



JI-NY-001-001

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANDRE H., a minor under the age of 21 :
years, by his mother and next friend, :
LULA H.; individually and on behalf of :
all other persons similarly situated, :

Plaintiffs, :

-against- :

THOMAS SOBOL, in his official :
capacity as Commissioner of the New :
York State Department of Education; :
NEW YORK CITY DEPARTMENT OF JUVENILE :
JUSTICE; ROSE W. WASHINGTON, in her :
official capacity as Commissioner :
of the New York City Department :
of Juvenile Justice; WILL McINTOSH, in :
his official capacity as Acting Exec- :
utive Director of Spofford Juvenile :
Detention Center; LEONARD DUNSTON, in :
his official capacity as Director of :
the New York State Division for Youth; :
THE BOARD OF EDUCATION OF THE CITY OF :
NEW YORK; ROBERT F. WAGNER, JR., JAMES :
REGAN, GWENDOLYN BAKER, EDWARD SADOWSKY, :
AMALIA BETANZOS, IRENE IMPELLIZZERI :
and STEPHEN FRANSE, in their official :
capacities as members of the Board of :
Education of the City of New York; :
JOSEPH A. FERNANDEZ, in his official :
capacity as Chancellor of the Board :
of Education of the City of New York; :
STANLEY LITOW, in his official :
capacity as Deputy Chancellor of the :
Board of Education of the City of :
New York; and EDDY BAYARDELLE, in his :
official capacity as Executive Direc- :
tor of the Division of Special :
Education of the Board of Education :
of the City of New York; :

Defendants. :

STIPULATION AND
ORDER OF SETTLEMENT
84 Civ. 3114 (DNE)

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WHEREAS, this action was commenced on May 3, 1984 by a class
of current and future residents of the Spofford Juvenile Center
(Spofford) to enforce their rights pursuant to the Education of

the Handicapped Act (EHA), 20 U.S.C. §§ 1400 et seq., and its implementing regulations at 34 C.F.R. §§ 300 et seq.; § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulations at 34 C.F.R. §§ 104 et seq.; the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; §§ 4401 et seq. of the New York State Education Law; and 8 N.Y.C.R.R. Parts 116 and 200; and

WHEREAS, defendants¹ have answered the complaint and have denied violating any of plaintiffs' rights; and

WHEREAS, class certification was granted by this Court on February 26, 1985; and

WHEREAS, the Court certified a class of all current and future residents of Spofford who are handicapped and in need of special education and related services; and

WHEREAS, the parties have exchanged relevant documents and have engaged in substantial discovery; and

WHEREAS, the parties agree that this Court has jurisdiction over this action and the parties and that this Court has the authority to order the relief provided in this Stipulation and Order of Settlement; and

WHEREAS, the parties, without conceding any infirmity in their claims or defenses, have come to an agreement that this Stipulation and Order of Settlement is appropriate,

¹ Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, the successors in office of the public officers named as defendants have been substituted as party defendants in the caption.

NOW, THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE ATTORNEYS FOR THE RESPECTIVE PARTIES THAT:

1. This Stipulation and Order of Settlement finally resolves all the claims in this action, except as provided in paragraph 35 below.

2. This Stipulation and Order of Settlement shall apply to Spofford and any other secure detention facility, within the meaning of N.Y. Fam. Ct. Act § 301.2(4), subsequently operated by the New York City Department of Juvenile Justice (DJJ) within the geographical limits of the City of New York or primarily for the youth of the City of New York.

3. This Stipulation and Order of Settlement shall apply to the named defendants and their successors, agents, employees, assigns and those acting in concert with them.

4. The terms of this Stipulation and Order of Settlement shall be fully implemented no later than the first day of the 1990-91 school year.

5. For purposes of this Stipulation and Order of Settlement, days shall mean calendar days, except as expressly otherwise provided.

6. Wherever the phrase "DJJ and BOE" (Board of Education of the City of New York) appears in this Stipulation and Order of Settlement, the responsibilities of each agency under this Stipulation and Order of Settlement shall be governed by the then-current inter-agency agreement between DJJ and BOE, and neither agency shall be deemed to be the guarantor of the responsibilities of the other under the agreement; provided that

nothing in the inter-agency agreement shall diminish or nullify any obligation imposed by the Stipulation and Order of Settlement.

7. This Stipulation and Order of Settlement shall not be construed as an admission by any defendant that the statutes or regulations set forth herein are applicable, as a matter of law, to said defendant.

8. This Stipulation and Order of Settlement does not represent, nor may it be construed to be, a policy or practice of any defendant(s).

9. This Stipulation and Order of Settlement shall not be admissible in any other litigation in any forum, except as necessary to pursue the remedies set forth in paragraph 39 below.

ASSESSMENT

10. In accordance with 8 N.Y.C.R.R. § 116.2(g), within ten school days after a child's admission to Spofford, DJJ shall complete an educational evaluation or shall obtain current information from the child's prior school or other comparable source. The educational evaluation shall be administered in accordance with 8 N.Y.C.R.R. § 116.2(g).

LOCATION, IDENTIFICATION AND REFERRAL

11. DJJ and BOE shall locate and identify children at Spofford who are or may be handicapped and in need of special education and related services in accordance with 20 U.S.C. §§ 1401(a)(1) and (15) and 1414(a)(1)(A); 34 C.F.R. §§ 300.5 and 300.220; and 8 N.Y.C.R.R. §§ 200.(1)(cc) and 200.2. DJJ and BOE shall develop and implement policies and procedures to locate and

identify children at Spofford who are or may be handicapped, which shall include but not be limited to:

a. Policies and procedures that, during the 1990-91 school year not later than the thirtieth day after a child's admission to Spofford, and during the 1991-92 and 1992-93 school years not later than the twenty-fifth day after a child's admission to Spofford, (1) identify each child previously found by a public or private school or other agency to be a handicapped child and eligible for special education and related services, and (2) request that the public or private school or other agency promptly transmit to Spofford the child's Individualized Education Program (IEP) and most recent evaluations; provided that from June 15th to September 1st of each year and during Spofford's winter and spring break weeks the activities described in paragraph 11 (a)(1) and (2) need not be followed.

b. Policies and procedures that assure that if a child at Spofford is suspected of having a handicapping condition, DJJ and BOE, in accordance with 8 N.Y.C.R.R. § 200.4(a), shall follow the procedures for referral for an individual evaluation and determination of eligibility for special education programs and related services.

EVALUATION AND PLACEMENT

12. DJJ and BOE shall assure the appointment or shall assure the availability of a Committee on Special Education in accordance with 8 N.Y.C.R.R. §§ 116.6(a) and 200.3.

13. DJJ and BOE shall assure that each child at Spofford who is referred for an individual evaluation shall be provided

with an individual evaluation consistent with the procedures set forth in 20 U.S.C. § 1412(5)(C); 34 C.F.R. §§ 300.530-300.534 and 300.540-300.543; and 8 N.Y.C.R.R. §§ 116.6, 200.1(r) and 200.4(b).

INDIVIDUALIZED EDUCATION PROGRAM

14. DJJ and BOE shall assure that each child at Spofford referred for an evaluation or review has a recommendation developed in accordance with 8 N.Y.C.R.R. § 200.4(c).

15. DJJ and BOE shall assure that each handicapped child at Spofford has an IEP developed, implemented, reviewed and revised in accordance with 20 U.S.C. §§ 1401(a)(19), 1412(4) and 1414(a)(5); 34 C.F.R. §§ 300.340-300.349; and 8 N.Y.C.R.R. §§ 116.6(b), 200.4 and 200.5.

16. DJJ and BOE shall assure that each parent of a child at Spofford is present at each IEP meeting or is afforded the opportunity to participate, in accordance with 20 U.S.C. §§ 1401(19), 1412(4) and 1414(a)(5); 34 C.F.R. §§ 300.10 and 300.343-300.345; and 8 N.Y.C.R.R. § 200.4(c) and (e).

17. For each child at Spofford for whom an IEP is received, which the child's teacher or an administrator at Spofford or the child's parent indicates is no longer appropriate, DJJ and BOE shall assure that an IEP review is conducted in accordance with 34 C.F.R. §§ 300.342-346 and 8 N.Y.C.R.R. § 200.4(e)(6).

FREE APPROPRIATE PUBLIC EDUCATION

18. DJJ and BOE shall assure that each handicapped child at Spofford is provided with a free appropriate public education, including special education and related services in the amount and type specified in each child's IEP, in the least restrictive environment consistent with the child's unique needs in accordance with 20 U.S.C. §§ 1401(a)(1), (15) and (16)-(19), 1412(4) and 1414(a)(1); 34 C.F.R. §§ 300.4, 300.13-14, 300.300, 300.346 and 300.550-553; and 8 N.Y.C.R.R. §§ 116.6, 200.4 and 200.6(a) and (c)-(f).

STAFFING REQUIREMENTS

19. DJJ and BOE shall assure that handicapped children at Spofford are provided with an adequate number of special education administrators or supervisors, special education instructors, and providers of related services, remedial services and transitional support services, who are appropriately certified, licensed or otherwise qualified in accordance with 34 C.F.R. § 300.12; and 8 N.Y.C.R.R. §§ 116.6 and 200.6(b).

PROCEDURAL SAFEGUARDS

20. DJJ and BOE shall assure that the procedural safeguards set forth in 20 U.S.C. §§ 1415 and 1417(c); 34 C.F.R. §§ 300.237, 300.500-514 and 300.560-576; and 8 N.Y.C.R.R. §§ 116.6, 200.4 and 200.5 are provided to children at Spofford and their parents.

21. DJJ and BOE shall assure that a surrogate parent is provided in accordance with 20 U.S.C. § 1415 (b)(1)(B); 34 C.F.R. § 300.514; and 8 N.Y.C.R.R. §§ 116.6 and 200.5(e).

ANNUAL REVIEW AND TRIENNIAL EVALUATION

22. DJJ and BOE shall assure that the IEP of each handicapped child at Spofford is reviewed and, if appropriate, revised periodically but not less frequently than annually in accordance with 20 U.S.C. §§ 1412(4) and 1414(a)(5); 34 C.F.R. § 300.534(a); and 8 N.Y.C.R.R. §§ 200.1(c) and 200.4(f), as modified by paragraph 52(a) of the Judgment in Jose P. v. Ambach, 79-C-270 (EHN) (December 14, 1979), attached to this Stipulation and Order of Settlement as Exhibit A, with the understanding that the parents will be invited to participate, but that the review may go forward in their absence if the parents are unable to participate.

23. In accordance with 34 C.F.R. § 300.534(b) and 8 N.Y.C.R.R. § 200.4(f), DJJ and BOE shall assure that, as needed, each handicapped child at Spofford receives a triennial evaluation to determine the child's individual needs and continuing eligibility for special education.

PERSONNEL DEVELOPMENT

24. DJJ and BOE shall, consistent with 20 U.S.C. § 1414(a)(1)(C)(i) and 34 C.F.R. §§ 300.380-300.387, develop and implement a comprehensive system of personnel development. In accordance with 20 U.S.C. § 1414(a)(1)(C)(i) and 34 C.F.R. §§ 300.380-300.387, DJJ and BOE shall provide ongoing training to appropriate personnel to assure proper identification of handicapped children and provision of a free appropriate public education.

STATE EDUCATION DEPARTMENT

25. The New York State Education Department (SED) shall comply with 20 U.S.C. § 1412(6) and 34 C.F.R. § 300.600. SED shall conduct a review of the Spofford education program for handicapped children, including any component operated by the BOE, at least once each academic year for a period of three years from the entry of this Stipulation and Order of Settlement as an Order of the Court. Upon a finding by SED of non-compliance with 20 U.S.C. §§ 1400 et seq. and its implementing regulations at 34 C.F.R. §§ 300 et seq.; with 8 N.Y.C.R.R. §§ 116.6 and 200 et seq.; or with this Stipulation and Order of Settlement, SED shall take appropriate action.

26. SED shall continue to provide technical assistance to DJJ or BOE with respect to any matter relating to the location, identification, referral, evaluation, placement and education of handicapped children at Spofford.

MONITORING

27. For a period of three years from the entry of this Stipulation and Order of Settlement as an Order of the Court, DJJ shall permit plaintiffs' counsel and an expert, accompanied by DJJ staff and counsel, to visit Spofford one day each semester for the purpose of monitoring compliance with this Stipulation and Order of Settlement. The expert shall be selected by the mutual agreement of the plaintiffs, DJJ and BOE. Plaintiffs and DJJ shall agree among themselves when, each semester, the visit will take place, provided that the visit agreed upon shall take place within twenty days of plaintiffs' request.

28. During the visits to Spofford, plaintiffs' counsel and the expert shall be permitted:

a. to interview privately up to ten residents, subject to each resident's consent;

b. to interview staff, subject to the staff member's consent;

c. to review relevant documents and records necessary to monitor compliance with the terms of this Stipulation and Order of Settlement; and

d. to observe relevant educational programs, equipment and activities necessary to monitor compliance with the terms of this Stipulation and Order of Settlement.

29. For a period of three years from the entry of this Stipulation and Order of Settlement as an Order of the Court, SED shall provide plaintiffs' counsel with a copy of the following documents within thirty days after each becomes final:

a. the New York State Plan submitted to the United States Department of Education pursuant to the EHA;

b. inter-agency agreements between SED and the New York State Division for Youth (DFY) relating to the education of handicapped children in juvenile detention facilities in New York State; and

c. program reviews and audits (as these terms are currently used) relating to the education of handicapped children at Spofford.

30. For a period of three years from the entry of this Stipulation and Order of Settlement as an Order of the Court, DFY

shall provide plaintiffs' counsel with a copy of reports and audits (as these terms are currently used), if any, within thirty days after each becomes final, relating to the education of handicapped children at Spofford.

31. For a period of three years from the entry of this Stipulation and Order of Settlement as an Order of the Court, DJJ shall provide plaintiffs' counsel with a copy of the following documents:

a. within thirty days of submission to SED, the Spofford facility education plan or equivalent document, and any amendments thereto;

b. during the 1990-91 school year, within thirty days after each becomes final, and once each semester during the 1991-92 and 1992-93 school years, DJJ policies and procedures relating to the education of handicapped children at Spofford, except as provided in subparagraph 31(f) below;

c. once each semester, training materials distributed to staff relating to the education of handicapped children;

d. once each semester, a random sample of 50 individual residents' records relating to their education at Spofford;

e. at the middle and end of each semester, the tracking reports setting forth the following information: (i) children at Spofford previously identified as handicapped by a public or private school or agency; (ii) children at Spofford suspected of having a handicapping condition and referred for an individual evaluation; (iii) children at Spofford provided an

individual evaluation; (iv) children at Spofford who had a Phase I IEP developed and/or implemented; (v) children at Spofford who had a Phase II IEP developed and/or implemented; (vi) children at Spofford who were provided an annual review; (vii) children at Spofford who were provided a triennial evaluation; and (viii) impartial due process hearings involving children at Spofford; and

f. within ten days of final promulgation by DJJ and BOE, the inter-agency agreement between DJJ and BOE referred to in paragraph 6 above.

32. For a period of three years from the entry of this Stipulation and Order of Settlement as an Order of the Court, BOE shall provide plaintiffs' counsel with a copy of policies and procedures relating to the education of handicapped children at Spofford:

a. for the 1990-91 school year, within thirty days after each becomes final; and

b. for the 1991-92 and 1992-93 school years, once each semester.

33. For a period of three years from the entry of this Stipulation and Order of Settlement as an Order of the Court, once each semester, BOE shall designate one or more persons who are knowledgeable about BOE's policies and procedures relating to the identification, referral, evaluation and placement of Spofford residents to meet with plaintiffs' counsel and/or the expert described in paragraph 27 above and BOE's counsel to discuss any issues concerning compliance with this Stipulation

and Order of Settlement. Upon request by plaintiffs' counsel, BOE shall provide documents and records relevant to those issues.

DAMAGES

34. Within thirty days after the entry of this Stipulation and Order of Settlement, City defendants shall pay the named plaintiff, Andre H., the sum of one thousand dollars (\$1,000.00).

ATTORNEY'S FEES AND COSTS

35. Plaintiffs and their counsel expressly reserve and do not waive any claim for reasonable attorney's fees and costs incurred in the prosecution of this action.

36. Defendants shall pay, in accordance with the Stipulation and Order filed herewith, the monitoring expert's reasonable fees, expenses and costs incurred in connection with the expert's performance of monitoring activities; provided that the fees, expenses and costs shall not exceed \$7,500.00 (seven thousand five hundred dollars) per year. The separate Stipulation and Order shall also govern the allocation of the City and State defendants' responsibility for any attorney's fees and costs paid to plaintiffs' counsel.

PRIVACY

37. All personally identifiable information concerning individual residents obtained by plaintiffs' attorneys and the expert shall be kept private and shall be used solely for the purpose of this litigation and for no other purpose.

ENFORCEMENT

38. If plaintiffs' counsel believes that any defendant is not in compliance with the terms of this Stipulation and Order of

Settlement, prior to seeking relief from the Court, plaintiffs' counsel shall make reasonable efforts to obtain voluntary compliance by notifying such defendant's counsel and requesting a meeting, which shall be held within two weeks of receipt of the notification unless the parties agree on a later date. If the matter is not resolved voluntarily within twenty-one days after the meeting, or if defendants refuse to meet, plaintiffs' counsel may seek relief from the Court.

39. Nothing contained in this Stipulation and Order of Settlement shall foreclose a Spofford resident's parent from invoking the administrative complaint or impartial hearing procedure in an individual case to enforce rights granted pursuant to 20 U.S.C. §§ 1400 et seq. and its implementing regulations at 34 C.F.R. §§ 300 et seq.; 29 U.S.C. § 794 and its implementing regulations at 34 C.F.R. §§ 104 et seq.; the New York State Education Law §§ 4401 et seq.; and 8 N.Y.C.R.R. Parts 116 and 200.

40. Three years after this Stipulation and Order of Settlement has been entered as an Order of the Court, it shall cease to be enforceable and the Court shall relinquish jurisdiction over this action.

Dated: New York, New York
May , 1990

Lenore Gittis

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SO ORDERED:

David H. East
U.S.D.J.

Dated: New York, New York
~~June 13, 1990~~
September 10