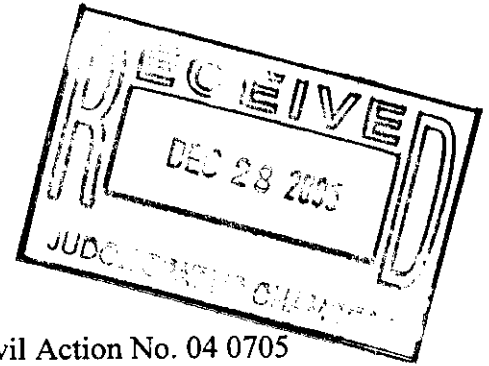


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK



NATIONAL LAW CENTER ON HOMELESSNESS AND
POVERTY, R.I., individually, and as parent and natural
guardian of A.B., a minor child, M.W., individually, and as
parent and natural guardian of Da.W., Di.W., Dq.W., T.H. and
S.J., minor children, M.K., individually, and as parent and
natural guardian of S.P., a minor child, T.K. and N.K.,
individually, and as parents and natural guardians of K.K.,
D.M., individually and as parent and natural guardian of M.M.,
C.T., individually and as grand parent and guardian of M.W.,
and R.C., individually, and as parent and natural guardian of
J.C., on behalf of themselves and all those similarly situated,

Civil Action No. 04 0705
(ADS/ARL)

Plaintiffs,

v.

**SETTLEMENT
AGREEMENT AND
CONSENT ORDER
BETWEEN PLAINTIFFS
AND STATE DEFENDANTS**

STATE OF NEW YORK, NEW YORK STATE
EDUCATION DEPARTMENT, RICHARD P. MILLS (as
Commissioner of Education of the State of New York);
SHEILA EVANS-TRANUMN (as Associate Commissioner of
Education of the State of New York); PATRICIA MCGUIRK
(as Program Manager for the Homeless of the New York State
Education Department); NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE, ROBERT
DOAR (as Acting Commissioner of the New York State Office
of Temporary and Disability Assistance), SUFFOLK
COUNTY DEPARTMENT OF SOCIAL SERVICES, JANET
DEMARZO (As Commissioner Of The Suffolk County
Department Of Social Services), DAN HICKEY (As Associate
Commissioner Of The Suffolk County Department Of Social
Services), and JOHN DOE SCHOOL DISTRICTS 1-10,

Defendants.

BACKGROUND

This action was brought by the National Law Center on Homelessness and Poverty and a proposed class of homeless children and parents of homeless children to enforce, inter alia, the provisions of the McKinney-Vento Act (42 U.S.C. § 11431 et seq.) and New York Education Law § 3209.

WHEREAS in their Complaint, the Plaintiffs allege that homeless children in Suffolk County face substantial obstacles to a free, appropriate public school education in violation of the McKinney-Vento Act and New York Education Law § 3209;

WHEREAS Defendants State of New York, The New York State Education Department, Richard P. Mills (as Commissioner of Education of The New York State Education Department), Sheila Evans-Tranum (as Associate Commissioner of Education of The New York State Education Department), Patricia McGuirk (as Homeless Education Program Manager for the New York State Education Department), the New York State Office of Temporary and Disability Assistance ("OTDA"), and Robert Doar (as Commissioner of OTDA) (collectively, the "State Defendants"), deny liability but agree on the requirement of educating homeless children and desire that this action be settled by this Consent Order and without the burden of continued protracted litigation;

WHEREAS the parties agree that it is important for the State to play a prominent role in the enforcement of the McKinney-Vento Act, New York Education Law § 3209 and related laws and regulations concerning the education of homeless children;

WHEREAS the parties agree and acknowledge that collection of detailed information concerning the education of homeless children is an integral part of ensuring that homeless children receive equal access to public schooling;

WHEREAS the parties agree that monitoring the activities of school districts vis-à-vis homeless children is an important component to promoting the goal of equal access to a free, appropriate public education for homeless children;

WHEREAS the parties agree that providing appropriate services to homeless children requires that relevant personnel and those involved in enrolling and transporting homeless children understand the rights and needs of homeless children and have sufficient knowledge of homeless children's rights and needs to be able to help them;

WHEREAS the parties agree that providing complete and timely information to homeless families is essential to ensuring that homeless children and unaccompanied youth receive the educational services to which they are entitled under federal and state law;

WHEREAS the parties agree that coordination and collaboration among the various governmental entities that deal with homeless children and their education is essential to ensuring that homeless children receive the educational opportunities to which they are entitled;

WHEREAS the parties agree to the jurisdiction of this Court over the parties and the subject matter of this action, and hereby waive, for purposes of this Order, hearings and findings of fact and conclusions of law on all issues;

IN WITNESS WHEREOF, and in resolution of this action, the parties hereby AGREE, and the Court expressly APPROVES, ENTERS and ORDERS the following consent order as final and binding among the parties as to the issues raised in the Amended Complaint or which could have been raised in the Amended Complaint:

I. DURATION OF CONSENT ORDER AND GENERAL TERMS

1. This Consent Order is effective upon its entry by the Court and shall remain in effect through and including October 1, 2008.

2. This Court shall retain jurisdiction of this action and jurisdiction over the parties during the term of this Order for the purpose of enforcing the Order as may be necessary. The Order shall expire and this matter shall be dismissed with prejudice effective October 1, 2008, unless the Plaintiffs move, prior to its expiration, to extend the Order for good cause shown upon notice to the State Defendants, and this Court grants such motion or otherwise grants a temporary extension of the Order pending determination of the motion.

3. During the term of this Order the parties to this Order shall endeavor in good faith to resolve informally any disputes or issues that may arise under or concerning this Order before referring such disputes to the Court.

4. The time limits set forth throughout this Order may be expanded upon the mutual, written agreement of the Plaintiffs and the State Defendants.

5. Within one hundred twenty (120) days of approval by the Court of this Order, the State Defendants shall pay to Plaintiffs' counsel attorneys' fees and costs in the sum of \$378,291.33. This payment shall reflect a full and final payment for Plaintiffs' attorneys fees and costs as to the State Defendants that are claimed as a result of this litigation up to and including execution of this Order and any activities or reviews provided for in this Order, subject to the right to seek counsel fees or other costs as set forth in Paragraph 84 of this Consent Order. If payment is not made by the one hundred twentieth day after such approval by the court of this order, interest on any of the sums not paid by the ninetieth day shall begin to run at the statutory rate pursuant to 28 U.S.C. § 1961.

6. As used, herein, the following definitions shall apply:
 - a. Defendants State of New York, The New York State Education Department, Richard P. Mills (as Commissioner of Education of The New York State Education Department), Sheila Evans-Tranumn (as Associate Commissioner of Education of The New York State Education Department) and Patricia McGuirk (as Homeless Education Program Manager for the New York State Education Department) will be referred to collectively herein as the "NYSED Defendants."
 - b. Defendants New York State Office of Temporary and Disability Assistance, and Robert Doar will be referred to as the "OTDA Defendants."
 - c. Together, the NYSED Defendants and the OTDA Defendants will be referred to as the "State Defendants."
 - d. Defendants Suffolk County Department of Social Services ("SCDSS"), Janet DeMarzo and Dan Hickey will be referred to collectively herein as the "SCDSS Defendants."
 - e. Defendants Longwood Central School District, Hampton Bays School District, Middle Country School District, Copiague Union Free School District, South Huntington School District, Patchogue-Medford School District, William Floyd School District, Central Islip School District, Bay Shore Union Free School District, South Country School District, Brentwood School District, North Babylon School District, Amityville School District and Riverhead School District will be referred to collectively herein as the "School District Defendants."
 - f. "Plaintiffs" shall mean Plaintiff National Law Center on Homelessness and Poverty, named class representatives R.I., A.B., M.W., Da.W, Di.W, Dq.W, T.H. and S.I., M.K., S.P., K.K. and T.K., and all members of the Plaintiff classes certified by the Court in this matter.
 - g. "Homeless Child" shall have the same definition as set forth in 42 U.S.C. § 11434a(2).
 - h. "Parent" or "guardian" shall mean any person "in parental relation" to, or a "custodian" of, any homeless child, as set forth in New York State Education Law § 3212.
 - i. "State Plan" shall mean the New York State Plan for the Education of Homeless Children and Youth, and any amendments, modifications or successive plans.
 - j. "School-aged" shall mean of sufficient age to be eligible for any free pre-school or public school education made generally and publicly available to children of such an age.
 - k. "Children" shall mean both children and youths, as the terms are used in the McKinney-Vento Act and New York Education Law § 3209.

- l. "Unaccompanied Youth" shall have the same definition as set forth in 42 U.S.C. § 11434a(6).
- m. "School Transportation" shall mean transportation to and from the school district designated by the parent, guardian or unaccompanied youth, transportation to the program set forth in a homeless child's individualized education plan, including pre-school students with disabilities, and transportation to any activities, including but not limited to extracurricular activities, pre-K programs, head start programs, summer school and any other program for which non-homeless children are provided transportation by the school district in which they are enrolled.

II. OBLIGATIONS OF THE OTDA DEFENDANTS

Administrative Guidance to SCDSS and Other Local Social Services Agencies

7. The OTDA Defendants shall issue and/or revise administrative directives and guidance concerning the local social services districts' responsibilities pursuant to New York State Education Law § 3209 and the provision of transportation special needs allowances pursuant to New York Social Services Law § 350-j for homeless children to and from school as follows:

- a. OTDA shall issue and/or revise its administrative directives and/or guidance so as to establish a statewide requirement that school transportation for a homeless child placed in housing by local social services agencies such as SCDSS is to be arranged within three (3) business days of such homeless child's initial placement in shelters or other temporary housing arranged by the local social service district.
- b. OTDA shall issue and/or revise its administrative directives and/or guidance so as to establish a statewide standard assuring that when child safety requires a parent to accompany such child(ren) to and from school, such accompaniment will not be grounds for sanction for failure to meet any OTDA, local social services district, or local services district rule, regulation, or directive during the period the parent accompanies the child.
- c. OTDA shall issue and/or revise its administrative directives and/or guidance so as to establish a statewide standard to ensure that if and when a local social service district requires a parent or guardian of a homeless child or children to accompany such child(ren) to or from school, the parent or guardian will not be sanctioned or penalized in any way for any failure to meet any OTDA or local social services district rules that result from accompanying the child(ren) to or from school. Social services

transportation, by, among other things, requiring SCDSS to provide OTDA with bi-monthly reporting of information to permit assessment of school transportation of such children over their entire period of homelessness.

10. To the extent that SCDSS is not presently recording or reporting the information or documentation required in the preceding paragraphs, OTDA shall direct SCDSS to submit to OTDA the necessary information and documentation. OTDA shall determine the appropriate response to be taken under the circumstances, including but not limited to consideration of the following:

- a. Seeking corrective action from SCDSS;
- b. Sending a letter or warning to SCDSS;
- c. Communicating with SCDSS concerning any transportation issues;
- d. Requesting further information from SCDSS or other parties;
- e. Referring the matter to the Deputy Commissioner for appropriate action, which may include, as permitted by law, the withholding of funds.

11. OTDA shall review and assess the information reported by SCDSS on a regular basis to determine whether SCDSS is complying with the McKinney-Vento Act and New York Education Law § 3209 as these statutes relate to the educational transportation of homeless children.

12. The OTDA Defendants shall perform audits of SCDSS procedures and programs in accordance with the following schedule:

- a. immediately upon execution of this Consent Order;
- b. again within six (6) months after execution of this Consent Order;
- c. again within eighteen (18) months after execution of this Consent Order;
and
- d. again within thirty (30) months after execution of this Consent Order.

13. These audits of procedures and programs will utilize the data gathered and will assess the effectiveness and timeliness of SCDSS's school transportation processes, programs and procedures as well as the accuracy and completeness of the data reported by SCDSS to OTDA concerning school transportation for homeless children. The audits of procedures and programs will seek to identify any weaknesses, problems or instances of non-compliance and will make such recommendations to SCDSS for improvements to its school transportation processes, programs and procedures as OTDA deems appropriate or necessary. The results of such audits of procedures and programs and the methods employed are to be discussed and shared with Plaintiffs' counsel.

Enforcement Procedures

14. Upon detecting any material problems or weaknesses in SCDSS's provision of school transportation to homeless children, OTDA shall require SCDSS promptly to develop a written Corrective Action Plan to address and correct the problems or weaknesses. The OTDA Defendants shall monitor SCDSS's progress under the Corrective Action Plan and shall take such actions consistent with New York State Social Services Law as may be reasonably necessary to ensure that prompt and appropriate action is taken to improve school transportation for homeless children placed in housing by the local social services district.

15. The OTDA Defendants shall maintain a record of any Corrective Action Plans submitted or required to be submitted to OTDA by SCDSS and, in the regular reporting to the Court and Plaintiffs' counsel required under the Consent Order, shall provide information concerning the number, nature and resolution of such Corrective Action Plans.

16. The OTDA Defendants shall designate an appropriate senior staff member (initially to be Director, Bureau of Shelter Services Jeff Barnes) who, with the assistance of

others at OTDA, will serve as OTDA's "Compliance Officer" for purposes of this Consent Order and will assume a primary role in monitoring and ensuring the compliance of SCDSS and establishing any necessary corrective action. The Compliance Officer will be primarily responsible for coordinating OTDA's activities and reporting under this Consent Order.

Reporting

17. The OTDA Defendants shall submit a written Compliance Report to the Court and to Plaintiffs' counsel twice in the first year after entry of this Consent Order, and once annually thereafter. The Compliance Report shall detail OTDA's activities in connection with this Consent Order and such other activities OTDA may have taken to monitor SCDSS's transportation of homeless children to school and any enforcement action or actions taken. The Compliance Report shall also provide summaries of the information SCDSS reports to OTDA concerning the effectiveness and timeliness of school transportation SCDSS provides to homeless children. The Compliance Report, while providing summary information, should be reasonably complete so as to provide the Court and Plaintiffs' counsel with an accurate understanding of both OTDA's activities under this Consent Order and the current state of school transportation of homeless students as provided by SCDSS.

18. In addition to the foregoing reporting, representatives from the OTDA Defendants shall communicate with Plaintiffs' counsel as appropriate to discuss any issues or trends relative to this Consent Order in the school transportation of homeless students which emerge over time.

Training and Other Provisions

19. The OTDA Defendants shall provide or arrange for the provision of refresher training and ongoing training to SCDSS staff and other relevant personnel (such as shelter staff and/or staff of other contracting agencies involved in school transportation or other services to

homeless children and families) concerning transportation of homeless children. Such trainings shall occur no less than once each year.

20. This training will cover, as appropriate, (i) the rights of homeless children and families under the McKinney-Vento Act, New York Education Law § 3209 and related regulations; (ii) the obligations of the various SCDSS Defendants as to the educational transportation of homeless children; (iii) this Consent Order; (iv) the reporting and monitoring activities set forth in this Consent Order; (v) coordination among SCDSS, OTDA and other agencies with respect to school transportation for homeless children; (vi) the proper use of forms and provision of information regarding the educational transportation of homeless children and (vii) materials produced by NYSED or its contractors explaining the needs of homeless children (including the barriers they face and the importance of school stability to their educational and social growth).

21. After the initial training set forth above, OTDA may provide training materials to be incorporated into SCDSS's ongoing training programs. This training will be coordinated with NYSED or school district training as appropriate.

22. OTDA, in consultation with the Plaintiffs, shall review the training programs and materials it provides to SCDSS as appropriate and shall promptly supplement and/or amend such training and/or training materials following any changes or amendments to pertinent laws, regulations, administrative directives or other requirements concerning the manner in which SCDSS must transport homeless children to and from school.

23. During the regular reporting to the Court and Plaintiffs' counsel discussed above, OTDA shall provide summary information concerning dates and number of trainings, including

the number of training sessions, the approximate number of attendees and any changes to training or training materials.

24. The OTDA Defendants shall consult with the Plaintiffs in good faith concerning training and training materials.

III. OBLIGATIONS OF THE NYSED DEFENDANTS

Changes to the Appeals Process

25. The parties agree that a timely and efficient appeals process is important in permitting a homeless child's or youth's parent or guardian or unaccompanied youth to exercise his/her right to a free, appropriate public education. Accordingly, NYSED has revised its appeals process pursuant to New York Education Law § 310 (the "§ 310 appeal" or "appeal") for appeals regarding a homeless child's or youth's access to a free, appropriate public education as follows:

- a. NYSED has (after an opportunity for consultation with Plaintiffs' counsel) created a form petition to be used to commence appeals regarding a homeless child's or youth's access to a free, appropriate public education. Amendments to Parts 275 and 276 and section 100.2(x) of the Regulations of the Commissioner of Education, relating to appeals regarding homeless children and youth were permanently adopted at the June 2005 Regents meeting, effective date July 14, 2005. The form petition is drafted in such a manner as to be easy to complete, but asks for enough information about the parent's or guardian's or unaccompanied youth's complaint as to enable NYSED to consider the appeal fully. The form petition is short and easily understandable by persons with no more than a sixth grade education. Where additional facts and/or details are required, the form petition includes blank lines to help prompt the petitioner to add the pertinent information.
- b. No filing fees shall be required for appeals brought before the Commissioner of Education regarding a homeless child's or youth's access to a free, appropriate public education pursuant to 8 N.Y.C.R.R. § 100.2(x).
- c. The homeless petitioner's petition must be legible, but need not be typewritten or notarized. The homeless petitioner shall sign a statement

which indicates that based on his/her information and belief, the information contained in the petition is true, and an acknowledgement that he/she is aware that under New York Penal Law § 175.30, a person who knowingly offers a false instrument for filing with a public official or public servant is guilty of Offering a False Instrument for Filing in the 2nd Degree, a Class A Misdemeanor.

- d. The NYSED Defendants shall require local educational agency liaisons for homeless children and youths ("homeless liaisons") to assist homeless families in filling out the form petition. Upon completion of the petition, the homeless liaisons shall provide homeless families with copies of the petition and any supporting documents, without cost to the homeless families. The NYSED Defendants shall require the homeless liaisons to either accept service of the petition and any supporting papers on behalf of any school district employee or officer named as a party or the school district if it is named as a party or effect service by mail by mailing the petition and any supporting documents to any school district employee or officer named as a party and, if the school district is named as a party, to a person in the office of superintendent who has been designated by the board of education to accept service on behalf of the school district. The homeless liaisons shall be required to provide the parent or guardian of a homeless child or youth or unaccompanied youth with a signed and dated acknowledgement verifying that they have received the petition and any supporting documents and either accepted service of these documents on behalf of the school district employee or school district officer or school district or effected service by mail by mailing the form petition and supporting documents to any school district employee or school district officer named as a party and, if the school district is named as a party, to a person in the office of superintendent who has been designated by the board of education to accept service on behalf of the school district. The NYSED Defendants shall direct school districts to maintain sufficient supplies of the petition and make the petition readily available to homeless families.
- e. The NYSED Defendants shall require the school district homeless liaisons to transmit on behalf of the parent or guardian of the homeless child or youth or the unaccompanied youth the completed petition and any supporting documents to NYSED. The homeless liaisons shall be required to provide the parent or guardian of the homeless child or youth or the unaccompanied youth with a signed and dated acknowledgement verifying that the homeless liaisons have received the petition and any supporting documents and will transmit these documents to NYSED on behalf of the parent or guardian of the homeless child or youth or the unaccompanied youth. Homeless families will not be required to arrange for the filing of the petition or any supporting documents with NYSED.

- f. Unless the homeless family or unaccompanied youth specifically requests otherwise, the completed petition will be treated automatically as a request for temporary stay, entitling the homeless student to the requested enrollment and/or transportation pending resolution of the stay request. The NYSED Defendants shall issue a ruling on the request for stay, if so required, in due course.
- g. If a school district makes a final determination not to enroll or transport a homeless child or youth or unaccompanied youth as requested by the parent or guardian or the unaccompanied youth, the school district shall delay for thirty (30) days the implementation of that decision to give the homeless family or unaccompanied youth time in which to commence an appeal to the Commissioner. If the parent or guardian of a homeless child or youth or an unaccompanied youth commences a § 310 appeal regarding the homeless child's or youth's or unaccompanied youth's access to a free, appropriate public education within thirty (30) days of such final determination, the homeless child or youth or unaccompanied youth will be able to attend the school in which enrollment is sought and/or obtain the requested transportation until the Commissioner of Education renders a decision on the stay application.
- h. Preschool children and children who are receiving special education services who submit a § 310 appeal in connection with a denial of transportation to or from school shall be entitled to interim transportation pending the appeal processes noted above.
- i. Disputes concerning whether a child is, in fact, homeless, shall be handled in the manner described in this section.
- j. The revised petition forms described above shall be maintained in sufficient quantities in each school.

26. The NYSED Defendants shall require school districts to maintain a written log of all appeals submitted by the parents or guardians of a homeless child or youth or unaccompanied youth.

27. Once each six months in the first year after entry of this Consent Order, and once annually thereafter, the NYSED Defendants shall review all § 310 appeals submitted by homeless families and shall summarize for the Court and Plaintiffs' counsel the number of cases, types of disputes and resolutions.

28. The NYSED Defendants shall revise, amend or enact appropriate regulations and directives to effectuate the changes to the appeals process set forth above.

Data Collection and Analysis

29. The NYSED Defendants shall implement data collection and analysis initiatives, including a data collection system called "Liaisons On-line Unified Information System for Evaluation" ("LOUISE"), which is currently under evaluation by NYSED, as set forth below.

30. The NYSED Defendants shall review the performance of the LOUISE system in the test districts in which it is currently being implemented and, based on its performance as a data collection tool, shall roll out the LOUISE data collection tool as quickly as possible among the fourteen School District Defendants, other high need districts and districts with fifty (50) or more homeless families.

31. Data collection under the LOUISE system shall be reviewed and implemented with the intent of including to the extent possible pertinent information concerning homeless families, and not merely information concerning school districts' specific McKinney-Vento subgrant activities. The LOUISE system shall be configured as technologically possible to collect a broad range of pertinent information concerning homeless education, including the number and ages of homeless children within a district, the percentage of homeless children remaining in schools of origin, the length of any enrollment delays, the average wait for transportation services, and the types of services provided to those children as well as attendance and performance information where possible. The system shall be implemented in such as manner as to ensure the greatest accuracy and uniformity of data possible.

32. Appropriate trainings shall be made available to homeless liaisons in districts reporting data to LOUISE in the proper use of LOUISE and techniques to collect complete,

accurate and uniform data about homeless families, children, youths and unaccompanied youths in the school districts.

33. The NYSED Defendants shall conduct a periodic review of the LOUISE system to determine its efficacy and utility, as it is rolled out to the districts specified in paragraph 30 of this Order.

34. In addition to LOUISE, NYSED shall employ other data collection methods to obtain data regarding issues involving the education of homeless students within Suffolk County and elsewhere in New York State, for analysis consistent with the paragraphs set forth below. These data collection methods shall include self-monitoring forms, which NYSED has designed (with input and comments from Plaintiffs' counsel) and which shall be disseminated to the school districts for completion. In addition, NYSED shall collect data concerning homeless families through the Basic Educational Data System ("BEDS") currently in use for all school districts.

35. The NYSED Defendants shall develop criteria for data analysis of the information obtained through LOUISE, BEDS and the self-monitoring forms and shall provide the same to Plaintiffs' counsel for comment and suggestions as soon as possible. The purpose of such analysis will be to provide the parties with a more accurate picture of the status of homeless education in Suffolk County and New York State, and to identify problems or instances of school districts' non-compliance with the laws and regulations pertaining to homeless education.

36. To the extent the information set forth below in this paragraph is not accurately captured by LOUISE, BEDS, the self-monitoring forms or other means, NYSED shall develop criteria and/or protocols for a sample survey (which may be conducted concurrently with on-site reviews discussed below). The sample survey shall be conducted with respect to a number of

school districts sufficient to constitute a statistically significant sample of districts within the State of New York. The sample survey will seek to assess, among other things:

- a. The number of homeless children enrolled by grade, etc.;
- b. Attendance information, including any delays or gaps in attendance due to incomplete implementation of the McKinney-Vento Act or NY State law;
- c. Performance information;
- d. Transportation information; and
- e. Other information concerning education of homeless children.

37. Plaintiffs' counsel shall be given an opportunity to offer comments and suggestions to NYSED concerning the sample survey, its criteria and/or protocols.

38. The parties shall confer at least twice a year during the term of this Consent Order, except in the event of an emergency, concerning data collection and analysis, and shall work cooperatively to improve the methods by which the NYSED Defendants collect and assess information concerning homeless students in Suffolk County and New York State.

Monitoring of School Districts

39. In addition to the data collection and analysis set forth above, and along with such other monitoring as NYSED deems appropriate and warranted under the circumstances, the NYSED Defendants agree to perform the following monitoring of the school districts:

40. In December 2004, NYSED conducted on-site reviews for compliance with homeless education laws and regulations of all fourteen School District Defendants and sixteen other districts with significant homeless populations (i.e., more than twenty-five homeless students at any one time) such as New York City, Buffalo and Long Island and/or found or suspected to be not in compliance with such laws or regulations based on LOUISE or other data. A second round of on-site reviews, including the fourteen School District Defendants, shall take

place no later than January 1, 2007, and may occur sooner if circumstances warrant or NYSED deems it appropriate. The NYSED Defendants shall conduct on-site reviews of other districts as warranted, based on issues raised by LOUISE and other data, complaints or allegations concerning non-compliance and the size and concentration of the homeless population in the districts at issue.

41. The NYSED Defendants have developed and shall maintain criteria and protocols for on-site reviews, to be discussed with Plaintiffs' counsel. These criteria will address, among other things:

- a. A review of the practices, procedures and programs of the school districts with respect to enrollment and transportation of homeless children, and other aspects of homeless education and compliance with the McKinney-Vento Act and New York Education Law § 3209.
- b. An assessment of the accuracy and completeness of data or information provided to NYSED by the school districts, including a sampling of files to ensure such accuracy and completeness.
- c. A review of attendance records for homeless children to ensure that homeless children are receiving access to a free, appropriate public education comparable to their non-homeless peers and to ensure school districts' compliance with the McKinney-Vento Act, New York Education Law § 3209 and related regulations.
- d. An assessment of the school districts' transportation systems for homeless children to ensure that no undue delays are preventing homeless children from attending school or are resulting in unnecessary school absences.
- e. An assessment of the school districts' transportation systems for homeless children to ensure that they are being provided with transportation to all activities for which non-homeless children are provided with transportation.

42. In addition to the foregoing, the NYSED Defendants shall conduct a review of the § 310 appeal forms submitted by homeless families, as set forth above, to determine the existence of any trends or issues and to assess whether any districts' practices, procedures or programs may constitute barriers or obstacles to the education of homeless children. The NYSED Defendants shall, as circumstances reasonably warrant, investigate any such districts to

determine whether any additional action, beyond the scope of the specific appeals reviewed, is necessary or appropriate, and may follow up with appropriate trainings or plans for corrective action as warranted by the circumstances.

43. The NYSED Defendants shall conduct periodic reviews and assessments of referral forms received from the New York State Technical and Education Assistance Center for Homeless Students ("NYS-TEACHS") or any other Technical Assistance Centers or similar entities or organizations as well as complaints received from the general public. To the extent that NYSED determines that such referral forms or complaints reasonably suggest non-compliance by one or more school districts and that an investigation is appropriate, the NYSED Defendants shall promptly investigate the same, by on-site reviews or other appropriate means, to ensure compliance.

Enforcement

44. The parties agree that the State has certain responsibilities in the enforcement of the McKinney-Vento Act, New York Education Law § 3209 and related laws and regulations concerning the education of homeless children. Accordingly, along with such other enforcement activities as NYSED deems appropriate and warranted under the circumstances, the NYSED Defendants agree to perform the following enforcement activities vis-à-vis the school districts:

45. The Homeless Education Program Manager (or the State Coordinator for Homeless Education), under the supervision of an Associate Commissioner at NYSED, shall receive, review and respond to copies of all referral forms from NYS-TEACHS or any other Technical Assistance Center for homeless education or related entity or organization concerning problems as to homeless children that could not be resolved by NYS-TEACHS or another Technical Assistance Center. The Program Manager (or State Coordinator) shall also receive

and respond to calls from other sources, including parents or guardians of homeless children, which involve allegations of homeless children missing any significant period of schooling.

46. The Program Manager (or State Coordinator) shall respond to each such referral or call and shall maintain a written log of each such call and the response or action taken (including the time and date received along with any follow up and disposition). The Program Manager (or State Coordinator), under the supervision of an Associate Commissioner of NYSED, shall determine the appropriate response to be taken under the circumstances, including but not limited to consideration of the following:

- a. Providing a specific directive to the school district and/or the Technical Center;
- b. Sending a letter or warning to the school district in question;
- c. Communicating with OTDA or SCDSS concerning any transportation or other social services issues;
- d. Requesting further information from the school district or other interested parties;
- e. Directing additional training of school personnel;
- f. Referring the matter to the Associate Commissioner for appropriate action which may include: communication to the school district, recommending to the Commissioner of NYSED the removal of an intransigent school superintendent, district superintendent, or school board member pursuant to N.Y. Education Law § 306, threatening to withhold NCLB funding, or withholding NCLB funding; and
- g. Taking such other action as may be appropriate under the circumstances to address and remedy any problems or issues with respect to the education of homeless children.

47. The NYSED Defendants, within their Compliance Report, shall report to the Court and Plaintiffs' counsel concerning the number, nature, response and disposition to such requests twice a year in the first year after entry of this Consent Order and once a year thereafter.

48. The NYSED Defendants shall provide support to NYS-TEACHS or any other Technical Assistance Centers under contract with NYSED to enforce the laws and regulations concerning the education of homeless children as may be reasonably necessary.

49. The NYSED Defendants shall assess the feasibility of opening additional Technical Assistance Centers for homeless education elsewhere in New York State.

Public Outreach

50. The NYSED Defendants agree that they will take reasonable measures to encourage the School District Defendants and the SCDSS Defendants to inform homeless families and unaccompanied youths in a timely manner of their right to receive services under the McKinney-Vento Act and/or New York Education Law § 3209, and to provide accurate and complete information to those children and their families about their rights and options to enable them to obtain the services they need and/or desire. Such reasonable measures will include, but are not limited to, the following:

51. The NYSED Defendants agree that they shall make available in sufficient quantities for each school district, social service locations, including but not limited to shelters, motels, libraries, public health centers and other public sites in Suffolk County as are agreed upon by the parties, a poster or posters in English and Spanish which the NYSED Defendants or their agents or contractors may have developed or in the future will develop advising parents and guardians of their children's rights under the McKinney-Vento Act and/or New York Education Law § 3209 (the "Poster"). Such posters will include the hotline numbers for NYS-TEACHS or any other similar state contractor, and the National Center on Homeless Education. The NYSED Defendants shall direct the school districts to make these Posters available in each of the School District Defendants' schools and administration buildings and shall provide sufficient copies to

permit the Poster to be displayed in each runaway and youth shelter, in each homeless shelter and motel lobby in which SCDSS places homeless families, and in any other places agreed upon by the parties.

52. In addition, the NYSED Defendants agree that they shall make available in reasonably sufficient quantities for each homeless family and unaccompanied youth in Suffolk County a brochure or brochures in English and Spanish as the State Defendants or their agents or contractors may have developed or in the future will develop advising parents and guardians of their children's rights under the McKinney-Vento Act and/or New York Education Law § 3209 (the "Brochure"). These Brochures shall be made available in all school districts' schools and administration buildings, in each runaway and youth shelter, in each homeless shelter and motel lobby in which social services agencies place homeless families, and in any other places agreed upon by the parties.

53. An Associate Commissioner at NYSED shall, by letter or memorandum, instruct all school districts to display the homeless education Posters prominently, distribute the homeless education Brochures to homeless children and families, and maintain a supply of the Brochures in each school building where parents and guardians conduct communications with school district personnel concerning enrollment, transportation or similar issues. The SCDSS Defendants shall be required to display the Posters prominently and maintain a supply of the Brochures in SCDSS offices or other locations where homeless families go to receive benefits from SCDSS including without limitation shelters, soup kitchens, healthcare for the homeless sites and social services offices, including those providing emergency housing, other government supported housing, food stamps, and TANF.

54. Upon any future revisions to the Brochure or Poster, the NYSED Defendants shall provide an advance copy of the same to Plaintiffs' counsel to permit Plaintiffs' counsel to provide comments and suggestions. The parties shall confer in good faith concerning any such comments and suggestions.

55. The NYSED Defendants shall provide additional copies of the Brochure and Poster to all school districts and collaborate with the school districts, OTDA and SCDSS regarding the distribution of the Brochure and Poster to shelters and other appropriate locations to be discussed among counsel, as available currently and upon any future printings.

56. The NYSED Defendants shall coordinate efforts with the School District Defendants and the OTDA Defendants shall coordinate with the SCDSS Defendants to ensure that the family of each homeless child receives the Brochure at the point at which they are first identified as homeless, in the native language of the family, where available, or in English or Spanish, if not.

Training

57. The parties agree that providing appropriate services to homeless children requires that relevant personnel and those involved in enrolling and transporting homeless children and youths understand the rights and needs of homeless children and have sufficient knowledge of homeless children's and unaccompanied youths' rights and needs sufficiently in order to be able to assist them. Accordingly, the NYSED Defendants agree to make available appropriate and reasonable training to all school district or local social services agency personnel who are likely to have contact with homeless children or their families concerning homeless children's education, or who are responsible for providing educational or related services to

homeless children or families. NYSED will collaborate with OTDA in development of OTDA's training of local social services district personnel.

58. Among other things, as of February 1, 2005, the NYSED Defendants conducted two-day Professional Development Sessions in New York City, Albany and Rochester concerning education of homeless children and data collection. All homeless liaisons and pertinent personnel from SCDSS and others involved in transporting, enrolling and educating homeless children were invited to attend. The State Defendants, where permissible, required representatives from school districts receiving funding under the McKinney-Vento Act to attend one of the Professional Development Sessions. The State Defendants otherwise encouraged appropriate school district representatives to attend one of the Professional Development Sessions.

59. In the above-mentioned training activity and others that the NYSED Defendants conduct or organize pertaining to educational services to be provided to homeless children and youths, the NYSED Defendants will invite as appropriate national experts and others to provide information concerning "best practices" under the McKinney-Vento Act that are being implemented outside of New York State.

60. The NYSED Defendants shall make available such additional training and support to school districts and invite local social service districts and agencies to participate in training offered either directly by NYSED or by NYS-TEACHS or another Technical Assistance Center under contract with NYSED, as is necessary and appropriate.

61. Relevant NYSED staff shall be appropriately trained with respect to McKinney-Vento Act and New York Education Law § 3209 and shall attend seminars and conferences as

appropriate. The NYSED Defendants shall keep a written record of such trainings including the date, attendees and subject matters covered.

62. The NYSED Defendants shall provide appropriate training regarding the McKinney-Vento Act and New York Education Law § 3209, which shall be mandatory for those school districts which receive McKinney-Vento funding. The State Defendants will strongly encourage all School District Defendants to attend such training. The NYSED Defendants shall keep records with regard to the training of the school districts' homeless liaisons (including date, attendees and subject matters covered) to be shared with the Court and Plaintiffs' counsel during the periodic reports the State Defendants will make as set forth in this Consent Order.

Reporting

63. The NYSED Defendants shall report to the Court and Plaintiffs' counsel as set forth above.

64. In addition to the foregoing reporting, representatives from the NYSED Defendants shall confer with Plaintiffs' counsel as appropriate during the meetings held pursuant to paragraph 42 herein to discuss any emerging issues or trends in the education of homeless students.

IV. COLLABORATION AMONG STATE DEFENDANTS AND OTHER GOVERNMENTAL ENTITIES

65. In addition to such other activities as the State Defendants believe to be appropriate, the State Defendants agree to conduct the following collaboration and cooperation activities:

66. The NYSED Defendants shall conduct monthly meetings (and additional meetings as may be periodically needed) with the OTDA Defendants to increase communication and coordination concerning homeless education. These monthly meetings shall be supported

and attended by appropriate NYSED personnel and the senior staff representative at OTDA (along with other relevant personnel) and will address the issues set forth in this Consent Order and will address any other issues relating to the access of homeless children and youths to a free, appropriate public education that the State Defendants reasonably deem to be pertinent. NYSED Associate Commissioner Evans-Tranumn shall attend all such monthly meetings for the first six months after the entry of this Order, bi-monthly for the following six months, and quarterly thereafter. NYSED personnel in attendance at the meetings will report to Associate Commissioner Evans-Tranumn concerning those meetings she does not attend.

67. The NYSED Defendants and the OTDA Defendants shall regularly collaborate concerning any problems or issues identified by OTDA as to SCDSS data and transportation systems and shall work cooperatively to develop appropriate plans to remedy the same.

68. NYS-TEACHS and any other Technical Assistance Center under contract with NYSED for the education of homeless children shall conduct (in collaboration with the NYSED Defendants) yearly informational conferences (in addition to such other technical assistance activities as are appropriate), and shall provide ongoing technical support to school districts, local social services districts and agencies, homeless liaisons and others.

69. The NYSED Defendants convened a statewide Homeless Advisory Committee ("HAC"), meeting on a quarterly basis in the first year after entry of the Order and as needed and at least twice per year after that. The HAC consists of senior representatives of NYSED, OTDA, unaccompanied youth programs, and other programs relating to or affecting homeless families. The HAC is chaired by an Associate Commissioner at NYSED and shall address issues of homeless education with a particular focus on improving homeless children's and youths' access to a free, appropriate public education. The HAC shall invite members from the legal services

community and others involved in homeless education issues to discuss best practices, issues and concerns as to homeless education in New York State. The first HAC meeting was held on December 6, 2004.

70. The Homeless Education Program Manager at NYSED has been in communication with the homeless liaison from each of the fourteen School District Defendants to coordinate such activities as are appropriate with respect to homeless education, including without limitation the implementation of consent orders in this matter and implementation of the requirements of the McKinney-Vento Act and New York Education Law § 3209. Such communication shall continue as determined by NYSED to be appropriate to effectuate the requirements of the McKinney-Vento Act and New York education Law § 3209.

71. Within thirty (30) days after the entry of this Consent Order, the Compliance Officer at OTDA shall contact the relevant personnel at SCDSS to initiate the data collection, monitoring and enforcement procedures set forth in this Consent Order.

V. REVISION OF POLICIES

72. Within ninety (90) days of the entry of this Order, the State Defendants shall revise any policies, procedures, guidelines, directives or other documents to incorporate, reflect and/or communicate the terms of this Consent Order, as necessary.

73. The parties acknowledge that this Consent Order does not prohibit future regulatory action by the State Defendants based on changes in relevant law consistent with the provisions of this Consent Order. The parties acknowledge that should a change in federal or state statutes or federal regulations occur that would render the State Defendants' performance hereunder unlawful or prohibited, or if federal or state statutes or federal regulations change such that the State is required to change its laws or regulations to comply with or to be eligible for

McKinney-Vento funding, the State Defendants shall notify Plaintiffs' counsel prior to implementing any such change in law, and shall move before this Court on notice to Plaintiffs' counsel as soon as is practicable to seek to amend the provisions of the Consent Order as appropriate. If any provision of this Consent Order or the application thereof becomes or is held invalid or unlawful, the other provisions or applications of the Agreement which can be given effect without the invalid or unlawful provisions or application shall be given effect, and to this end the provisions of this Consent Order are declared to be severable.

VI. MISCELLANEOUS

74. The parties shall confer in good faith to establish reasonable procedures to permit immediate and direct communications for addressing any problems or concerns that may arise concerning compliance with this Consent Order

75. The parties agree to work together cooperatively to provide Plaintiffs' counsel with such information and documents as may be reasonably necessary to assess and evaluate the State Defendants' performance of the various obligations under this Order. The parties shall work together in good faith with respect to other documents that may be requested by the Plaintiffs' counsel, and the Defendants shall make a good faith effort to provide reasonably requested information on a prompt and expedited basis to the extent permitted under relevant laws and regulations.

76. The State Defendants shall each submit a separate written Compliance Report to the Court and to Plaintiffs' counsel once each six months in the first year after entry of this Consent Order, and once annually thereafter. Each Compliance Report will detail each State agency's activities and expenditures in connection with this Consent Order and such other activities NYSED and/or OTDA may have taken to monitor the education and/or transportation

of homeless children and any enforcement action or actions taken. The Compliance Report will also provide summaries of the information reported to NYSED by the school districts and to OTDA by SCDSS concerning the enrollment and transportation of homeless children and other aspects of the education of homeless children. The Compliance Report, while providing summary information, should be sufficient to provide the Court and Plaintiffs' counsel with an accurate understanding of NYSED's and OTDA's activities under this Consent Order as well as the current state of the education and/or transportation of homeless children in the schools operated by the School District Defendants.

77. Information made available to the Plaintiffs' counsel under this Consent Order shall also be made available to counsel for any of the parties upon request. Personally identifiable information shall be kept confidential by counsel, and further disclosure is prohibited unless specifically authorized by law, court order or consent by the subject.

78. If, after prompt and good faith discussions, the parties have not been able to resolve their differences with respect to any particular problem or issue arising under this Consent Order, either party may submit the matter to the Court. Counsel will provide each other with appropriate written notice of their intention to seek judicial relief. The Court shall have continuing jurisdiction, for the entire term of this Consent Order, to issue such rulings and fashion such relief as may be reasonably necessary to promote the terms and purposes of this Consent Order.

79. The individuals executing this Order represent that they are authorized to sign for and bind the party or parties for whom they execute the Order. The individual(s) signing on behalf of the State Defendants represent and warrant that the execution and delivery of this Consent Order has been duly authorized and approved.

80. In construing this Consent Order, the same shall not be construed against any party on the basis that the party was the drafter. Rather, the language of this Consent Order shall in all cases be construed as a whole, according to its fair meaning and purpose, and not strictly for or against any of the parties.

81. No waiver of any breach of any term or provisions of this Consent Order shall be construed to be, or shall be, a waiver of any other breach of this Consent Order. No waiver shall be binding unless in writing and signed by the party waiving the breach. Failure to enforce, or delays by a party in seeking enforcement of the terms of this Consent Order against any breach thereof shall not act as a waiver of any such breaches or of any subsequent breaches.

82. This Consent Order may not be modified except as ordered by the Court, and with good cause shown. Parties may seek a modification of this Consent Order only upon fifteen days' written notice to counsel for the other affected parties, or, in the event of emergent circumstances, with as much advance notice as is practicable under the circumstances.

83. This Consent Order may be executed in counterparts, and each counterpart, when executed, shall have the full efficacy of a signed original. Photocopies of such signed counterparts may be used in lieu of the originals for any purpose.

84. The terms of Paragraph 5 of this Order regarding payment of attorneys' fees and costs, are subject to the approval of all appropriate state officials, including, with respect to payment, the New York State Comptroller, in accordance with the provisions of New York Public Officers Law Section 17. Should the payment of attorneys' fees and costs pursuant to Paragraph 5 of this Order not be approved by the New York State Comptroller, then the provisions of Paragraph 5 herein shall be deemed null and void, and plaintiffs shall be considered a prevailing party for the purposes of making an appropriate motion seeking counsel fees and

costs claimed as a result of this litigation up to and including execution of this Order. Should disputes subsequently arise with respect to the enforcement of this Consent Order, the parties may submit to the Court any appropriate motion concerning attorneys' fees or costs incurred in seeking enforcement.

85. Nothing herein shall be deemed an admission of fault or liability by any party.

86. The terms of this Consent Order shall not, in any manner, be construed as determinative of the accuracy of factual or legal allegations raised in this action, or given precedential effect or any other effect except in actions between the parties to this Order.

87. This Consent Order contains all the terms and conditions agreed upon by the parties hereto.

Dated: ~~November~~ ^{December} 27, 2005

We hereby consent to the foregoing:

On behalf of the Plaintiffs:



Jeffrey Alan Simes (JS-7080)
Christopher Garvey (CG-3323)
Goodwin Procter LLP
599 Lexington Avenue
New York, New York 10022
Tel: (212) 813-8800
Fax: (212) 355-3333

Deborah Berger (DB-1111)
of counsel to the Long Island Advocacy Center, Inc.
490 Wheeler Road, Suite 165 C
Hauppauge, New York 11788
Tel: (631) 234-0467
Fax: (631) 234-4069

Of counsel:

Maria Foscarinis (MF-3647)
National Law Center on Homelessness
and Poverty
1411 K Street, N.W., Suite 1400
Washington, D.C. 20005
Tel: (202) 638-2535
Fax: (202) 628-2737

Lewis M. Wasserman (LW-7134)
Wasserman Steen LLP
50 Medford Avenue
Patchogue, New York 11772
Tel: (631) 758-3367
Fax: (631) 758-3369

We hereby consent to the foregoing:

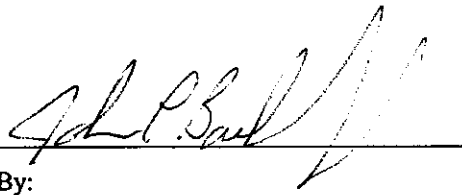
On behalf of the State Defendants:

ELIOT SPITZER
Attorney General of the
State of New York


By:

SUSAN M. CONNOLLY
Assistant Attorney General
Attorney for the State Defendants
300 Motor Parkway-Suite 205
Hauppauge, New York 11788
Tel.: (631) 231-2424
Fax: (631) 435-4757

For the OTDA Defendants:


By:

So ORDERED this 31st day of March, 2006


Hon. Arthur D. Spatt, United States District Judge

We hereby consent to the foregoing:

On behalf of the State Defendants:

ELIOT SPITZER
Attorney General of the
State of New York

By:



SUSAN M. CONNOLLY
Assistant Attorney General
Attorney for the State Defendants
300 Motor Parkway-Suite 205
Hauppauge, New York 11788
Tel.: (631) 231-2424
Fax: (631) 435-4757

For the OTDA Defendants:

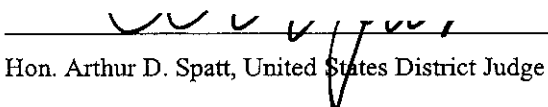
For the NYSED defendants:

By:



KATHY A. AHEARN
Counsel and Deputy Commissioner for Legal Affairs
New York State Education Department
89 Washington Avenue
Albany, New York 12234
Tel.: (518) 474-6400
Fax: (518) 473-2925

So ORDERED this 31st day of MARCH, 2006



Hon. Arthur D. Spatt, United States District Judge