



JI-WA-001-025

CIVIL TRACK I
JUDGE DIXON

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EVERGREEN LEGAL SERVICES

OCT 29 1993

INSTITUTIONS PROJECT

COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

T.I., a minor, by and through)
his mother and next friend,)
D.I.; et al.,)

NO. 90-2-16125-1

Plaintiffs,)

STIPULATION & CONSENT JUDGMENT ON
REMAINING EDUCATION CLAIMS

vs.)

HAROLD DELIA, Director,)
DEPARTMENT OF YOUTH)
SERVICES, et al.,)

Defendants.)

STIPULATION

The parties, plaintiffs B.I. and S.K. and the class of incarcerated juveniles they represent, through their counsel Patricia J. Arthur and John Phillips, the defendants Seattle School District, and Love Denton and Donald Felder in their official capacities, through their counsel Michael W. Hoge, and the third-party defendant the State of Washington, through its counsel, Robert Patterson and Howard Fischer, hereby agree that the following Stipulation and Consent Judgment shall be entered subject to the approval of the court and notice to the class members. This Stipulation and Consent Judgment is entered to resolve

STIPULATION & CONSENT JUDGMENT ON
REMAINING EDUCATION CLAIMS-

1 all of the remaining education claims raised in the above-entitled class action lawsuit that
2 were not previously resolved by the Stipulation and Order of Partial Settlement entered on
3 November 26, 1990. (The plaintiffs have entered a separate Stipulated Dismissal with
4 respect to all of their remaining claims against the King County defendants.)

5 BACKGROUND AND REPRESENTATIONS

6 1. The Complaint in this action was filed on August 10, 1990, on behalf of named
7 plaintiffs and all others similarly situated against Harold Delia, Director, Department of
8 Youth Services, Tim Hill, King County Executive, Love Denton, Donald Felder, King
9 County, and the Seattle School District No. 1. Defendant Seattle School District filed an
10 Answer to the Complaint on September 26, 1990, and filed a Third-Party Complaint against
11 the State of Washington on the same date. The State of Washington filed an Answer to the
12 Third-Party Complaint on December 17, 1990. Leave was granted twice to plaintiffs to
13 amend their original complaint to substitute additional named plaintiffs.
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16 2. This case was certified as a class action by order dated December 6, 1990. The
17 case involved a number of claims relating to the conditions of confinement at the King
18 County Detention Facility (KCDF) and the education program there.

19 3. Most claims brought by plaintiffs against the County and School District in this
20 action have been resolved by a previous Stipulation and Order dated November 26, 1990,
21 and by Order Granting Preliminary Injunction entered on August 30, 1991. The sole
22 remaining claim is against the Seattle School District and the third-party defendant State of
23 Washington. Plaintiffs allege this claim as their Third Cause of Action in the Second
24 Amended Complaint as follows:
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26 Defendants have deprived plaintiffs of their right to an education in violation
27 of the due process clause of the Fourteenth Amendment to the United States

28 STIPULATION & CONSENT JUDGMENT ON
REMAINING EDUCATION CLAIMS-

1 Constitution, Article 9, §1 of the Washington Constitution, 42 U.S.C. §1983
2 and RCW 13.04, RCW 13.40 and RCW 28A.

3 This remaining claim is brought by plaintiffs B.I. and S.K. on behalf of a class defined as:

4 All youth of compulsory school age now or in the future incarcerated at the
5 King County Detention Facility (KCDF).

6 Order establishing Plaintiff Class entered December 6, 1990. This claim is hereby resolved
7 by this Stipulation and Judgment.

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

10 5. The parties represent to the Court that this Stipulation is fair, reasonable, and
11 adequate to protect the class in accordance with the standards of CR 23(e) of the
12 Washington Civil Rules.
13

14 6. The Stipulation is not to be construed as an admission of liability or violation of
15 law by any of the defendants. Defendants and third party defendants have entered into the
16 Stipulation for the purpose of settling disputed contentions and controversies arising from
17 this action.
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19 7. This Stipulation shall not be effective until it has been signed by counsel on
20 behalf of the parties listed on the signature page, and approved by a Judge of the King
21 County Superior Court. If the Stipulation does not become effective, it will be deemed part
22 of negotiations for settlement purposes only; it will not be admissible to prove or disprove
23 the allegations in the Complaint; and all rights, claims and defenses that existed apart from
24 the Stipulation shall be automatically restored to the parties.
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26 JURISDICTION

27 8. This Court has jurisdiction of the subject matter of this action and personal
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1 jurisdiction over the named defendants and third party defendants to this action.

2 PARTIES AND THE SETTLEMENT CLASS

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4 9. Plaintiffs in this action are the named plaintiff, B.I., by and through his mother
5 Q.I., and S.K., by and through his mother U.I., and the plaintiff class as defined above in
6 paragraph 3 which includes youth who are educationally handicapped and eligible to receive
7 special education services.

8 10. The parties stipulate that this action is properly maintained as a class action
9 under CR 23 of the Washington Civil Rules.

10
11 11. The defendants who are subject to this Stipulation and Consent Judgment are the
12 Seattle School District, Donald Felder and Love Denton in their official capacities. The
13 third party defendant State of Washington by and through the Office of the Superintendent
14 of Public Instruction of the State of Washington (OSPI) is also a party to this Stipulation
15 and Consent Judgment.

16 12. When finally executed by the Court, this Stipulation shall be binding on the
17 plaintiffs and these defendants and third party defendants, their agents, employees,
18 assignees, and successors.

19
20 NOTICE TO THE CLASS

21 13. Pursuant to CR 23(e) and the approval of King County, the defendants shall,
22 within fourteen (14) days after the Court's approval of the proposed notice attached as
23 Exhibit A, post that notice at the KCDF, in conspicuous places which the youth frequent.
24 The defendants shall also mail said notice to the last known address of all the parents or
25 guardians of youth incarcerated at the KCDF on the date of posting there. Members of the
26 class shall have thirty (30) days after such mailing and posting within which to submit to
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1 counsel for the plaintiffs any inquiries or objections they may have. Counsel for plaintiffs
2 shall promptly forward copies of any such inquiries or objections to counsel for the
3 defendants and to the Court. On the copies to be submitted to the defendants, the names of
4 the youth will be deleted if the youth so request. Following the expiration of the time for
5 submitting any objections, the Court will approve the Stipulation as submitted or schedule a
6 hearing for the purposes of considering approval of the Stipulation
7

8 DEFINITIONS

9 14. All terms herein are used as defined in RCW 28A.155, RCW 28A.190 as
10 modified by RCW 13.04.145, WAC 392-171 and WAC 392-122.
11

12 OBLIGATIONS OF THE DEFENDANT SEATTLE SCHOOL DISTRICT

13 15. The District agrees at all times in the future to employ no fewer than two full-
14 time certified special education teachers to provide special education and related services at
15 the KCDF. During the 1993-1994 school year, the District will employ six full-time
16 teachers in the general education program at the KCDF in addition to two full-time certified
17 special education teachers.
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19 16. In addition to employing the certified special education teachers as provided in
20 the preceding paragraph, the Seattle School District agrees at all times in the future to
21 encourage existing general education teachers employed at the KCDF to obtain special
22 education certification. The District further agrees to take all reasonable steps to fill future
23 teacher vacancies at the KCDF with adequate certified special education teachers. For five
24 years from the date of entry of this Consent Judgment, the District will notify plaintiffs'
25 counsel of any such vacancy as soon as it occurs and inform them of the steps taken to fill
26 the vacancy with an adequate certified special education teacher.
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1 17. The District agrees that sufficient clerical staff support will be provided to the
2 special education teachers at the KCDF and that it will make its best efforts to reduce the
3 clerical duties and functions that special education teachers are required to perform.
4

5 18. The District agrees that for any of the pull-out classes or self-contained
6 classrooms that may be established, the two full-time special education teachers referred to
7 in Paragraph 15 above will teach only those students who are disabled under either federal
8 or state law and eligible for special education services. These two special education
9 teachers will not be assigned to general education program activities unless the population of
10 students who may receive special education services under this agreement decreases or
11 consultative special education services pursuant to WAC 392-171-315(1) have been
12 effectively implemented, to a point where two full-time special education teachers are
13 unnecessary to adequately provide special education services.
14

15 19. The District will provide appropriate placement options and individualized
16 special education services in detention including: a self-contained classroom, pull-out
17 classes and consultative special education services pursuant to WAC 392-171-315(1) as
18 necessary to accommodate the individual special education needs of students while in
19 detention.
20

21 20. The District will make reasonable efforts to employ an education assistant at the
22 KCDF to assist in the delivery of special education. The District will immediately attempt
23 to fill this position by recruiting and advertising in the manner most likely to result in the
24 most applicants for the position.
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26 21. The District agrees to employ no less than a .2 FTE psychologist at the KCDF
27 to assist with the identification and assessment of eligible students.
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22. The District agrees to implement as is practicable within the detention facility any existing individualized education program (IEP) developed outside of detention that is current. The District will not use interim IEPs for detained youth whenever youth have a current IEP. The District may continue using an interim IEP process for diagnostic purposes for special education eligible youth without current IEPs subject to the guidelines established in paragraph 23 below.

23. In consultation with plaintiffs' expert Ken Howell and a mutually acceptable independent expert, the District will take reasonable action within 30 days from the date all parties sign this Stipulation to develop substantive criteria and a procedure for determining how: (1) current IEPs will be implemented at the KCDF; (2) educational objectives and goals specified in current IEPs will be prioritized for implementation in detention, and (3) how the special education needs of students without current IEPs will be met.

24. The Seattle School District agrees to pay the costs of the independent expert's fees incurred during this 30 day consultative process. These costs shall not exceed \$3,000.

25. The District agrees to implement the criteria and procedures developed pursuant to the process set forth in paragraph 23 which will become part of the School District's obligations under this Stipulation and Consent Judgment.

26. The District will provide on-going training to education staff and available correctional and probation staff at the KCDF to assure the proper identification of handicapped students and the provision of needed special education services.

OBLIGATIONS OF THE THIRD-PARTY DEFENDANT, OSPI

27. The Office of the Superintendent of Public Instruction of the State of Washington agrees to provide technical assistance to the Seattle School District to help

1 insure that eligible students at the KCDF receive appropriate accommodation of their
2 individual special education and related service needs while they are in detention.

3
4 28. OSPI will monitor the implementation of the procedures developed as set forth
5 in paragraph 23 during the 93-94 school year and provide technical assistance as necessary.
6 Thereafter, OSPI will monitor KCDF in accordance with the statewide compliance
7 monitoring criteria and schedule.

8 29. The OSPI will continue to fund through the 1993-1994 academic year a special
9 grant to assist in the further development and refinement of special education program
10 processes at the KCDF. Thereafter, OSPI agrees to, at a minimum, administer funding to
11 the Seattle School District for education services in detention according to then existing
12 statutes, rules and appropriation acts.

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14 30. Within available resources, OSPI will encourage and help other school districts
15 around the state to provide special education programs within juvenile detention centers
16 consistent with the principles of this agreement.

17 REPORTING REQUIREMENTS

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19 31. For the purpose of monitoring compliance with this Order, the Seattle School
20 District agrees to provide plaintiffs' counsel with a report for a period of five years.
21 During the first two years, the District will report on a semi-annual basis. Thereafter, the
22 District will report annually. The report will contain the following information:

- 23 (a) the number of youth at the KCDF during the quarter who received any special
24 education service including a description of the types of services provided;
25
26 (b) the number of youth who had current IEPs;
27
28 (c) the number of youth who did not have current IEPs;

1 (d) the number of youth for whom a psychological assessment was initiated during
2 the reporting period;

3 (e) a description and the number of staff positions at the KCDF providing special
4 education services.
5

6 32. The District will annually for a period of five years permit plaintiffs' counsel
7 and/or their designated expert(s) to have access to a reasonable statistically significant
8 number of randomly selected special education student files after appropriate notice to
9 selected students and their parents or guardians.
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11 33. Plaintiffs' attorneys and/or expert(s), after reasonable notice to the Seattle
12 School District and its attorneys, will be permitted to make on-site inspections at the
13 KCDF, interview school staff and youth as needed in order to evaluate compliance with this
14 Stipulation, provided that not more than one compliance evaluation will be conducted in any
15 12-month calendar period following entry of this Stipulation.
16

17 34. This Stipulation resolves all of plaintiffs' remaining claims in this case.
18 However, the parties reserve the right to modify the terms of this decree if there are
19 changed circumstances which justify modification. The parties agree that any reduction in
20 the number of regular education staff at the KCDF below the levels agreed to herein for the
21 1993-1994 school year without a corresponding reduction in the number of students
22 constitutes sufficient changed circumstances to justify the modification of this decree if the
23 reduction precludes the delivery of special education services.
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25 35. Nothing in this agreement shall be construed to preclude or resolve claims by
26 individuals brought in the future as allowed by WAC 392-171-531 that specific special
27 education or related services have not been provided.
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CONTINUING JURISDICTION AND DISPUTE RESOLUTION

36. Upon final approval by the Court, this Stipulation and any modifications thereto shall be incorporated into a Judgment.

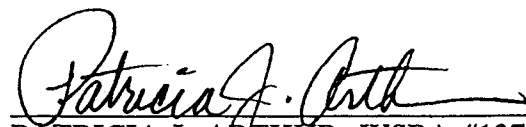
37. The parties will use all reasonable means to resolve disputes that arise under this agreement prior to seeking the involvement of this Court. In the event that the parties are unable to resolve a dispute informally, plaintiffs' counsel shall notify defendants in writing of the alleged violation of 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 this process shall the matter be submitted to the Court for further orders as may be appropriate.

38. Within twenty days of the filing of the Stipulation with the Court, the District shall post copies of this Stipulation in housing and school areas of the KCDF. Upon approval from King County, the District will also post copies in the housing areas of the KCDF. Thereafter, school staff will make reasonable, good faith efforts to maintain the posting of the Stipulation in those areas.

39. Plaintiffs agree to waive costs and attorneys fees incurred as of the date of the entry of this Stipulation and Consent Judgment.

IT IS SO STIPULATED.

DATED: October 8, 1993



PATRICIA J. ARTHUR, WSBA #13769
JOHN PHILLIPS, WSBA #12185
Attorneys for Plaintiffs

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DATED: October 4, 1993



MICHAEL W. HOGE, WSBA #6180
Attorney for Defendant Seattle School
District No. 1, Love Denton, and
Donald Felder

DATED: Oct. 7, 1993



ROBERT PATTERSON, WSBA #644
W. HOWARD FISCHER, WSBA #6142
Attorneys for Third-Party
Defendant State of Washington

CONSENT JUDGMENT

The Court, having reviewed the Stipulation of the parties for the resolution of the above-encaptioned lawsuit, and having reviewed all the objections made by class members (if any), and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Judgment is entered incorporating the terms of the parties' Stipulation which the Court incorporates herein as if set forth in full.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the court retains jurisdiction to monitor and enforce the terms of the Stipulation and Judgment.

IT IS SO ORDERED.

DATED: Oct 27, 1993



JUDGE ROBERT E. DIXON
King County Superior Court Judge

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