



CW-NY-002-002

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

J.G., by his mother and next friend,
 Mrs. G.; M.W., by her mother and next
 friend, Mrs. W.; A.M., by his mother
 and next friend, Mrs. M.; and K.M., by
 her mother and next friend, Mrs. M; on
 behalf of themselves and all persons
 similarly situated,

Plaintiffs,

v.

THE BOARD OF EDUCATION OF THE
 ROCHESTER CITY SCHOOL DISTRICT;
 JOHN DELVECCHIO, ARCHIE CURRY, FRANK
 WILLIS, IRENE FRUSCI, JOSEPHINE
 GENOVESE, KAREN GRELLA, and GARY SMITH,
 individually and in their official
 capacities as members of the Board of
 Education of the Rochester City School
 District; LAVAL M. WILSON, in his
 official capacity as Superintendent of
 the Rochester City Schools; BERNARD S.
 GREENBERGER, individually and in his
 official capacity as Director of the
 Department of Special Education of the
 Rochester City Schools; ROBERT LAYS,
 individually and in his official
 capacity as Director of the Department
 of Special Education of the Rochester
 City Schools; JOSEPH SALEMI, individ-
 ually and in his official capacity as
 Assistant Director of the Department of
 Special Education of the Rochester City
 Schools; THE NEW YORK STATE DEPARTMENT
 OF EDUCATION; and GORDON M. AMBACH, in
 his official capacity as Commissioner
 of the New York State Education
 Department,

Defendants.

PARTIALCONSENT JUDGMENT

Civil Action
 No. 81-173T

Plaintiffs having filed their complaint herein on March 6,
 1981, and the Rochester defendants having acknowledged receipt of
 the summons and complaint herein and the Court having held that

this Court has jurisdiction over the subject matter of this action and the plaintiffs and Rochester defendants having agreed upon a basis for settlement of this action including the entry of this Partial Consent Judgment by execution of a Stipulation to Entry of Judgment, the original of which has been filed with this Court, and the Court pursuant to F.R.Civ.P. 23(e) having considered the fairness and reasonableness of the proposed settlement,

NOW on motion of counsel for the plaintiffs it is

ORDERED, ADJUDGED and DECREED that this action is certified as a class action pursuant to F.R.Civ.P. 23(a) and (b)(2) on behalf of a class composed of all current and future students in the Rochester City School District who have been or will be classified as having handicapping conditions or placed in special education programs or who have been or will be referred in writing to the Committee on the Handicapped, and it is further

ORDERED, ADJUDGED and DECREED that the Rochester defendants shall conform their policies and practices to the requirements of the Stipulation to Entry of Judgment which has been executed in this action, and it is further

ORDERED, ADJUDGED and DECREED that pursuant to F.R.Civ.P. 54(b), the Court having found that there is no just reason for delay in entry of judgment on the other claims, the Eleventh and Twelfth Claims for Relief in the Complaint herein are severed and reserved for future determination, and it is further

ORDERED, ADJUDGED and DECREED that this Court shall retain jurisdiction of this action for the purpose of the resolution of the issue of attorneys fees and resolution of any post settlement disputes in accordance with the Stipulation to Entry of Judgment, and it is further

ORDERED, ADJUDGED and DECREED that the Court finds this Partial Consent Judgment to be reasonable and fair to the members of the class, and thus it is approved.

DATED: August 11, 1983
Rochester, New York


UNITED STATES DISTRICT JUDGE

SECTION A

GENERAL PROVISIONS

1. The parties agree to entry of a Partial Consent Judgment incorporating the provisions of this Stipulation. The Rochester defendants have approved the proposed Partial Consent Judgment as to form and content before submission to the Court.

2. The parties agree that the prerequisites for class certification as set forth in F.R.Civ.P. 23(a) and (b)(2) are satisfied with regard to a plaintiff class defined as: all current and future students in the Rochester City School District who have been or will be classified as having handicapping conditions or placed in special education programs or who have been or will be referred in writing to the Committee on the Handicapped.

3. When used in this Stipulation and Partial Consent Judgment, the term "local defendants" shall mean The Board of Education of the Rochester City School District, all of its officers and employees, all such persons' successors in office, agents and servants and those other persons in active participation with them who receive or have received actual notice of this judgment by personal service or otherwise. The term "parties" shall mean the local defendants (as defined in this paragraph) and the plaintiff class (as defined in paragraph 2 above). The terms of this Stipulation shall be binding on all parties.

4. Where specific documents, notices, or procedures are

mentioned or described in this Stipulation or attached hereto, local defendants shall utilize or follow the specific document, notice, or procedure for at least three years after entry of judgment herein, unless modified pursuant to the procedure described in paragraph 8 herein. Subsequent to three years after entry of judgment herein local defendants may substitute equally effective documents, notices, and procedures for those specifically described herein. When used herein, the phrases "now and in the future" and "annually" shall indicate a requirement which is binding without regard to the aforementioned three-year limitation.

5. Whenever in this Stipulation a stated administrative or clerical duty is to be performed by a designated employee of the local defendants, the local defendants may designate any other employee to perform such duty.

6. At any time subsequent to entry of judgment herein the local defendants may make a motion pursuant to Rule 60(b)(5) of the Federal Rules of Civil Procedure to be relieved of any obligation under this Stipulation based upon a change in the applicable laws or regulations.

7. The parties intend that all documents and notices which are provided to parents of members of the plaintiff class shall encourage the parents' participation in the process of determining the handicapping condition of their child and developing their child's special education program, shall inform

the parents of their rights, and shall be written in plain and understandable English or Spanish. Any future changes in documents, notices or procedures shall be evaluated for their likelihood to meet the goals set forth in this paragraph.

8. This agreement contains as an Appendix numerous documents, notices and procedures which have been reviewed by the attorneys and approved by the parties. Plaintiffs understand that from time to time the local defendants may wish to modify these documents, notices and procedures. For three years following the entry of judgment in this action local defendants shall have the right to change or institute the use of new documents, notices, or procedures which are specifically described in this Stipulation only in accordance with the following procedures:

a) Any change in any document, notice, or procedure which is annexed or will be annexed to this Stipulation to Entry of Judgment, or is specifically described herein, shall be accomplished by providing a written copy of the proposed replacement document or change to plaintiffs' counsel no less than thirty days before the proposed change is to become effective. The local defendants shall specify the reason for the proposed change. The plaintiffs' counsel shall comment in writing to the school official designated by the local defendants within fifteen days of receipt of the proposed change. If plaintiffs' counsel fail to respond within fifteen days, the local defendants may presume approval of the proposed change. If

the local defendants do not accept all revisions proposed by plaintiffs' counsel, they shall notify plaintiffs' counsel and offer an opportunity to discuss the issue within five days of plaintiffs' response. These time frames may be extended or reduced by consent of the plaintiffs' counsel and local defendants, which shall not be unreasonably withheld. If, after discussion, the plaintiffs' counsel and local defendants are unable to agree upon a change, either party may, within ten days of failure to reach agreement, refer the dispute to the Court for resolution.

b) The local defendants may make any application which they deem desirable to the Court prior to implementing any document, notice, or policy, should they wish to ensure advance approval of the document, notice, or policy.

9. Because of the ethical considerations involved, the attorneys for the parties are unable to discuss the issue of attorneys fees and other costs as part of the settlement agreement. The attorneys for the parties acknowledge that these issues remain to be decided. The attorneys will attempt to resolve the issue of attorneys fees and costs after this agreement is executed. If they are unable to resolve the issue within 30 days after entry of a final order resolving this action with regard to all parties (including the State defendants), all claims and defenses involving attorneys fees are reserved for future determination by the Court on motion of any of the

parties.

10. To the extent that the terms of Section M of this Stipulation require the local defendants to develop documents, plans, proposals and procedures, the procedures described in this paragraph will be followed. The defendants shall deliver a copy of the plan, proposal or procedures to plaintiffs' counsel on the date specified. Within two weeks of receipt, plaintiffs' counsel shall deliver to the defendants' counsel any proposed modifications. Counsel for plaintiffs and defendants shall schedule a meeting to occur within one week of defendants' receipt of plaintiffs' proposed modifications to discuss finalization of the plan, proposal or procedures. Appropriate employees of the defendants familiar with the issues involved in the plan, proposal or procedures shall attend such meeting; reasonably obtainable relevant documents or information, requested by plaintiffs' counsel in writing at the time of submission of any proposed modifications, shall be made available at such meeting. If final approval is not obtained at such meeting, an additional meeting shall be scheduled forthwith, at which plaintiffs' counsel and defendants' counsel will reduce to writing the specific areas of remaining disagreement regarding all documents, plans, proposals or procedures which remain unapproved. The parties shall submit their positions and legal arguments for resolution by the Court within six weeks of delivery of said documents, plans, proposals and procedures to plaintiffs' counsel.

11. To the extent that the terms of this Stipulation may require the local defendants to develop corrective plans, the procedures described in paragraph 10 shall apply except that if final agreement is not obtained at the meeting between the local defendants and plaintiffs' counsel the matter of the adequacy of the corrective plan shall be submitted for determination by the Court within twenty days or the corrective plan developed by the local defendants shall be deemed approved by the plaintiffs.

12. Local defendants shall, for three years following entry of judgment herein, forward copies of all administrative bulletins and policy directives which relate in any way to procedures or services involving all or any identifiable group of handicapped students or potentially handicapped students to plaintiffs' counsel at the approximate time such bulletins and directives are issued.

13. Documents, plans, proposals and procedures which are agreed upon between the parties, or approved by action of the Court, shall be deemed to be part of this Stipulation and may only be changed during the first three years following entry of judgment herein in accordance with the procedures set forth in paragraph 8 of this Stipulation.

SECTION B

REQUESTS FOR EVALUATION AND REFERRALS

14. The parties recognize that the process whereby potentially handicapped students are referred to the Committee on the Handicapped (COH) for evaluation, recommendation and placement should be uniform throughout the District, well known to staff and parents, easily monitored for compliance with established time frames, and should be designed so as to inform parents about the nature of the COH referral process and to obtain informed parental consent to evaluation as expeditiously as possible. It is the purpose of this Section to establish procedures designed to achieve these goals.

15. The following documents, notices and procedures have been developed and will be used by the local defendants in the referral and evaluation process:

a) The local defendants shall accept written requests for evaluation for a suspected handicapping condition and referrals to the COH on the referral form (Exhibit A) from District employees, and in any other written form from parents or other non-employee sources. The date of referral shall be the date the written referral or request for evaluation is received by the child's school or the COH, whichever occurs first. Should an employee of the District submit an incomplete referral form, it shall be treated as complete for purposes of establishing date of referral, but the local defendants may require their employees

to provide further information on the referral form.

b) When a referral is received by the child's school, the referral shall be forwarded to the COH within five school days. When a referral is received by the COH, the five day notice (Exhibit B) shall be sent to the child's school within five school days. Each school in the District shall maintain a School Tracking Log (Exhibit C) with regard to all students referred to the COH as new referrals or as referrals for a change in classification, program and/or placement. Exhibit B shall be modified by the local defendants by September 1, 1984, to permit its use as an individual tracking document.

c) The letter requesting consent to test (Exhibits D-1 and D-2) shall be sent by the school principal (if referral was received by him/her) or by the COH Chairperson (if referral was received by COH) on or before the fifth school day after the referral was received, together with information regarding testing (Exhibits E-1 and E-2), and the consent to test form (Exhibits F-1 and F-2). All letters to parents shall be dated to reflect the date of mailing.

d) If parental consent to test is not received by the building administrator within five school days after the consent to test letter (Exhibits D) was sent, the second letter requesting consent (Exhibits G-1 and G-2) shall be sent to parents. If parental consent is refused at the conference referred to in Exhibits G or if the parents do not attend the conference, a request for an impartial hearing (Exhibits H-1 and

H-2) shall be sent to the COH by the building administrator. An impartial hearing shall be scheduled and the parents shall be informed of the time and place of this hearing by letter dated at least five school days before the hearing.

e) Because Exhibits D constitute parental notification that a referral has been received, if parental consent to test is obtained by personnel at the child's school, such personnel shall provide the parents with copies of Exhibits D and E at the time consent is obtained on Exhibit F.

f) Subsequent to three years after entry of judgment herein, the local defendants shall continue to comply with the requirements of this paragraph except that similar documents may be substituted for the specific documents mentioned.

16. The local defendants shall implement the following monitoring and enforcement procedures with regard to timely transmission of referrals:

a) Referrals from schools shall be received at Central Office by the COH Tracking Clerk and date stamped with the date received in Central Office.

b) COH Tracking Clerk shall record the Referral Date, the Date Received by Principal and the Date Received by COH.

c) If there is more than a five school day discrepancy between the Referral Date and the Date Received by Principal, or more than a five school day discrepancy between the Date Received by Principal and the Date Received by COH, the COH Tracking Clerk

shall send the school principal a notice of discrepancy (Exhibit I). Any written response from the principal shall be maintained for the duration of the school year in a separate file in the Central Office together with the notices of discrepancy.

d) Where notices of discrepancy have been sent to a school more than five times in one semester, the local defendants shall prepare a corrective plan showing the steps already taken and to be taken to remedy the problem. This corrective plan shall be delivered to plaintiffs' counsel and the State defendants within one month of the fifth notice of discrepancy.

e) Subsequent to three years after entry of judgment herein, the local defendants shall continue to record and monitor the dates of referrals and transmission of referrals and to take timely corrective action when discrepancies are discovered.

17. The local defendants shall implement the following monitoring and enforcement procedures with regard to compliance with the requirements for obtaining parental consent to test:

a) A copy of Exhibits D, and of Exhibits F, G, and H, if any, shall be filed in the student's cumulative folder.

b) If the annual student record review described in Section L of this Stipulation shows failure to comply with the requirements of paragraphs 15 and/or 17(a) of this Stipulation in more than 20% of the folders reviewed in any school during the 1983-84 school year and 10% each year thereafter, the local defendants shall prepare a corrective plan showing steps already taken and to be taken to remedy the problem. This corrective

plan shall be delivered to plaintiffs' counsel and the State defendants within one month of completion of the annual student record review.

c) Subsequent to three years after entry of judgment herein, the local defendants shall continue to require compliance with paragraph 17(a) above and to take timely corrective action when the annual student record reviews show noncompliance with the requirements of paragraphs 15 and/or 17(a) of this Stipulation.

18. The local defendants shall now and in the future inform parents of all District students as to the procedure for initiating a special education referral and as to other special education procedures by the following means:

a) The local defendants shall distribute to the parents or guardians of every student enrolled in the District, in August or September of every school year, a copy of the District's School Calendar/Directory, containing information regarding the education of handicapped children (Exhibit J). Exhibit J shall be reprinted in succeeding years' calendars, unless a change is mutually agreed to as provided in paragraph 8 of this Stipulation. Each year's School Calendar/Directory shall also be distributed to parents and guardians of students who enroll in District schools after the beginning of the school year at the time of such students' enrollment.

b) The local defendants shall distribute to the parents or guardians of every student enrolled in the District,

in the fall of 1983 and of every school year thereafter, a copy of the City School Line (Exhibit K), containing an article on procedures relating to the education of handicapped children. This article, similar or identical to Exhibit J, shall be reprinted in subsequent years' editions unless a change is mutually agreed to as provided in paragraph 8 of this Stipulation.

c) The local defendants shall distribute both the Calendar and City School Line as described in subparagraphs (a) and (b) above as long as both are printed or published. If one of said publications ceases to be published, the local defendants shall continue to distribute the other. If both of said publications cease to be published, the local defendants shall distribute substantially similar information to that contained in Exhibit J to parents of all students enrolled in the District, at or near the beginning of each school year, in some other form.

d) The local defendants shall distribute to each school in the District at least twenty-five copies of the most recent edition of the State Education Department's publication Your Child's Right to an Education at the beginning of the school year. Said publication shall also be kept in the meeting rooms of the local defendants' COHs and a copy shall be offered to every parent or guardian who attends a COH meeting. The local defendants shall make it the responsibility of the parent member of the COH to offer parents and guardians a copy of the publication at COH meetings.

SECTION C

EVALUATIONS, COH RECOMMENDATIONS, AND DUE PROCESS HEARINGS

19. The parties intend that the procedures described in this Section will result in the timely completion of evaluations for all students who have been referred to the COH and will allow the COH to issue timely recommendations for classification, program and placement of such students based on information obtained from evaluations performed, from persons knowledgeable about the child, and from the child's parents. The parties further intend that the provisions of this Section will facilitate parental participation in the COH decision-making process and will provide parents with full notice of proposed COH action and of such parents' and their children's procedural rights in the COH process.

20. The following procedures and forms have been developed and shall be used by the local defendants in the evaluation and COH recommendation process:

a) The local defendants shall now and in the future automatically schedule the COH meeting to consider a recommendation for a child who has been referred to the COH no later than the week of the 30th school day after the date the referral was received by the building administrator or the COH, whichever occurred first. Working days shall be used to compute this time rather than school days during the summer recess.

b) The local defendants shall notify school principals of the receipt of the referral, of the date that the evaluation

packet is due in the Central office, and of the week of the Committee on the Handicapped meeting by use of Exhibit B.

c) The local defendants shall require that by the 5th school day prior to the COH meeting, the staff of the student's school shall complete and transmit to Central Office the complete evaluation packet containing at least the following documents to be reviewed by the COH: i) Social History (Exhibit L); ii) Health Developmental Assessment (Exhibit M); iii) Classroom Observation Form (Exhibit N) (discretionary for summer COH meetings); iv) Speech/Language Report (Exhibit O); v) Psychological Evaluation (Exhibit P); vi) Audiological Report (Exhibit Q)(where indicated); vii) Physical Therapy/Occupational Therapy report (Exhibit R)(where indicated); viii) Social Worker's Report (Exhibit S)(where indicated); and ix) the Recommendation for COH Review/Action (Exhibit T). The local defendants may elect to conduct a parent conference at the local school, but in no event shall the transmittal of the evaluation packet be delayed to await completion of a parent conference. The local defendants shall instruct all PPS staff and building administrators that the evaluation packet must be transmitted to Central Office on or before the due date regardless of whether a parent conference has been held.

d) It shall be the responsibility of the building administrator of each school to ensure that the evaluations and forms listed above are completed and received in the Central

Office no later than 5 school days before the COH meeting. Any inability to do so which the building administrator deems to be justifiable must be documented in writing and maintained in the student's cumulative folder and in a separate file in the Central Office. It shall also be the responsibility of the building administrator to ensure that the School Tracking Log (Exhibit C) is completed for every student in his/her school who is referred to the COH and that such log is maintained in the school office.

e) A member of the school-based evaluation team (currently known as the PPS team) or other school-based person knowledgeable about the child shall attend the COH meeting regarding the child and be prepared to discuss the evaluations performed by the team and the needs of the child. If the evaluation packet is incomplete for unjustified reasons, the COH meeting shall be rescheduled within 15 school days during the 1983-84 school year and 10 school days every year thereafter. Except for COH meetings which take place during the summer recess, if the PPS team member or other school-based person knowledgeable about the child fails to appear at a COH meeting for a child who may be recommended for initial placement in special education or at a meeting where the child's parent expresses disagreement with the PPS team's findings or the COH's proposed recommendations, the COH meeting shall be rescheduled within 15 school days during the 1983-84 school year and 10 school days every year thereafter. In other cases the COH shall determine whether the presence of the school-based person is

necessary for informed and appropriate COH action and may either reschedule the COH meeting as described in this paragraph or issue its recommendation and develop the Phase I IEP in that person's absence.

f) If the child's parent is in attendance at a COH meeting which must be rescheduled, the parent shall be told of the reason for the delay and that the meeting will be rescheduled. Parents shall be notified of the rescheduled COH meeting date by use of the letter described below in paragraph 25 of this Stipulation (Exhibits U); however, Exhibit V (notice of rights) need not be sent when Exhibit U is used to notify parents of a rescheduled COH meeting. The local defendants shall take all necessary actions to ensure that the problem necessitating rescheduling of the COH meeting is corrected before the rescheduled COH meeting.

g) In order to ensure and facilitate participation of the school-based person in COH meetings, the local defendants shall make available substitute personnel, if needed, to relieve the school-based person or another employee at the student's school of his/her instructional or administrative duties during the time needed to attend the COH meeting and shall schedule the COH meetings for all of a given school's referrals submitted during any week, on one day no later than thirty school days from the last day of the week of referral.

h) Where the COH has had to reschedule its meeting regarding a child either because: i) a complete evaluation packet

was not received by the COH in time for its meeting; or ii) the person knowledgeable about the child from the child's school did not appear at the COH meeting, and this has occurred more than five times for unjustified reasons in any semester for any given school, the local defendants shall prepare a corrective plan showing the steps already taken and to be taken to remedy the problem. The corrective plan shall be delivered to plaintiffs' counsel and the State defendants within one month of the fifth rescheduling of a COH meeting.

21. Subsequent to three years after the entry of judgment herein, the local defendants shall continue to: notify principals of the date that the evaluation packet is due in Central Office and of the approximate date of the COH meeting; require the completed evaluation packet to be transmitted to Central Office at least 5 days before the COH meeting; require the building administrator to maintain a tracking log similar to Exhibit C; enforce the provisions of paragraph 20 (c), (e), (f) and (g) above, except that similar documents may be substituted for the specific documents referred to therein; and take timely corrective action when a pattern of COH rescheduling appears with regard to any given school.

22. The local defendants shall now and in the future employ a sufficient number of psychologists and other evaluation staff to complete all evaluations of children with suspected handicapping conditions within the time required by this

Stipulation.

23. The local defendants shall require that the head of the building PPS team (the building principal or his/her administrative designee) coordinate the evaluation process. The head of the PPS team shall also be responsible for designating the member of the PPS team or other person knowledgeable about the child's educational needs who will attend the COH meeting.

24. Each member of the PPS team or other person responsible for performing one of the required evaluations on a child shall perform his/her evaluation as soon as possible, without waiting for other team members to complete their evaluations. After the evaluations have been completed, the PPS team shall meet to discuss the evaluation results. Such meeting shall not be considered defective if any member of the PPS team whose verbal input is not required is absent from the meeting. The COH shall not be bound, now or in the future, by any recommendation made by the PPS team.

25. No later than 5 school days before any COH meeting regarding a child, the local defendants shall send a notice of the COH meeting (Exhibits U-1 and U-2) to the child's parents. Whenever this letter is sent, it shall be accompanied by the document Rights of Parents of Students With Suspected Handicapping Conditions (Exhibits V-1 through V-6). A dated copy of Exhibit U shall be placed in the student's cumulative folder.

26. At the outset of each COH meeting, each member of the COH and each school representative shall be introduced to the

parents and explain why he or she is present. The parent member of the COH shall offer to the parents a copy of Your Child's Right to An Education.

27. At the COH meeting, either the knowledgeable building representative or the member(s) of the COH team with specific subject matter expertise in the suspected handicapping condition of the child shall: a) explain to the parents and the members of the COH the evaluation results and discuss the meaning of the tests and evaluations which have been performed; or b) when no new evaluations have been performed, explain the purpose of the meeting and discuss any reports, test results or other information which has been submitted to the COH.

28. All COH meetings shall be conducted in a manner which attempts to solicit the parents' views on their child's needs. Parents should be encouraged to participate in the discussion and react to the evaluation materials being reviewed and discussed. The COH normally shall agree upon classification, placement and program while the parent is present so that the parent may participate in the development of the Phase I IEP. In extraordinary cases, where in the professional judgment of the COH full discussion of an issue would be contrary to the best interests of the child, such discussion may take place without the parent present.

29. If the COH proposes to classify a child as handicapped, they shall develop the proposed Phase I Individualized Education

Program (IEP)(Exhibit W) with input from the parents at the meeting. They shall provide the parents with a blank Phase I IEP Form during the discussion so that the parents can better follow the discussion. All items shown on the Phase I IEP form shall be discussed with the parents and recommendations shall be made with regard to all items. The actual writing or typing of the Phase I IEP may be completed after the COH meeting.

30. Except as provided in Section F of this Stipulation, in no event shall the parents be asked or permitted to sign a consent to a placement of their child in a special education program prior to or during a COH meeting.

31. Plaintiffs' counsel shall be free to observe COH meetings to monitor compliance with this section of this Stipulation with parental consent and prior notification of the local defendants.

32. Within three school days after completion of the COH meeting, the local defendants shall send to the child's parents: a) the COH recommendation letter (Exhibits X-1 and X-2); b) a copy of the Rights of Parents of Students With Handicapping Conditions (Exhibits V); c) a copy of the completed Phase I IEP (Exhibit W); and d) a copy of the COH minutes (Exhibit Y).

33. The local defendants shall develop, and include in the manual described in paragraph 98 of this Stipulation and in the in-service training described in paragraph 94 of this Stipulation, directives for all staff to instruct them in dealing with parental objections to COH recommendations which are

received in any form other than a written request for a hearing. Such directives shall instruct staff to advise parents to submit a written request for a hearing and to refer parents to agencies listed in Exhibit V. District staff shall not substitute mediation for assisting parents in requesting a hearing. Mediation should occur after the parent has requested a hearing, with a goal of reaching an agreement which will obviate the need for the due process hearing.

34. When a parent has requested in writing a due process hearing, or when the local defendants have scheduled a due process hearing, the local defendants shall send a notice of hearing (Exhibits Z-1 and Z-2) to the parent at least five school days before the hearing.

35. The local defendants shall ensure that in any case in which a parent timely requests a due process hearing to contest a COH recommendation, the hearing will be held and decision rendered within 45 calendar days of receipt of the parent's written request for a hearing.

36. Within 20 school days after mailing the COH recommendation, unless a written request for a due process hearing has been received, or unless the parents have not granted written consent to initial placement of their child in special education, the local defendants shall send to the child's parents a placement notification letter (Exhibits AA-1 and AA-2).

37. If, by the 30th school day after a COH recommendation

for an initial placement in special education, the parents have not requested a due process hearing in writing and have also not returned to the District a signed copy of the Phase I IEP, the local defendants shall schedule a due process hearing and send to the parent a notice of hearing (Exhibits Z).

38. Whenever Exhibits U, W, X, Y, Z or AA are sent to parents, a copy of such document(s) shall be placed in the student's cumulative folder.

39. Subsequent to three years after the entry of judgment herein, the local defendants shall continue to follow the provisions in paragraphs 24-30, and 32-38 of this Stipulation. At or after that time the local defendants may substitute similar documents for the specific documents mentioned in said paragraphs; however, prior to making any change in Exhibits V or replacing it with another document, local defendants shall consult with plaintiffs' counsel or representatives of their agencies or with representatives of one or more other local advocacy organizations regarding the content and wording of such document.

SECTION D

TIMELY PLACEMENTS

40. The parties agree that the procedures described in this section for timely placement of handicapped students in appropriate educational programs are experimental for the 1983-84 and 1984-85 school years and reflect the following assumptions: a) that timely placement of all handicapped students who will be identified during a given school year can best be accomplished by making accurate projections regarding the number of such students and reserving sufficient classroom space and hiring sufficient personnel to accommodate all such placements at the beginning of each semester; b) that these procedures contemplate beginning each semester of the school year with less than the maximum allowable number of students in most special classes and resource programs; c) that students who can be maintained satisfactorily in their present placements for the duration of a semester are often better served by being placed in a new, more appropriate educational setting at the beginning of the following semester than by being moved (often to a different school) in the middle of a semester; d) that special education classes and programs can be staffed and equipped more efficiently and productively by establishing them at the beginning of each semester rather than by creating them on an "as needed" basis during the course of the school year; and e) that, under this approach, special arrangements must be made to accommodate students who cannot be satisfactorily maintained in their current educational programs

for the duration of a semester.

41. Prior to the beginning of May of each school year, the local defendants shall engage in the Annual Assessment and Planning process described in Section J of this Stipulation. The local defendants shall project how many classrooms and special education teachers and support staff will be needed to serve the number of special education students being served and projected to be served by the end of the current school year as well as the number of special education students projected to be identified during the following school year. The latter projection will be based on, among other things, the number of special education students identified during the current school year (broken down by semester) adjusted to reflect any identifiable trend toward increase or decrease of that number and expected attrition.

42. Based on the above-described projections, the local defendants shall reserve for the following school year the number of classrooms needed to serve the projected number of special education students and shall budget, for the following school year, salaries for all special education staff projected to be needed for the school year. The local defendants shall have employed, at the beginning of the first semester of these school years, a sufficient number of special education teachers to serve the projected first semester population of special education students. The local defendants shall have employed at the beginning of the second semester of these school years, a

sufficient number of special education teachers to serve the projected number of special education students who must be placed during the second semester in accordance with the terms of this Stipulation. This figure may be adjusted upward or downward to reflect unexpected changes in the numbers of special education students identified. Plaintiffs' counsel shall be notified of changes in these projections. All handicapped students for whom parental consent to placement has been obtained (when necessary) shall be placed in their recommended program and/or provided with the recommended services no later than thirty school days after COH recommendation unless and until the classes and classroom space projected for the semester are filled to capacity.

43. New special education classes and programs shall be opened only at the beginning of the first and second semesters of these school years, except as provided in this paragraph and in paragraphs 63 and 71 of this Stipulation. If the local defendants find, by use of the reporting system described in paragraph 102(a) of this Stipulation, that any student for whom the COH has recommended a special education placement or program and for whom parental consent to placement has been received, will not be placed in such placement or program by the 61st school day after the COH recommendation, unless a new class is opened, the local defendants shall open a new class or obtain a variance from the State defendants so as to allow placement of such student by the 61st school day after the COH recommendation. If the local defendants find, by use of the reporting system

described in paragraph 102(a) of this Stipulation, that any group of students which may be placed in a single special education class pursuant to the regulations of the Commissioner of Education and the terms of this Stipulation has been recommended for special education placement by the COH and parental consent to placement has been received for such group of students, and such group has been identified more than forty-five school days before the end of a semester, the local defendants shall open a class for such students within two weeks of identification of the last member of the group. The procedures described in this paragraph shall not apply after the beginning of the fourth marking period (halfway through the second semester) in any case where the student will be maintained in his/her current educational program for the remainder of the school year and the student's parents and a designee of the local defendants agree that the student's educational needs would be better met by placing him/her at the beginning of the following school year.

44. The provisions of this Section shall not apply to special education students whose recommended placement is a private (agency) placement. Timely placement of such students shall be accomplished in accordance with the provisions of Section E of this Stipulation.

45. The provisions of paragraph 43 above presume that all handicapped children will be maintained in their then-current educational programs and placements until they are placed in a

newly recommended program. To the extent that problems arise with regard to maintaining students in their then-current placements, such problems shall be dealt with according to the provisions of Section F of this Stipulation.

46. The parties agree that this Section of this Stipulation is experimental for the 1983-84 and 1984-85 school years. It is the belief of all parties that, based on accurate projections by the local defendants, all handicapped students should be able to be placed in their recommended programs within sixty school days of referral to the COH. It is the belief of all parties that the provisions embodied in paragraph 43 which extend the placement timeframes of state regulation should not, in fact, have to be used, but are included as a fail-safe mechanism only.

47. By May 1, 1984 and May 1, 1985, the local defendants shall prepare a status report on the implementation of this Section. Said report shall include information regarding: (a) successes and failures of the placement procedure described in this Section; (b) the number of students for whom the "fail-safe" provisions of paragraph 43 had to be invoked during the school year; and (c) the number of students who were not placed within 60 school days of the date of referral to the COH during the school year. Copies of this report shall be provided to the plaintiffs' counsel by May 1, 1984 and May 1, 1985 respectively.

48. During May, 1984 and May, 1985, the parties shall meet as often as is necessary to determine what, if any, changes should be made in the procedures described in this Section for

the succeeding school years. At those times the issue of timely placement shall be deemed reopened for negotiation and no party shall be bound by the agreement embodied in this Section with regard to finalization of the timely placement provisions in this matter. If the parties are unable to reach agreement as to final terms for timely placement of handicapped students by May 25, 1985, either party may refer the matter to the Court for resolution within ten days.

SECTION E
PRIVATE (AGENCY) PLACEMENTS

49. The parties recognize that handicapped students for whom the COH has recommended private (agency) placement have often waited six to twelve months for placement due to the local agencies' inability to accept or accommodate all such students. The parties further recognize that many of such students have been recommended for agency placement by the COH because District programs did not provide the intensive level of services needed by these children. In view of these facts, it is the purpose of this Section to: (a) provide a higher level of support services to children placed in self-contained classes and resource rooms for emotionally disturbed children, and to children with other types of handicapping conditions who have significant emotional needs, in order to allow more such children to be educated in these settings within the District; (b) expand the District's Group Tutoring program, a goal of which is to reintegrate emotionally disturbed children into the public school setting, to include a small number of elementary-age students and a greater number of secondary students; (c) to increase the capability of the Group Tutoring Program to implement IEPs for handicapped students attending Group Tutoring; (d) to create, if the need arises, a maximum of three District-based classes with a 6/1 student-teacher ratio, with support services or with one instructional aide for each such class, to accommodate children

who cannot be maintained in any of the District's other programs and are waiting for agency placement; and (e) to significantly reduce the number of handicapped students who are placed on home instruction.

50. The provisions of this Section, like the provisions of the preceding Section, are experimental and shall be in effect during the 1983-84 and 1984-85 school years unless otherwise stated herein.

51. The local defendants shall, prior to the beginning of each such school year, ensure that a psychologist, social worker, behavior modification specialist and/or other appropriately certified support personnel, who does not carry responsibility for performing evaluations on children other than the children in the programs with which he/she is working directly, is available to every self-contained class for elementary-based emotionally disturbed children. No such personnel shall be assigned to more than a total of six such classes; these classes shall be in the same school or in schools which are in close proximity to one another. The purpose and duties of such personnel shall be to provide a program of ongoing support services as a part of the curriculum of each class to which he/she is assigned and to provide individual and/or group counseling to those students in such classes for whom it is deemed appropriate by professional staff.

52. The local defendants' Director of Special Education-Instruction, prior to the beginning of each such school year,

shall assign no less than a total of seven certified special education teachers to selected elementary school buildings containing special education classes with only one administrator or containing a significant number of special education classes to: assist in organizing the special education programs; provide instructional support to the special education programs; and chair subcommittees of the COH. The local defendants shall organize self-contained classes for elementary intermediate and advanced learning disabled students at the class size limits set forth in 8 N.Y.C.R.R. § 200.6(f)(4).

53. The local defendants shall advise the COH that emotionally disturbed students who have shown a need for a higher level of structure and services than has heretofore been available in District-based programs shall now be considered for placement in District-based classes for emotionally disturbed children as described in paragraph 51 above.

54. The local defendants shall, prior to the beginning of the 1983-84 and 1984-85 school years, ensure that a program similar to the District's Group Tutoring Program is available for a minimum of ten elementary-age students. The COH shall be advised that emotionally disturbed students who cannot receive appropriate educational services in the classes described in paragraph 51 above, but who may benefit from placement in a Group Tutoring situation (including particularly children who exhibit symptoms of school phobia), shall now be considered for placement

in the Group Tutoring - Elementary Program.

55. In recognition of the fact that many of the secondary-age emotionally disturbed students in the District who have heretofore been placed on home instruction may be able to benefit from placement in the Group Tutoring Program, the local defendants shall, prior to the beginning of the 1983-84 school year, expand the Group Tutoring Program to have the capacity for the placement of at least thirty additional secondary-age emotionally handicapped students in the program during the 1983-84 school year. The COH shall be advised that emotionally disturbed students who may benefit from placement in a Group Tutoring situation (including particularly children who exhibit symptoms of school phobia, truancy problems, and those who have had problems in other school settings) shall now be considered for placement in the Group Tutoring Program.

56. Handicapped students in the Group Tutoring Program shall have properly developed Phase I and Phase II IEPs and shall receive all special programs and services contained in those IEPs. Instuctors in the Group Tutoring Program need not be certified in special education so long as special education certified personnel, psychologists, social workers and/or other support personnel are made available to consult with and provide services to handicapped students in the Group Tutoring Program.

57. It is the expectation of all parties that the programs described in paragraphs 51-56 above will meet the educational needs of a significant percentage of the emotionally

disturbed students who have previously been recommended for agency placement or placed on home instruction. It is the further expectation of all parties that the availability of these programs together with the increased support services which will be available to emotionally disturbed students in secondary-based special education classes and resource rooms, as a result of the increase in support personnel described in paragraphs 22 and 51 of this Stipulation and the resulting increased availability of secondary-based support personnel, will reduce the number of emotionally handicapped students being recommended for agency placement to the point where these placements may be able to be accomplished in a timely manner (i.e., within sixty to ninety school days of referral). However, because of the untried nature of these provisions, the local defendants agree to establish, if the need arises, a maximum of two secondary and one elementary class with a student-teacher ratio of 6/1 with support services or with one instructional aide for each class. These classes shall be designed to serve the intensive needs of those emotionally disturbed children who are or will be waiting for agency placement for more than ninety school days since the date of referral. Because only one elementary 6/1 class is being established during the experimental period, the local defendants may organize such class so that the chronological age range of the students shall not exceed five years.

58. The parties recognize that the provisions of this

Section of the Stipulation may be affected by action of the Regents regarding state-wide applicability of the provisions of Section 200.6 of the Commissioner's Regulations, which are currently not binding on the local defendants. Because of this fact, and because the provisions of this Section are experimental in nature, the local defendants shall prepare, by May 1, 1984, a status report on the effects and results of implementation of this Section, together with a statement of proposed actions to be taken by the District for the 1984-85 school year as a result of any action by the Regents regarding Section 200.6. The status report shall include information regarding: (a) a comparison of the number of COH recommendations for agency placement made during the 1983-84 school year with the number made during the 1982-83 school year; and (b) the average waiting time including any trends regarding the average waiting time for District students recommended for agency placement. Copies of this status report shall be provided to plaintiffs' counsel by May 1, 1984. There shall be a similar status report prepared by the local defendants and provided to plaintiffs' counsel by May 1, 1985.

59. During May, 1984, and May, 1985, the parties shall meet as often as is necessary to determine what, if any, changes should be made in the provisions described in this Section for the succeeding school years. At those times the issue of private (agency) placements shall be deemed reopened for negotiation and no party shall be bound by the agreement embodied in this Section with regard to finalization of the private (agency) placement

provisions in this matter. If the parties are unable to reach agreement as to final resolution of the issue of private (agency) placements by May 25, 1985, either party may refer the matter for resolution to the Court within ten days.

SECTION F

MAINTAINING HANDICAPPED STUDENTS IN THEIR THEN-CURRENT EDUCATIONAL PLACEMENTS AND ENROLLING HANDICAPPED STUDENTS IN SCHOOL

60. The parties recognize that the needs of handicapped students can best be met if any student's possible need for a change in placement or program is detected early and if any needed change is accomplished without interruption of the student's educational program. The parties further recognize that "home instruction" is a highly restrictive placement for a handicapped student. These procedures are designed to reduce significantly the number of handicapped students who are placed temporarily on home instruction. Through the procedures of this section the parties intend to provide a mechanism for maintaining handicapped students who may require a change of classification, placement and/or program in their then-current educational placement and program until an alternative, more appropriate placement and/or program can be implemented and a mechanism for enrolling students previously classified as handicapped who are new to the District in an appropriate available placement and/or program while such students go through the COH process.

61. All handicapped students for whom a change of classification, placement and/or program is sought and who have not been suspended pursuant to the procedures described in the companion case of Michael T. v. Board of Education of the Rochester City School District, Civil Action No. 83-30T, shall be maintained in their then-current educational placement and/or

program while the COH acts on the referral for change of classification, program and/or placement and until the student is actually placed in a different, more appropriate educational placement as recommended by the COH and not objected to by the student's parents. If the parents of such a student object to the COH's recommendation, the student shall be maintained in his/her then-current educational placement and/or program until the completion of all administrative and judicial procedures provided for challenging special education placements and programs.

62. The provisions of paragraph 61 above shall not apply where a student's parents have given informed written consent to a temporary placement and program for the student which is mutually acceptable to the District and the parents. Parental consent to a temporary placement and/or program for a student shall be obtained only after support services available in the building have been found to be unsuccessful in maintaining the student and only on the form attached hereto as Exhibits BB-1 and BB-2. The local defendants may only implement a temporary placement for a handicapped student for whom a change in classification, placement and/or program is sought through the following procedure:

- a) A written referral for change of classification, program and/or placement is submitted to the COH;

- b) Personnel from the student's school (including at least: 1) the student's teacher; 2) the building administrator or

his/her designee; and 3) the Special Education Coordinating Administrator or the special education teacher referred to in paragraph 52 of this Stipulation if such person is not the principal's designee) meet with the student's parents and discuss the difficulty of maintaining the student in his/her then-current educational placement and/or program and the alternatives for temporary placement of the student;

c) If the parent chooses an alternative temporary placement for the student pending a new COH recommendation and placement, the parent shall fill out and sign the Consent to Temporary Placement form attached hereto as Exhibits BB;

d) The Consent to Temporary Placement form is forwarded to the COH;

e) The COH or the COH Chairperson may authorize the temporary placement only if: a referral to the COH for change of placement has already been received regarding the student; the school has informed the COH in writing of the support services which were utilized in an attempt to maintain the student; an Exhibit BB has been completed and signed by the parent(s); where such temporary placement is to be home instruction, the alternative placements available have been considered and found not to be appropriate; and the COH meeting at which a change of classification, placement and/or program for the student will be considered has been scheduled for the earliest expedited COH meeting time available, but no later than the week of the 30th school day after referral;

f) If the COH or its Chairperson approves the temporary placement, it shall send to the student's parents, and to the building administrator of the student's current school, the COH-approved Consent to Temporary Placement form (Exhibits BB);

g) The student shall in all cases be maintained in his/her then-current placement and program until the building administrator receives the COH-approved Exhibit BB, unless the student presents a serious danger to self or others;

h) In order to provide expedited COH meetings for the students referred to in this Section and other students who may require them, the local defendants shall reserve one-half day per week of COH meeting time;

i) At the COH meeting the parents shall again be advised that their consent to the temporary placement is revocable, and the parents' response, if any, to this advice shall be recorded in the minutes of the COH meeting;

j) If the COH does not recommend a change of classification, placement or program, or if the COH recommends only a change in program which can be accomplished within the student's current placement, the student shall be returned to his/her previous placement within five school days of the COH meeting;

k) If the COH recommends a change of classification or placement, or a change in program which cannot be accomplished

within the student's current placement, the student shall be placed in the recommended program (if the parents do not object to the recommendation) within thirty school days of the COH meeting.

63. The provisions of paragraph 43 in Section D of this Stipulation (Timely Placements) shall not apply to any handicapped student who has been placed in a temporary placement pursuant to paragraph 62 above. All handicapped students who have been placed in a temporary placement pending COH review and for whom the COH has recommended a new program and/or placement after review shall be placed in the new recommended program (if the parents do not object) no later than the thirtieth school day after the date of the recommendation. All such students who have been recommended for agency placement and for whom such placement cannot be accomplished within thirty school days shall be maintained in their temporary placement or shall be temporarily placed by the COH according to the provisions of paragraph 57 of Section E of this Stipulation pending agency placement.

64. The COH shall issue a recommendation showing home instruction as the recommended placement for a student only when the COH has determined that such placement constitutes the least restrictive environment in which a handicapped student can receive an appropriate education designed to meet his/her individual needs. The minutes of any COH meeting at which such a recommendation is made shall reflect the reasons for the COH's rejection of alternative placements for the child (including

agency placement and residential placement). Copies of these minutes and the COH recommendation shall be kept in a separate file in the Office of Student Equity and Placement for review by the parties. Subsequent to December 1, 1983, placement on home instruction shall only be recommended in accordance with the Criteria for Placement on Home Instruction to be developed pursuant to paragraph 102(b) of this Stipulation.

65. Where the COH determines that private (agency) placement is appropriate for a child, the COH shall issue a recommendation showing the designated agency as the recommended placement, whether or not such agency has already accepted the child. If the COH believes that placement in the recommended agency will likely not be accomplished within 30 school days, the COH shall separately designate as "temporary" any temporary placement to which the parent has agreed. Before accepting parental consent to home instruction as the temporary placement for such a child, the COH shall first determine whether temporary placement in a class established pursuant to paragraph 57 would be appropriate for the child. Temporary placement of a child awaiting agency placement shall be made into one of these classes rather than on home instruction, unless these classes are full or the COH and parent agree that such a class would not be appropriate to meet the child's needs.

66. In order to allow handicapped students to be maintained in their then-current placement and program pending COH review of

their need for a change of classification, placement or program, the local defendants shall hire, for the 1983-84 school year, a minimum of 21 new instructional aides to be assigned to special education classes. At least this number of instructional aides, in addition to the number of instructional aides currently assigned to special education classes, shall remain employed by the local defendants in subsequent school years, except that the number may be proportionately reduced if the population of handicapped students in the District should decline. These instructional aides, and the additional support personnel to be employed pursuant to paragraphs 22 and 51 of this Stipulation, shall be utilized whenever possible to assist in maintaining a handicapped student in his/her then-current educational placement pending COH review of a change in placement. Where an instructional aide or additional support from a psychologist, social worker or other appropriate personnel can be made available in a building, no handicapped student who attends school in that building may be placed in a temporary placement until an effort has been made to maintain the student in his/her then-current educational placement with the use of an instructional aide or other supportive services.

67. A copy of any Consent to Temporary Placement shall be placed in the student's cumulative folder and PPS folder. Information regarding students placed on home instruction shall be maintained according to the provisions of paragraph 64 of this Stipulation.

68. Prior to July 1, 1983, the local defendants shall mail to the parents of all handicapped students currently receiving home instruction and expected to remain on home instruction for September, 1983, a letter informing them of the availability of additional placements and soliciting requests for COH review. The local defendants shall similarly notify the tutors of such students and solicit tutors' requests for COH review of their students. All such students for whom a request for COH review has been received prior to July 10, 1983, shall be reviewed by the COH and considered for a less restrictive placement than home instruction for September, 1983. All such students for whom new placement is recommended and for whom no parental objection to the recommendation has been received within fifteen days after mailing the recommendation, shall be placed in the recommended program and placement by the opening of the 1983-84 school year.

69. The parties agree that the issue of short-term and long-term suspension of handicapped students and the proper procedures to follow in disciplining handicapped students are not addressed in this Stipulation but shall be resolved through negotiation or litigation of the companion case Michael T. v. Board of Education of the Rochester City School District, Civil Action No. 83-30T. It is the intention of the parties to negotiate a Stipulation to Entry of Consent Judgment in the Michael T. case which will be presented to the Court for approval simultaneously with the Stipulation in this matter.

70. When a new entrant who is or may be handicapped seeks and is entitled to enroll in the District, it shall be the responsibility of the principal or his/her designee (elementary school), or of the Special Education Coordinating Administrator (secondary school), to make an initial recommendation regarding the appropriate temporary placement for such student. This determination shall be made by such individual in consultation with a designated Central Office administrator and with the informed consent of the student's parent. The determination regarding an appropriate temporary placement of a child who is otherwise entitled to enroll shall be made according to the following procedures:

a) If the parent advises that the child was classified as handicapped in a former school district and can present suitable documentation, such as a current IEP, COH recommendation and/or school records, the school official shall consult by telephone with a designated Central Office administrator to establish the appropriate temporary placement for the child, which shall be in an available program and placement in the City School District most similar to the child's program and placement in the former district;

b) If the parent consents to such temporary placement by use of the form attached hereto as Exhibits CC-1 and CC-2, the child shall be placed within three school days if the placement is available in the child's home school and eight school days if not in the home school; the Office of Student Equity and

Placement shall notify the parent of the placement.

c) If the parent does not consent to the proposed temporary placement, the child shall be enrolled forthwith in the regular class and grade which he/she would otherwise attend;

d) If the parent advises that the child was classified as handicapped in the former school district, but cannot provide suitable documentation regarding the nature of the child's former placement, the school official shall telephone the child's former school district forthwith, if such former district can be identified, and make all reasonable efforts to determine the child's classification and placement in the former school district;

e) If suitable information is obtained from the former school district, the child shall be enrolled in the appropriate temporary placement pursuant to subparagraphs b) and c) above through the Office of Student Equity and Placement, which shall notify the building administrator of the child's home school of the action taken;

f) If suitable information cannot be obtained from the former school district, the child shall be enrolled in the regular class and grade which he/she would otherwise attend;

g) If the parent of a child referred to in subparagraphs c) or f) above does not want his/her child to attend the regular class or temporary placement offered, such parent may consent to placement of the child on home instruction

pending COH review and placement in an appropriate program by use of Exhibits CC.

h) The building administrator shall submit a referral to the COH regarding a claimed handicapped new enrollee on the date of the child's or parent's initial attempt to enroll the child in school and shall provide the parent with copies of Exhibits D and E and obtain, if possible, parental consent to evaluation of the student (Exhibits F) and parental permission for release of records from the former school; the Central Office administrator consulted by the school official pursuant to subparagraph 80(a) above shall make inquiries to determine that a referral has been or is being submitted;

i) Where a new enrollee is enrolled in a temporary placement other than the home school pursuant to subparagraphs b) or e) above, the building administrator of the child's home school shall transmit the newly opened cumulative file, a copy of the referral, and a copy of the Consent to Test form signed by the parent to the school in which the child is temporarily placed; evaluations of the child, if needed, shall be performed by personnel at the school of temporary placement.

71. The provisions of paragraph 43 in Section D of this Stipulation (Timely Placements) shall not apply to any handicapped student who has been placed in a temporary placement pursuant to this section. All such students shall be placed (if the parents do not object) in the program and placement recommended by the COH no later than the thirtieth school day

after the date of the recommendation. All such students who have been recommended for agency placement and for whom such placement cannot be accomplished within thirty school days shall be maintained in their temporary placement; if the temporary placement is home instruction, the provisions of paragraph 65 of this Stipulation shall apply.

72. In all cases of new enrollees the temporary placement shall be deemed the child's then-current educational placement if the parent objects to the COH recommendation.

73. The local defendants shall develop, and include in the manual described in paragraph 98 of this Stipulation and in the in-service training described in paragraph 94 of this Stipulation, directives for all staff to instruct them in the content and implementation of the procedures described in this Section. The local defendants shall rescind the Memorandum dated December 15, 1983 (Exhibit DD) and shall issue separately the directives described in this paragraph to all relevant staff, including at least all building administrators and Special Education Coordinating Administrators.

74. The parties agree that because the provisions of this Section are dependent for their effectiveness upon several of the other provisions of this Stipulation which are experimental for the 1983-84 and 1984-85 school years, this Section also shall be deemed experimental for these school years.

75. By May 1, 1984, the local defendants shall prepare a

report on the effects and results of implementation of this Section. Said report shall include information regarding: a) the number and type of temporary placements approved by the COH or its Chairperson through April 1, 1984, pursuant to paragraph 62 of this Stipulation; b) the effectiveness of the procedures described in this Section in maintaining students in their then-current educational placements; c) the COH's implementation of the Criteria for Placement on Home Instruction pursuant to paragraph 102(b) of this Stipulation; and d) any other relevant information relating to successes and failures of the procedures described in this Section. Copies of this report shall be provided to plaintiffs' counsel by May 1, 1984. There shall be a similar report prepared by the local defendants and provided to plaintiffs' counsel by May 1, 1985.

76. During May, 1984, and May, 1985, the parties shall meet as often as is necessary to determine what, if any, changes should be made in the procedures described in this Section for the 1984-85 and succeeding school years. At that time the issue of maintaining students in their then-current placements and enrollment of new students shall be deemed reopened for negotiation and no party shall be bound by the agreement embodied in this Section with regard to finalization of this issue. If the parties are unable to reach agreement as to final terms for maintaining students in their then-current educational placements and/or enrollment of new students by May 25, 1985, either party may refer the matter for resolution to the Court within ten days.

SECTION G

PHASE II IEPs AND ANNUAL REVIEWS

77. In order to allow annual reviews to be conducted with full parental participation and to facilitate timely and complete preparation of Individualized Education Programs (IEPs) the parties have adopted the following procedures. The procedures described in paragraphs 78 and 80-83 of this Section shall be followed now and in the future except that subsequent to three years after entry of judgment herein, the local defendants may substitute similar documents for the specific documents mentioned therein.

78. The local defendants shall require that Phase II IEPs are developed either: a) within 30 school days after a child has been placed in a special education program, begun a new school year or begun to receive a special education service; or b) at the Phase II IEP review as described in paragraph 81 of this Stipulation, whichever occurs first. The local defendants shall use the revised Phase II IEP form (Exhibit EE).

79. The local defendants shall develop procedures for parental involvement in the development of Phase II IEPs as described in paragraph 102(c) of this Stipulation. Compliance with those procedures shall be monitored as described in Section L of this Stipulation. When the annual student record review described in Section L shows that more than 20% in the 1983-84 school year and 10% in the 1984-85 and 1985-86 school

years of a school's Phase II IEPs have not been completed in accordance with paragraph 78 above or that parental notification letters (which are to be developed pursuant to paragraph 102(c) of this Stipulation) were not sent in accordance with the procedures for parental involvement in more than the same percentages as above of the folders reviewed, the local defendants shall prepare a corrective plan showing the steps already taken and to be taken to remedy the problem. This corrective plan shall be delivered to plaintiffs' counsel and the State defendants within one month of the completion of the annual student record review. Subsequent to three years after entry of judgment herein, the local defendants shall continue to take timely corrective action when the annual student record review shows noncompliance with paragraph 78 above and/or the requirements for parental involvement in development of Phase II IEPs.

80. The local defendants shall conduct an annual review of each handicapped student's educational program and placement pursuant to the following procedures:

a) Prior to annual review, personnel at the child's school shall identify those handicapped students who are likely to have only a change recommended in annual goals on their Phase I IEP, and those students who are likely to have more significant changes in Phase I IEP recommended or seriously considered.

b) The parents of students for whom only a change in annual goals is contemplated shall be sent a letter notifying

them of an opportunity to meet with their child's teacher and a Chairperson of a subcommittee of the COH appointed to conduct annual reviews (preferably an individual from outside their child's school) who is knowledgeable about the special education programs, placements, and services available in the District. This letter (Exhibits FF-1 and FF-2) also shall offer the parent the opportunity to meet with a subcommittee of the COH and shall be sent together with Exhibit V.

c) The parents of students for whom a change of more than annual goals is contemplated shall be sent a letter notifying them of the opportunity to meet with a subcommittee of the COH (Exhibits GG-1 and GG-2), accompanied by Exhibit V.

d) If the parent attends the parent/teacher/Chairperson meeting and as a result of the meeting any participant believes that a change in any item of the student's Phase I IEP other than the annual goals is desirable or should be considered, the Chairperson shall schedule the parent for a meeting with the subcommittee, if the parent wishes to attend.

e) The Chairperson of the subcommittee of the COH which meets at any given school shall be the person who has met with parents and teachers as described above. During the meeting of the subcommittee of the COH the Chairperson shall present to the subcommittee for review the Phase I IEPs for the students for whom neither parents nor the school requested a meeting with the subcommittee of the COH.

f) To avoid inconsistent results and duplicative efforts, the local defendants shall not be required to include in any annual review process a student for whom a COH review has taken place or will take place within thirty-five school days of the annual review at the child's school.

81. The local defendants may choose to combine the annual conference required to review Phase II IEPs with the annual review of Phase I IEPs. In that case Exhibits FF and GG and the letters developed pursuant to paragraph 102(c) of this Stipulation may be modified to reflect such new procedure in accordance with the procedures in paragraph 8 of this Stipulation.

82. For students placed in Group Tutoring, individual tutoring, or on home instruction, in addition to the annual review described in paragraph 80 above, there shall be a review conducted prior to the end of the first semester in accordance with the procedures described in paragraph 80.

83. The local defendants shall develop and implement procedures by which teachers will note the date of completion of Phase II IEPs upon class lists provided for that purpose for timely use during the 1983-84 and subsequent school years.

SECTION H

ACADEMIC, NONACADEMIC AND EXTRACURRICULAR PROGRAMS AND ACTIVITIES

84. The parties agree that all academic, nonacademic and extracurricular activities, including special programs and schools, must be open to all otherwise qualified handicapped students. The local defendants agree to review the accessibility of all academic and nonacademic programs and identify barriers, if any, to participation for such students.

85. By June 1, 1984, the local defendants shall compile statistics regarding the participation of handicapped students in academic and non-academic activities which will show: a) the number of such students enrolled in each of the District's special programs, including but not limited to, magnet school programs, Edison Tech, School of the Arts, School Without Walls, World of Work, World of Inquiry, MAP classes, etc., broken down by special program, number of handicapped students and types of handicapping conditions (including whether in resource room or special class placement); and b) methods of recruitment for each of the District's special programs and the efforts made to reach handicapped students.

86. Based on the information gathered above, the local defendants shall develop a proposal to increase the participation of otherwise qualified handicapped students in the District's special programs and eliminate those barriers which may have been found to exist which prevent participation of otherwise qualified

handicapped students in such programs. A copy of such proposal shall be delivered to plaintiffs' counsel by August 15, 1984. Upon approval of such proposal pursuant to the procedures described in paragraph 8 of this Stipulation, the local defendants shall implement such proposal.

87. The local defendants shall, no later than December 31, 1985, assess the effects of the proposal above in: a) removing barriers, if any, to participation by otherwise qualified handicapped students in the District's special programs; and b) increasing participation of otherwise qualified handicapped students in such programs; and shall, during the following month, meet with plaintiffs' counsel to determine what changes, if any, should be made in District procedures to increase participation of otherwise qualified handicapped students in the District's special programs.

SECTION I

COMPLAINTS AND INQUIRIES

88. The local defendants shall now and in the future identify a single telephone number for individuals making inquiries or complaints concerning the education of handicapped students. The staff member(s) who will answer this number shall connect the caller with a person able to respond to the inquiry or complaint.

89. Now and in the future, all appropriate forms and notices, including but not limited to letters to parents, the Calendar/Directory, and the City Line newspaper, shall state the telephone number for inquiries and complaints. These modifications shall be in effect no later than December 1, 1983.

SECTION J

ANNUAL ASSESSMENT AND PLANNING

90. Annually, prior to budget preparation, the local defendants shall perform an assessment of the projected need for special education placements and services for the following year. This assessment of projected special education placements and services needs shall, at minimum, contain a statement of the number of handicapped students currently receiving special education services, estimates of the number of students who will be identified as handicapped and require special education services prior to or during the next school year, estimates of the number and type of special classes required, estimates of the number of additional staff necessary to perform evaluations and provide instruction and related services and to effectuate placements within the required time limits, the additional supplies and instructional materials required for the proposed classrooms, and the estimated cost of all these items. A copy of this assessment will be furnished to the State defendants and plaintiffs' counsel in each of the next three school years, prior to the District's adoption of its budget for the following school year.

91. The local defendants shall annually reserve sufficient classrooms, instructional materials and supplies, and recruit and hire sufficient special education teachers and support staff to ensure timely evaluation and placement of the projected number of students who will be newly classified as having handicapping

conditions during the upcoming school year as well as those already classified.

92. In early January of every school year, the local defendants shall evaluate the projections of need made the preceding spring to determine whether a sufficient number of classrooms and instructional and support personnel were projected and budgeted for to allow for timely evaluation and placement of all handicapped students requiring placement during the school year. This evaluation shall include a comparison of the number of referrals actually received and special education placements actually recommended by the COH with the number projected. A copy of this evaluation will be furnished to the State defendants and plaintiffs' counsel in each of the next three school years by January 15.

93. If the above-described mid-year evaluation shows that additional classrooms and/or instructional and support personnel will be needed during the second semester of the school year in order to allow for timely placement of handicapped students identified during the first semester and to be identified during the second semester, the local defendants shall hire staff for and open at the beginning of the second semester whatever number of additional special education classes are shown to be needed.

SECTION K

TRAINING OF STAFF REGARDING SPECIAL EDUCATION PROCEDURES

94. By December 1, 1983, the local defendants shall develop a Plan for Special Education Training which shall include at least the following elements:

a) Training of all COH members as to the specific duties of the COH and the particular duties of each COH member and all other relevant procedures described in this Stipulation and in any Stipulation entered in the companion case (Michael T.);

b) Training of all PPS team members as to the specific duties of the PPS team and each member of the team, the procedures for completing timely evaluations of students, the procedures for delivering and presenting evaluative information to parents and the COH, and all other procedures described in this Stipulation with which they may become involved.

c) Training of all building administrators as to procedures relating to referrals, completion of evaluations, presentation of information to COH, monitoring and enforcement procedures, use of the School Tracking Log, maintenance in then-current placement, suspension of handicapped students, enrollment of new entrants, and all other procedures described in this Stipulation with which they may become involved.

d) Training of all special education teachers in use of new forms and procedures, maintenance in then-current

placement, suspension of handicapped students, development of Phase II IEPs with appropriate parental involvement, and all other procedures described in this Stipulation with which they may become involved.

e) Training of all regular education teachers in procedures for referral of students suspected of having handicapping conditions, maintenance in then-current placement and suspension of handicapped students, the placement of newly enrolled handicapped students, and any other procedures described in this Stipulation with which they may become involved.

95. The above-described Plan shall include a schedule for initial training of all groups described in paragraph 94 above no later than January 30, 1984, as well as a schedule for annual training of all such groups.

96. The local defendants shall forward to the plaintiffs' counsel a copy of the Plan for Special Education Training by December 1, 1983. Upon approval of the plan through the procedures described in paragraph 10 of this Stipulation, the plan shall be incorporated in this Stipulation as Exhibit HH.

97. In relation to the training of PPS team members described in paragraph 94(b) above, the local defendants shall develop a PPS Manual no later than December 1, 1983. A copy of the PPS Manual shall be forwarded to plaintiffs' counsel upon completion and/or at any earlier stage if local defendants desire comment from plaintiffs' counsel.

98. In relation to the training of all groups described in

paragraph 94 and for the purpose of clarifying and disseminating information about the terms of this Stipulation to all District staff, the local defendants shall develop a revised Special Education Manual covering all aspects of the special education system and procedures in the District. This Manual shall be developed and written cooperatively with plaintiffs' counsel. Plaintiffs' counsel agree to make themselves available at any time, upon reasonable notice, for purposes of development of this manual. The local defendants shall forward a copy of the first draft of this manual to plaintiffs' counsel no later than December 1, 1983. Within two weeks of receipt of the first draft of the manual, plaintiffs' counsel shall deliver to the local defendants their comments and any proposed modifications or additions to the manual. The local defendants shall meet with plaintiffs' counsel on a regular basis until agreement is reached on all aspects of the manual. Any forms or matters of policy or procedure to be included in the manual which either party deems to be in violation of this Stipulation may be referred for resolution to the Court pursuant to paragraph 10 of this Stipulation.

SECTION L

STATE MONITORING

99. The parties agree that compliance with the terms of this Stipulation which require timely mailing of a variety of documents to parents of handicapped and potentially handicapped students can best be monitored by reviewing on an annual basis a statistically significant number of student records at each of the District's schools and programs at which handicapped students are educated. In this way school-based problems with compliance can be consistently identified and corrected.

100. Because the parties agree that the State defendants are legally responsible for performing this monitoring (referred to throughout this Stipulation as the "annual student record review"), and because the State defendants are not parties to this Stipulation, it is the intention of the plaintiffs to seek relief against the State defendants, either by stipulated settlement or Court Order, which will require them to perform this annual student record review. As of the date that such relief is obtained, the annual student record review referred to in this Stipulation shall mean the review ordered or agreed to be performed by the State defendants.

101. Until such time as ultimate relief on the issue of monitoring responsibilities is obtained against the State defendants, the annual student record review shall mean whatever review of the records of handicapped students is in fact being performed by the State defendants. The local defendants shall

forward to plaintiffs' counsel copies of all written communications from the State defendants, whether in "draft" or "final" form, regarding such record reviews within ten days of receipt. The local defendants shall also afford plaintiffs' counsel access to the records of handicapped students, upon reasonable notice to local defendants, for the purpose of monitoring compliance with the terms of this Stipulation which require timely mailing of a variety of documents to parents of handicapped and potentially handicapped students. If either party to this Stipulation is dissatisfied with the ultimate relief obtained against the State defendants, either by stipulated settlement or Court Order, with regard to the issue of State monitoring responsibilities, this issue shall be deemed reopened for negotiation between the parties. If, after negotiation, the parties are unable to reach agreement, any party may make application to the Court for an Order.

SECTION M

PLANS

102. In order to effectuate the terms of this Stipulation, the local defendants shall prepare a plan containing at least the following components:

a) A computerized reporting system which shows during each reporting period:

i. the total number of referrals received by the COH;

ii. the number of new referrals received by the COH;

iii. the number of referrals received by the COH for change in classification, placement and/or program;

iv. the number of referrals received by the COH for third year reevaluations;

v. the number of referrals for expedited COH meetings and temporary placement requests for currently enrolled handicapped students;

vi. the number of referrals for expedited COH meetings as a result of disciplinary proceedings;

vii. the number of referrals and temporary placement requests for new entrants (where handicapping condition is substantiated from prior school);

viii. the number of COH meetings held and a breakdown of the COH recommendations by classification and type

of program;

ix. the number of COH meetings held by the week of the 30th school day after referral;

x. the number of COH meetings not held by the week of the 30th school day after referral, with coded reasons why such meetings were not held;

xi. the number of COH meetings which had to be rescheduled, with coded reasons why such meetings were rescheduled;

xii. the total number of students whose placement is effective during the reporting period, with a distribution report of the number of school days between the date of COH recommendation (or the date of a decision by an impartial hearing officer or the Commissioner of Education) and the date of placement;

xiii. the number of students who, as of the last day of the reporting period, have not been placed by the 30th school day from COH recommendation (excluding students for whom an impartial hearing has been requested by the parent, or for whom an impartial hearing has been requested by the COH because the parent has not signed the Phase I IEP giving consent for an initial placement in special education) reported by the classification/type of placement/age level and the number of school days since the date of the COH recommendation.

Such reporting system shall clearly present the above-described information. The local defendants shall make maximum

reasonable efforts to provide the above-described information in comprehensible form prior to the computerization of the reporting system. The fully computerized reporting system shall be operational during the 1983-84 school year.

b) A set of Criteria for Placement on Home Instruction which shall describe the symptoms, diagnoses, testing results, etc., which may establish that home instruction is the least restrictive environment in which a handicapped child can be educated;

c) Procedures for Parental Involvement in Development of Phase II IEPs as referred to in Section G of this Stipulation, which shall include: revised letters to be sent to parents informing them of the time, date and location of the Phase II IEP conference; and a requirement that copies of parent notification letters and Phase II IEPs be filed in the student's cumulative folder.

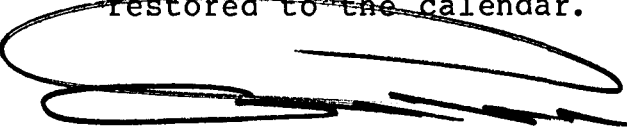
103. The plans referred to in paragraph 102(b) and (c) above shall be delivered to plaintiffs' counsel by December 1, 1983. The plan referred to in paragraph 102(a) above shall be delivered to counsel for the parties by December 31, 1983, except that by October 1, 1983, the local defendants shall advise plaintiffs' counsel of the manner in which the information described in paragraph 102(a) will be provided prior to the computerization of the reporting system. These plans shall be subject to approval pursuant to paragraph 10 of this Stipulation.

104. The local defendants shall forward to plaintiffs' counsel and the State defendants monthly reports containing the information referred to in paragraph 102(a). This monthly reporting period may be modified by mutual agreement.

SECTION N


DAMAGES

105. The parties are unable to resolve the issue of damages to the individual plaintiffs until the United States Court of Appeals for the Second Circuit resolves the appeal in Quackenbush v. Johnson City School District, No. 82-7695, which has been argued before the Court. Therefore, the parties agree to sever the claims for individual damages and to attempt to resolve them through negotiation after the Second Circuit issues its decision Quackenbush. If negotiations are unproductive, plaintiffs shall notify the Court and the severed claim shall be restored to the calendar.

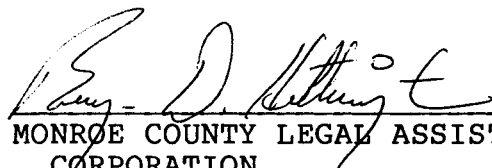


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