations identified in Section II. 6 and 100 flyers at each of the remaining locations in a conspicuous place where individuals entering or leaving the locations can easily access the flyers.
 - a. Each flyer shall provide notice in English and in the 5 most commonly spoken languages at Proctor High School.
 - b. If a representative of any location specified in Section II. 6 of this Consent Decree refuses to allow the distribution of the flyers, the Defendants shall inform Plaintiffs' counsel within 7 days of said refusal, and Defendants shall be deemed in compliance with Section II. 4 of this Consent Decree with respect to that location.
5. Within 7 days after placing and distributing the posters and flyers at the required locations, Defendants shall notify Plaintiffs' counsel of that fact in writing.
6. As required by Section II. 3 and II. 4, the Defendants shall provide notice at the following locations:
 - a. Mohawk Valley Resource Center for Refugees, 309 Genesee Street, Utica, N.Y.
 - b. Utica Public Library, 303 Genesee Street, Utica, N.Y.
 - c. Oneida County Department of Social Services, 800 Park Avenue, Utica, N.Y.
 - d. Midtown Utica Community Center, 47 Scott Street and 40 Faxon Street, Utica, N.Y.

- e. Utica ACCESS Site, 508 2nd Street, Utica, N.Y.
- f. OHM BOCES, 4747 Middle Settlement Road, New Hartford, N.Y.
- g. Mohawk Valley Somali Bantu Community Association, 615 Elizabeth Street, Utica, N.Y.
- h. Muslim Community Association of Mohawk Valley, 1631 Kemble Street, Utica, N.Y.
- i. Bosnian Islamic Association of Utica, 306 Court Street, Utica, N.Y.
- j. Community Seventh Day Adventist Church, 1116 Park Avenue, Utica, N.Y.
- k. Utica Municipal Housing Authority, Perretta Twin Towers, 509 Second Street, #1, Utica, N.Y.
- l. Golden Burma Asian Market, 314 South Street, Utica, N.Y.
- m. Golden Burma Halal Meat Market, 1173 McQuade Avenue, Utica, N.Y.
- n. Mya Family Asian Food Market, 1651 Oneida Street, Utica, N.Y.
- o. Chanatry's Supermarket, 485 French Road, Utica, N.Y.
- p. Senshine Market, 600 Culver Avenue #1, Utica, N.Y.
- q. Muharem Market, 1129 Bleeker Street, Utica, N.Y.

III. ENROLLMENT PROCEDURES

- 1. A District employee, along with an appropriate language interpreter, shall meet in person with any ELL aged 16 to 20 who requests enrollment in high school.
 - a. The District shall advise the ELL of his or her right to attend high school until age 21 or until he or she obtains a high school diploma, that the right continues even if the ELL at first decides to enroll in an Alternative

Education Program, and inform the ELL of the differences between high school and any existing Alternative Education Programs. The District shall use the checklist, attached as Exhibit F, to advise ELLs of their rights and the differences between high school and any existing Alternative Education Programs.

- b. During this meeting, the District shall offer enrollment in the District's high school to the School-Age Eligible ELL.
 - c. The District shall require that every ELL who elects to enroll in an Alternative Education Program sign the Waiver Form attached as Exhibit D to this Consent Decree. The Waiver Form shall be in the ELL's native language or an interpreter shall verify, in writing, that he or she interpreted the document for the ELL in the ELL's native language.
2. Within 5 business days of the arrival of any School-Age Eligible ELL at the Refugee Center, the Refugee Center shall notify the District of the ELL's arrival. The District shall meet in person with any ELL who wishes to enroll in high school as soon as reasonably possible and complete the actions required in this Consent Decree.
- a. In the event that the Refugee Center ceases to exist, or if the Refugee Center stops providing resettlement services to refugees in Utica, Defendants shall endeavor to coordinate its enrollment procedures with any entity that replaces the Refugee Center or takes control of the refugee resettlement process in Utica.

3. The District shall take all necessary steps to coordinate with providers of Alternative Education Programs for School-Age Eligible ELLs living in Utica to ensure that ELLs who seek admission in any Alternative Education Program first sign Waiver Forms.
4. At the conclusion of each school year during the term of the Consent Decree, the District shall meet in person with and offer each School-Age Eligible ELL who resides in Utica and attends an Alternative Education Program the choice to transfer to Proctor High School. ELLs who wish to remain in an Alternative Education Program must sign the Opt-Out Form, attached as Exhibit E to this Consent Decree, to opt-out of transferring to Proctor High School.
5. The District shall maintain enrollment policies that comply with all applicable laws, rules, regulations, and policies pursuant to this Consent Decree. The District shall promptly update its enrollment policies in response to relevant amendments to the New York Education Law or the Commissioner's Regulations, or in response to relevant, new guidance from the U.S. Departments of Education and/or Justice. If the Defendants amend or replace their enrollment policies at anytime during the term of this Consent Decree, Defendants shall provide Plaintiffs' counsel with a copy of the revised enrollment policies no later than 30 days after making the revisions.

IV. FORMS

1. Defendants shall not make any changes to the Waiver Forms or Opt-Out Forms attached to this Consent Decree.
2. The Defendants shall promptly update the checklist attached to this Consent Decree in response to the creation of new Alternative Education Programs or the termination of

existing ones. If Defendants update the checklist, the Defendants shall provide Plaintiffs' counsel with a copy of the revised checklist no later than 30 days after making the revisions.

V. TRAINING

1. The District shall provide annual training to every District employee involved in the school enrollment process on how to enroll ELLs in accordance with this Consent Decree, and all applicable laws, rules, regulations, and policies pursuant to this Consent Decree.
2. If the District hires someone during the school year to participate in the enrollment process, the District shall promptly train that individual in accordance with this Consent Decree, and all applicable laws, rules, regulations, and policies pursuant to this Consent Decree.
3. Within 90 days of the Effective Date of this Consent Decree, the Defendants shall provide Plaintiffs' counsel with the training materials they plan to use to conduct the trainings required by Sections V. 1 and V. 2.
4. The District shall maintain training materials that comply with this Consent Decree, and all applicable laws, rules, regulations, and policies pursuant to this Consent Decree. The District shall promptly update the training materials in response to relevant amendments to the New York Education Law or Regulations of the Commissioner of the New York State Education Department, or in response to relevant, new guidance from the U.S. Departments of Education and/or Justice. If the District updates, amends, or replaces its training materials at anytime during the term of this Consent Decree, the District shall

provide Plaintiffs' counsel with a copy of the revised training materials no later than 30 days after making the revisions.

5. The District shall record, in writing, the name and title of every District employee who participated in the training, what training materials were provided, the duration of the training session, and who gave the training.
6. Beginning 6 months after the Effective Date of this Consent Decree, and continuing every 6 months thereafter for the duration of the Consent Decree, the District shall notify Plaintiffs' counsel of the titles of every District employee who participated in the training required by this Section, what training materials were provided, the duration of the training session, and who gave the training.

VI. COMPENSATORY SERVICES

1. Defendants shall allow Plaintiffs to attend Proctor High School past their 21st birthday as compensatory education as follows:
 - a. Patrick Tuyizere – 7 months
 - b. Suk Maya Rai – 13 months
 - c. BBH – 2 months
 - d. Ali Janar – 24 months
 - e. Ado Lar – 8 months

VII. TERM OF THIS CONSENT DECREE

1. This Consent Decree is effective immediately upon the signature of the Court.

2. Without further action by the Court, this Consent Decree shall expire 4 years following the Effective Date.

VIII. REPORTING

1. Beginning 6 months after the Effective Date of this Consent Decree, and continuing every 6 months thereafter for the duration of the Consent Decree, Defendants shall provide Plaintiffs' counsel with a report including the following for the preceding six month period:
 - a. the number of ELLs aged 16-20 that were referred to the Defendants by the Refugee Center, including a breakdown of the number of ELLs according to their ages;
 - b. the number of ELLs aged 16-20 who were newly enrolled in Proctor High School, including a breakdown of the number of ELLs according to their ages;
 - c. the number of ELLs aged 16-20 who were newly enrolled in Alternative Education Programs that the Defendants are aware of, including the name and type of program (e.g., GED program) and including a breakdown of the number of ELLs in each program according to their ages;
 - d. the Waiver Forms for every ELL aged 16-20 residing in Utica who is enrolled in an Alternative Education Program or was sent a Waiver Form as part of the Defendants' one-time review and mailing; and
 - e. the Opt-Out Forms for every ELL aged 16-20 residing in Utica and enrolled in an Alternative Education Program who elects to remain in an

Alternative Education Program after being offered the opportunity to transfer to Proctor High School.

2. Beginning 6 months after the Effective Date of this Consent Decree, and continuing every 6 months thereafter for the duration of the Consent Decree, the Refugee Center shall provide Plaintiffs' counsel with a report including the following for the preceding six month period:
 - a. the number of ELLs aged 16-20 that the Refugee Center referred to the Defendants, including a breakdown of the number of ELLs according to their ages;
 - b. the number of ELLs aged 16-20 newly enrolled in Proctor High School that the Refugee Center is aware of, including a breakdown of the number of ELLs according to their ages; and
 - c. the number of ELLs aged 16-20 newly enrolled in Alternative Education Programs that the Refugee Center is aware of, including the name and type of program (e.g., GED program) and including a breakdown of the number of ELLs in each program according to their ages.
3. The Parties acknowledge that federal and state law, including the Family Educational Rights and Privacy Act, 20. U.S.C. § 1232g, governs the disclosure of student education records. The District's production of signed Waiver Forms and Opt-Out Forms shall be made pursuant to the protective order attached as Exhibit B to this Consent Decree.

IX. IMPLEMENTATION

1. To the extent necessary and not otherwise explicitly required by this Consent Decree, the Board of Education shall take all actions under its authority to ensure that the terms of the Consent Decree are implemented, and that the employees of the District comply with the Consent Decree.
2. The Board of Education shall designate the Administrator of Special Education and ESL Services to ensure compliance with the Consent Decree.
3. To the extent necessary and not otherwise explicitly required by this Consent Decree, the Board of Directors of the Refugee Center shall take all actions under its authority to ensure that the terms of the Consent Decree are implemented, and that employees of the Refugee Center comply with the Consent Decree.
4. The Board of Directors of the Refugee Center shall designate a Refugee Center employee to serve as a compliance coordinator. The Refugee Center's compliance coordinator shall be responsible for coordinating the Refugee Center's compliance with the Consent Decree, shall report directly to the Board of Directors of the Refugee Center about the implementation of the Consent Decree, and shall serve as a point of contact for Plaintiffs' counsel. The Refugee Center shall notify Plaintiffs' counsel of the identity of their compliance coordinator within 30 days of the Effective Date. If the Refugee Center changes its compliance coordinator, the Refugee Center shall promptly notify Plaintiffs' counsel of the identity of the new compliance coordinator.

X. ENFORCEMENT

1. The Parties consent to the jurisdiction of this Court over any proceedings seeking to enforce the terms of this Consent Decree.
2. In the event the Court finds that a party has not complied with a material provision of this Consent Decree, the Court shall have the power to order specific performance of the provision and/or any other relief the Court deems necessary.

XI. MODIFICATION

1. This Consent Decree may not be modified without the written consent of the Parties and the approval of the Court.

XII. NOTIFICATIONS TO COUNSEL

1. Notices and other written communications pursuant to this Consent Decree shall be in writing. Notice to the Defendants shall be addressed to the Superintendent of the Utica City School District at 106 Memorial Parkway, Utica, N.Y. 13501. Notice to Plaintiffs or the Refugee Center shall be addressed to the attorneys of the respective parties specified in the signature pages of this Consent Decree.
2. The District shall notify all counsel if there is any substitution of the Superintendent of the Utica City School District. In the event that any substitution is to be made in counsel to receive communications under this Consent Decree, all counsel and the Superintendent of the Utica City School District shall be informed, and the name and contact information for substitute counsel shall be provided.

XIII. DISMISSAL AND RESERVATION OF JURISDICTION

1. Upon approval of the Consent Decree by the Court, the Parties shall execute, deliver, and file a stipulation of dismissal with prejudice of the Action and the Third Party Action, substantially in the form attached hereto as Exhibit A. The Court shall retain jurisdiction of the Action and the Third Party Action to enforce this Consent Decree, the protective order attached as Exhibit B, and to decide any motion by Plaintiffs' counsel seeking attorneys' fees and costs.

XIV. ATTORNEYS' FEES AND COSTS

1. Plaintiffs' counsel may apply for an award of reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 following the Court's approval of this Consent Decree, or according to the motion schedule set by the Court, with such motion supported by time and billing rate information. Defendants may oppose the amount of attorneys' fees and costs sought.

XV. NON-WAIVER PROVISIONS

1. This Consent Decree does not limit or affect the rights and remedies of any persons who are not a party to this Consent Decree.
2. The failure by any party to enforce any provision of the Consent Decree with respect to any deadline or other provision herein shall not be construed as a waiver of their right to enforce deadlines or provisions of this Consent Decree.

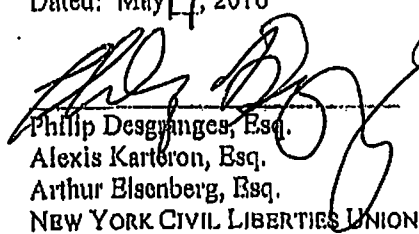
XVI. ENTIRE AGREEMENT

1. This Consent Decree embodies the entire agreement of the Parties. No prior or contemporaneous agreements, oral or written, entered into prior to the execution of this Consent Decree regarding the subject matter of this Action or Third Party Action shall be deemed to exist, or to bind the Parties hereto, or to vary the terms and conditions contained herein. Captions are included herein solely for convenience of reference, and shall not be used to limit the terms of the Consent Decree.

XVII. EXECUTION

1. This Consent Decree may be executed in multiple counterparts, and faxed and/or emailed signatures will be valid and enforceable, each of which shall be deemed an original, and all of which shall constitute one and the same document.

Dated: May 19, 2016

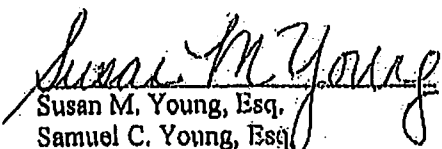

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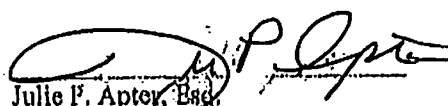
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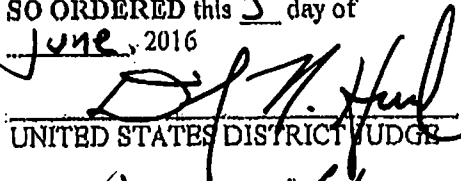
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SO ORDERED this 3rd day of
June, 2016


UNITED STATES DISTRICT JUDGE
Utica, N.Y.