

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NICK O., by his mother, and Next Friend
JANE O., on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

C.A. TERHUNE, in his official capacity as Director of the California Youth Authority; RICHARD TILLSON, in his official capacity as Superintendent of the Northern Reception Center - Clinic,
Defendants.

This Stipulation and Order ("Stipulation") is made and entered into by and between counsel for plaintiff and counsel for "defendants to resolve the above entitled class action lawsuit.

RECITALS AND REPRESENTATIONS

A. The complaint in this action was filed on May 25, 1989, on behalf of plaintiff, Nick O., and all others similarly situated and alleges that defendants violated plaintiffs' rights under the Education of the Handicapped Act, 20 U.S.C. " 1401 et seq., (EHA), the Rehabilitation Act of 1973, 29 U.S.C. ' 794, the Federal civil Rights Act, 42 U.S.C. ' 1983, and the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

B. The defendants filed an answer to the complaint on September 20, 1989, denying any such violations.

C. The undersigned counsel are authorized by their clients to enter into this Stipulation and to take all steps required, pursuant thereto.

D. The parties represent to the Court that this Stipulation is fair, reasonable, and adequate to protect the class in accordance with the standards of Rule 23 (e) of the Federal Rules of Civil Procedure.

E. The Stipulation is not to be construed as an admission of liability or violation of law by the defendants. Defendants have entered into this Stipulation for the purpose of settling disputed contentions and controversies arising from this action.

F. This Stipulation shall not be effective until it has been signed by counsel on behalf of the parties listed on the signature page, and approved by a United States District Judge for the Eastern District of California. If the Stipulation does not become effective, it will be deemed part of negotiations for settlement purposes only: it will not be admissible to prove or disprove the allegations in the complaint; and all rights, claims and defenses that existed apart from the Stipulation shall be automatically restored to the parties.

NOW THEREFORE, the parties hereby stipulate that a judgment be entered which shall incorporate the following terms and conditions.

I. JURISDICTION

1. This court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. " 1331, 1343(3) and 1343(4) and personal jurisdiction over the named defendants to this action.

II. PARTIES AND THE SETTLEMENT CLASS

2. Plaintiffs in this action are the named plaintiff, Nick

O., by and through his guardian ad litem, Jane O., and the plaintiff class which includes all current and future wards of the California Youth Authority who are educationally handicapped. The term "educationally handicapped" as used throughout this Stipulation shall also include the term "individuals with exceptional needs".

3. The parties stipulate that this action is properly

maintained as a class action under Rule 23(o), Federal Rules of Civil Procedure and is appropriately designated as coming within the provisions of Rule 23(b) of the Federal Rules of Civil Procedure.

4. The defendants are C. A. Terhune, in his official capacity as Director of the California Youth Authority, and Richard Tillson, in his official capacity as Superintendent of the California Youth Authority's Northern Reception Center-Clinic.

5. When finally filed with the Court, this Stipulation

shall be binding on the plaintiffs and the named defendants, their agents, employees, assignees, and successors.

6. California Education code provisions are referred to in

this Stipulation to help assure that individuals with exceptional needs are provided the programs and services that they are entitled to under federal law, and are in no way intended to abrogate or restrict any rights such individuals have under federal law.

III. NOTICE TO THE CLASS

7. Pursuant to Rule 23 (e), the defendants shall, within fourteen (14) days after the Court's approval of the proposed notice

attached as Exhibit A, post at all facilities operated by the California Youth Authority, in conspicuous places which the youth frequent, the notice in the form approved by the Court. Members of the class shall have 30 days after such posting within which to submit to counsel for the plaintiffs any inquiries or objections they may have. Counsel for plaintiffs shall promptly forward copies of any such inquiries or objections to counsel for the defendants and to the Court. On the copies to be submitted to the defendants, the names of the wards will be deleted if the wards so request. Following the expiration of the time for submitting any objections, the Court will approve the Stipulation as submitted or schedule a hearing for the purposes of considering approval of the Stipulation.

IV. DEFENDANTS' OBLIGATIONS

A. Appropriate Education for Handicapped Children

8. Defendants will ensure that all class members are provided with a free appropriate public education, including special education and related services, in the least restrictive environment consistent with their unique needs in compliance with

20 U.S.C. " 1400, 1401, 1412, 1414 (a) (1) (C) (iv); 34 C.F.R. '5 300.1, 300.300, X300.550-556: California Education Code (EC) " 56001, 56026(a), 15 :56030.5, 56031.

B. Identification and Screening

9. The defendants will develop and implement procedures and policies to identify wards *entering the* California Youth Authority (CYA) facilities who are or may be handicapped as defined in 20 U.S.C. " 1401(a)(1),(15), 1412 (2) (C) s 34 C.F.R. ' 300.5: EC " 56026, 56300-56303. This will include but not be limited to:

a. A system sufficient to accomplish within five working days of each ward's delivery to a CYA institution or facility, (i) identification of each ward previously identified by public schools or other qualified agency as eligible for special education and related services, (ii) a telephonic or written request of prior school or other agency records and documentation regarding the ward's special educational needs, and (iii) communications with the ward's parent or guardian and administrator of last public school attended by the ward concerning the special educational needs of such ward.

b. A system sufficient to assure effective screening by qualified personnel of all entering wards for the purpose of identifying within 15 working days of entry into CYA each handicapped ward who has not been previously identified by a public school or other qualified agency as meeting the criteria for assessment as an individual with exceptional needs.

C. Development and Implementation of Individual Educational Programs

10. The defendants will develop and implement an assessment system for development of Individual Educational Programs (IEP) that complies with the requirements of 20 U. S. C. " 1401(19), 1412(2)(3),(4), (5)(C), (6); **1414** (a)(5); 34 C.F.R. " 300.340-300.349, 300.530-300.543; EC " 56320-56329, 56333, 56337-56338, 56340-56347, 56380-56381. The term "assessment" as used throughout this Stipulation shall also mean "evaluation" as-used in 34 C.F.R. " 300.1 et. seq.

11. For each ward identified as handicapped or as an individual with exceptional needs by a public school or other qualified agency prior to the ward's commitment to CYA, the defendants will immediately place the student in a comparable program as required by Education Code section 5625 for a period not to exceed 30 days by which time an IEP review will have been conducted in conformity with paragraphs 13-17 of this Stipulation.

12. Each ward not covered by paragraph 11 who CYA has identified as an individual who may have exceptional needs (as described in paragraph 9(b)), shall be referred for a full and complete assessment by an appropriate assessment team with specialists in any areas in which a ward has, or is suspected to have, a handicap, in compliance with 20 U.S.C. " 1411, 1412(5)(C); 34 C.F.R. " 300.532, 300.540--300.543: EC " 56320-56324, 56326 56327, 56329, 56333, 56337, 56341.

a. Within 15 days of a referral for assessment, the defendants shall prepare and mail to the ward's parent, guardian, or surrogate parent a proposed assessment plan.

b. Testing used in assessments shall be appropriate for and applicable to the establishment of the existence of disabilities that affect learning, in compliance with 20 U.S.C, " 1412(5)(C): 34 C.F.R. ' 300.532: EC ' 56320.

13. An IEP required as the result of an assessment of a ward, shall be developed within 30 days from the date of the receipt of the parent's, guardian's or surrogate parent's written consent for assessment, unless the parent, guardian or surrogate parent agrees to an extension.

14. If the parent, guardian surrogate parent or qualified staff person so requests, an IEP meeting to review an IEP that was developed subsequent to the ward's entry into CYA shall be held within 30 days after the receipt of the request.

15. The defendants shall ensure that the ward's parent, guardian, or surrogate parent, as defined in 34 C.F.R. " 300.10, 300.514; EC ' 56028, 56050, is present at each IEP meeting or is afforded the opportunity to participate, in compliance with 20 U.S.C. " 1401(19), 1415(a): 34 C.F.R. ' 300.345; EC 56321, 56341(b)(3), (F), 56506.

16. The IEP shall be individualized and shall contain a statement of the student's present level of educational performance, a statement of specific short term measurable instructional objectives within the capability of the ward, and a statement of the special education and related services to be provided to the student, in compliance with 20 U.S.C. " 1401(19), 1412(4), 1414(a)(5): 34 C.F.R. ' 300.346: EC ' 56345. When the IEP team determines that the ward needs such services, the IEP shall include a statement of short term instructional objectives for vocational programs to be provided to the student and the integration of vocational programs into the special education program of the student.

17. The IEP shall specifically require related services as defined in 20 U.S.C. ' 1401 (17); 34 C.F.R. ' 300.13, EC ' 56363 where these are necessary to enable a student to benefit from an educational program.

18. The goals and short term instructional objectives of the IEP shall be reviewed regularly by the school staff to determine whether the goals and objectives are being met, whether specified services are being provided, and whether modifications are necessary, in compliance with 20 U.S.C. " 1401 (19), 1412(4), 1414(a)(5); 34 C.F.R. " 300.343(d), 300.346; EC " 56343, 56347, 56380-56381.

D. Provision of Special Education and Related Services

19. The defendants shall provide special education and related services in the amount and type specified in each ward's IEP as required by 20 U.S.C. SS 1401 (16), (17), (19), 1412(4),(5)(g); 1415(a)(5); 34 C.F.R. " 300.13-300.14, 300.346, 300.551; EC " 56031, 56345, 56360-56361, 56363. Education services shall be individualized and shall address the specific disabilities of wards in compliance with 20 U.S.C. 'S 1401; 34 C.F.R. ' 300.1(a); EC " 56000-56001, 56031.

20. The defendants will ensure that there are adequate and appropriate numbers of qualified staff, as defined in 34 C.F.R. " 300.12, to provide special education and related services to wards. Special education teachers shall meet all state certification requirements in the area in which they will be providing special education or related services, in compliance with 20 U.S. C " 1413 (a) (3); 34 C.F.R. ' 300.12; EC " 56060-56003, 56362, 56362.5, 56362.7, 56368.

21. The obligation to provide appropriate special education and related services and to ensure that there are adequate numbers of qualified staff to carry out this responsibility applies to all facilities operated by the California Youth Authority, including the Northern Reception Center-Clinic in Sacramento.

22. In compliance with 20 U.S.C. ' 1413 (a)(3); 34 C.F.R. " 300.380-387; EC " 56240-56243, the defendants will provide ongoing training to appropriate personnel to assure proper identification of handicapped students and provision of needed special education services.

E. Procedural Safeguards

23. The defendants will ensure that the procedural safeguards mandated by 20 U.S.C. " 1415, 1417(c); 34 C.F.R. " 300.500-514 and 300.560-576; EC 56340, 56342-56347; 56500.1-56507, are provided to all class members and their parents.

V. PLAN TO FULFILL DEFENDANTS' OBLIGATIONS

24. Defendants will make all revisions in their Special Education Procedures Manual necessary to fulfill their obligations within 30 days from entry of this Stipulation by the Court.

25. a. Defendants will implement a system to identify and screen wards who are or may be handicapped, as described in Paragraph 9 within 90 days of the entry of this Stipulated Judgment.

b. Defendants will fill needed special educational staff positions or retain any needed contractual services within 90 days from the entry of this Stipulated Judgment. As positions 2 become vacant defendants will fill needed special education staff positions or retain any needed contractual services within 90 days of such vacancies.

26. Defendants shall assure that all of the obligations and responsibilities set forth in this agreement are fulfilled and all necessary policies and procedures are fully implemented within six months from the date of the entry of this Stipulated Judgment.

VI. ASSESSMENT AND MONITOR

27. Defendants will provide plaintiff's counsel with a monthly report no later than the 20th day of the following month setting forth the following information for each CYA institution: (a) the number of wards referred to the school consultation team; (b) the number of wards the school consultation team referred to special education; (c) the number of interim special education placements reviewed; (d) the number of wards screened for special education eligibility; (e) the number of wards referred for special education assessments; (f) the number of wards who had special education assessment plans developed and who were assessed; (g) the number of wards who had an IEP developed and were placed for services; (h) the number of wards who had an annual special education review; (i) the number of wards given a tri-annual special education review; (j) the number of wards not receiving any needed special education services (with a description of the type of service that was not provided); (k) the total number of special education wards; (l) the number of wards entering CYA who had IEPs; (m) copies of all corrective action plans for any area out of compliance; and (n) copies of any comments, program updates or personnel changes relating to the monthly special education report. Items (c) through (i) of this report will also indicate the number of wards who received each of the special education activities referred to within the proper timelines.

28. Defendants, no later than the 20th day of the months of January, April, July and October, will provide plaintiffs' counsel with a report setting forth the following

information: (a) the total number of wards in custody in each CYA facility as of the end of each month during that quarter; (b) the total number of new wards admitted to a reception facility during each month in the quarter; (c) a description and the number of staff positions at each CYA facility engaged in providing special education evaluations and services. Additionally, defendants on a semi-annual basis will provide plaintiffs' counsel with a report setting forth the total number of wards identified as eligible for special education at CYA broken down for each institution and for each handicapping condition. Defendants' providing plaintiffs' counsel with a copy of the semi-annual report entitled, "The Special Education Pupil Count Report" which CYA is required to submit to the State Department of Education, setting forth the total number of wards identified as eligible for special education at CYA broken down for each institution and for each handicapping condition, will satisfy Subdivision (c) of the above agreement.

29. Defendants will also provide plaintiffs' counsel with copies of policies and procedures adopted or modified in compliance with this Stipulation. Defendants will also afford plaintiffs' counsel reasonable access to CYA facilities and documents for purposes of ascertaining compliance with this Stipulation.

30. Dr. Robert R. Rutherford and Dr. Kenneth Howell, on behalf of plaintiffs, will evaluate defendants' compliance with this Stipulation. The CYA will reimburse plaintiffs' compliance evaluators for all reasonably incurred costs, including compensation for the time spent in monitoring and evaluating compliance and travel expenses. The total reimbursement for time and expenses of plaintiffs' compliance evaluators shall not exceed \$25,000 in any 12-month monitoring period, and compensation for their time shall not exceed \$400 per day per person.

31. In the event that either of the two individuals selected to evaluate defendants' compliance with this agreement is unable to fulfill this role, plaintiffs may select a replacement. Any such replacement shall have an advanced degree in special education, be associated with an accredited college or university, shall have experience working with educationally handicapped children, and shall reside in California, Washington, Oregon, or Arizona. Plaintiffs shall submit the name and qualifications of an appropriate replacement to defendants at least 30 days prior to any proposed compliance evaluation. Defendants shall submit any objections that they may have to plaintiffs' selection within 15 days after being so notified. Defendants shall not have the power to reject plaintiffs' selection or to withhold payment of the monitor's reasonable fees and expenses.

32. Plaintiffs' compliance evaluators will be permitted to make on-site inspections at CYA facilities, review documents, and interview staff, subcontractors, agents, employees, and wards as needed in order to evaluate compliance with this Stipulation, provided that not more than one compliance evaluation in any CYA facility will be conducted in any 12-month calendar period following entry of this Stipulation. Plaintiffs may also select additional special education experts to participate in these compliance evaluations, however, CYA will not reimburse for any costs for any such additional persons.

VII. CONTINUING JURISDICTION AND DISPUTE RESOLUTION

33. Upon final approval by the Court, this Stipulation and any modifications thereto shall be incorporated in a Judgment in the form annexed hereto as Exhibit B.

34. The parties will use all reasonable means to resolve disputes that arise under this agreement prior to seeking the involvement of this Court. In the event that the

parties are unable to resolve a dispute informally, plaintiffs' counsel shall notify defendants in writing of the alleged violation of the Stipulation and the remedial action demanded. Defendants shall have 30 days to respond in writing. The defendants' response shall describe the corrective action that will be taken and the timetable for implementation, or shall explain why defendants believe that no remedial action is warranted. The parties will also attempt to meet in good faith to resolve any disputes. Only if the parties are unable to resolve a dispute through exhaustion of this process shall the matter be submitted to the Court for further orders as may be appropriate.

35. This stipulation will remain in full force and effect for three years from the date of its entry by this Court.

36. The Court's approval and filing of the Stipulation referred to in paragraph 35 shall not be construed to prevent new litigation on constitutional or federal statutory claims alleged to be in existence following the date of the filing of the Stipulation.

37. Upon agreement of the parties, or upon motion of the plaintiffs and a finding of good cause by the Court, the Stipulation may be extended for additional periods of time to be fixed by this Court from time to time. The failure of the defendants to comply with the obligations set forth in this Stipulation shall be grounds for extending the Stipulation. The jurisdiction of the Court to extend or modify the Stipulation and to enter any order that may be appropriate shall continue until the Stipulation 19 expires.

38. Within twenty days of the filing of the Stipulation with the Court, the defendants shall post copies of this Stipulation in housing and school areas of each CYA facility. Thereafter, staff will make reasonable, good faith efforts to maintain the posting of the Stipulation in those areas for as long as the Stipulation is in effect.

VIII. ATTORNEYS FEES D EXPENSES

39. Plaintiffs as the prevailing parties, may request from the Court an award of reasonable attorneys' fees and cost, and defendants reserve the right to contest the amount of any such request.

IT IS SO STIPULATED

Dated: February 7, 1990

LOREN M. WARBOYS
MARK I. SOLER
SUSAN L. BURRELL
YOUTH LAW CENTER

JOHN E. SPARKS
TIMOTHY A. MELTZER
SYLVIE KULKIN
MARTA PIERPOINT
BROBECK, PHLEGER & HARRISON
Attorneys for Plaintiffs

ANTONIA RADILLO
JOHN K. VAN DE KAMP
RICHARD B. IGLEHART

JAMES CHING
OFFICE OF THE ATTORNEY GENERAL
Attorneys for Defendants
Terhune and Tillson

DAN C. DOYLE
CHIEF COUNSEL
STATE OF CALIFORNIA, DEPARTMENT OF
THE YOUTH AUTHORITY

IT IS SO ORDERED

Dated: 2/15/90