THE TERMINATION OF CONSENT DECREES IN IDEA CLASS ACTIONS

Alexander S. Elson

Abstract

With the rise of institutional reform litigation in the wake of *Brown v. Board of Education*, public institutions such as schools, prisons, foster homes, and mental health centers frequently came under the control of federal court injunctions and consent decrees. A defining feature of this institutional reform litigation was the unprecedented length of time in which courts remained involved in reform efforts. As courts assumed increasing control over governmental institutions —and as they did so for increasingly long periods of time—questions emerged about how, and by what standards, their supervision should terminate.

This paper focuses on one aspect of this "termination debate"—sunset clauses in consent decrees —in one case category—IDEA class actions. The IDEA class action case category provides a fertile context for this analysis because: (1) there are many examples from which to draw—there are at least 59 IDEA class actions and most contain settlements with sunset clauses; and (2) IDEA class actions—unlike in many other areas of institutional reform litigation—lack settled and uniform standards for termination. As a result, the sunset clauses that govern termination in IDEA class actions vary tremendously from case to case, as does the litigation that surrounds them.

The spectrum of IDEA sunset clauses is vast: whereas some emphasize finality by setting strict time deadlines for termination, others emphasize substantial or total compliance by requiring defendants to achieve specific results before any deadlines can be triggered. Looking to five case studies (with a particular focus on Chicago's *Corey H v. Board of Education* litigation), this paper first explores the broad spectrum of termination standards and, second, analyzes the factors—such as the scope of the litigation strategy and the nature of the remedy sought—that influence their creation. It suggests, *inter alia,* that the terms of sunset clauses can be explained in large part by the nature and breadth of the remedies that the plaintiffs seek.

This paper is available with a group of other like papers at the Civil Rights Litigation Clearinghouse (search for case studies).

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I. Introduction

With the rise of institutional reform litigation in the wake of *Brown v. Board of Education*, public institutions such as schools, prisons, foster homes, and mental health centers frequently came under the control of federal court injunctions and consent decrees.[1] A defining feature of this institutional reform litigation[2] was the unprecedented length of time in which courts remained involved in reform efforts.[3] For example, "The first school case --*Brown*--only recently ended [and]. . . the first of the public housing desegregation cases, *Gautreaux v. Chicago Housing Authority*, which was filed in Chicago in 1966, is still active."[4] Similar examples abound.[5] As courts assumed increasing control over governmental institutions —and as they did so for increasingly long periods of time—questions emerged about how, and by what standards, their supervision should terminate. Some argued, for example, that "Congress should compel termination of [all] decrees after a fixed time, such as four years, unless plaintiffs show that current violations exist."[6] Some members of Congress recently tried (and failed) to enact a mandatory four year sunset on all present and future consent decrees against state and local

[1] Michael A. Rebell, *Jose P. v. Ambach: Special Education Reform in New York City*, *in* JUSTICE AND SCHOOL SYSTEMS: THE ROLE OF THE COURTS IN EDUCATION LITIGATION 27 (Barbara Flicker ed., 1991) ("In the years following *Brown,* the federal courts took on an activist role in implementing their desegregation mandates. This 'new model' of institutional reform litigation inspired analogous judicial activism in other social contexts. . .") [hereinafter Rebell *Jose P* Report].

[2] Professors Charles Sabel and William Simon define institutional reform litigation as "civil rights advocacy seeking to restructure public agencies." Charles F. Sabel and William Simon, *Destabalization Rights; How Public Law Litigation Succeeds*, 117 HARV. L. REV. 1016, 1016 (2004).

[3] *See* Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 HARV. L. REV. 1281, 1298 (1976) (the consent decree "provides for a complex, on-going regime of performance rather than a simple, one-shot, one-way transfer. . . .[I]t prolongs and deepens, rather than terminates, the court's involvement with the dispute"). Representative Lamar Smith (R - TX) recently explained in a committee hearing on the proposed Federal Consent Decree Fairness Act that "State-run services, such as school busing, Medicaid, mental health facilities, prisons, and special education, all have been the subject of Federal lawsuits. It is not unusual for these Federal consent decrees to span 20 to 30 years. . ." *Hearing on H.R. 1229 Before the Subcomm. on Courts, the Internet, and Intellectual Property of the H. Comm. on the Judiciary*, 109th Cong. 1 (2005) (testimony of Lamar Smith (R - TX)).

[4] David Zaring, *National Rulemaking Through Trial Courts: The Big Case and Institutional Reform*, 51 UCLA L. REV. 1015, 1019-20 (2004).

[5] *Id.* at 1020 ("vast numbers of government institutions throughout the country continue to be subject to the supervision of district courts").

[6] Ross Sandler and David Schoenbrod, *Consent Decrees: Governance by Lawyers*, THE NATIONAL LAW JOURNAL, (Jan. 20, 2003) *available at* http://www.democracybydecree.com/html/natl_law_journal.html.

governments.[7] Other advocates have countered that judicial supervision should not be subject to rigid and arbitrary time limits. They argue that, because "litigation is the last and the least but all too frequently the only recourse of those who suffer discrimination at the hands of those who administer our educational systems,"[8] court involvement should not terminate until the social ill in question has been corrected. Moreover, the burden of proof to demonstrate enforcement should not fall on the plaintiffs seeking to enforce statutory or constitutional rights, but on the defendant institution found originally to be in violation.[9]

This paper focuses on one aspect of this "termination debate"—sunset clauses in consent decrees[10] —in one case category—IDEA class actions. The IDEA class action case category provides a fertile context for this analysis for two primary reasons. First, there are many examples from which to draw: there are at least 59 IDEA class actions and most contain settlements with sunset clauses.[11] Second, unlike many other areas of institutional reform litigation, IDEA class actions lack settled and uniform standards for termination.[12] As a result,

[7] Federal Consent Decree Fairness Act, S. 489, 109th Cong. (2005) (introduced March 10, 2005 by Senator Lamar Alexander (R-TN)); Federal Consent Decree Fairness Act, H.R. 1229, 109th Cong. (2005) (introduced March 1, 2005 by Representative Roy Blunt (R-MO)). With the Federal Consent Decree Fairness Act, some members of Congress sought to place the burden of proof to demonstrate that continued enforcement of the consent decree is necessary on the party who originally filed the lawsuit. Under the Act, state or local governments could file a motion to vacate or modify a consent decree four years after the decree is entered or after the election of a new state or local official. Further, the consent decree would lapse if the federal court overseeing the decree did not rule within 90 days. Together, these provisions would have effectively required plaintiffs to re-prove their entire case every four years or every time the voters elect a new administration. Further, as the legislation called for retroactive application, it would have applied to existing consent decrees, no matter when they were created. The Act never made it out of committee hearings after July of 2005 and thus never became law.

[8] Howard I. Kalodner, *Overview of Judicial Activism in Education Litigation, in* JUSTICE AND SCHOOL SYSTEMS: THE ROLE OF THE COURTS IN EDUCATION LITIGATION 4 (Barbara Flicker ed., 1991).

[9] *See infra* note 139 (quoting a sunset clause where the burden of proof falls on the defendant).

[10] Courts maintain control over both the modification and termination of consent decrees. The standards for modification were established by the Supreme Court in *RUFO v. Inmates of Suffolk County Jail,* 502 U.S. 367 (1992). For a general discussion of the standards for modification and termination of consent decrees, see Shima Baradaran-Robison, *Kaleidoscopic Consent Decrees: School Desegregation and Prison Reform Consent Decrees After the Prison Litigation Reform Act and Freedman-Dowell,* 2003 B.Y.U. L. REV 1333, 1334 (2003).

[11] *See infra* note 60 and accompanying text.

[12] Examples of such settled and uniform approaches to termination exist in the prison reform context, where termination is governed by the Prison Litigation Reform Act, and the school desegregation context, where termination is governed by settled legal principles established by the Supreme Court. *See infra* notes 112-113 and accompanying text.

the sunset clauses vary tremendously from case to case, as does the litigation that surrounds them.

Part II of this paper provides general background on the IDEA class action case category and is divided into three sections. Section one provides a short general description and history of IDEA class action litigation and sections two and three describe the makeup and organization of the legal community litigating IDEA class actions. Finding that the legal community is unorganized with little communication across regions, I suggest that the disjointed nature of the legal community may provide at least one explanation for the wide-range of approaches to (and sunsets in) IDEA class actions.

Part III looks to the goals, aspirations, and strategies of the plaintiffs' lawyers to understand the vast discrepancy in legal approaches to IDEA class actions. This section establishes that special education lawyers generally choose one of two litigation strategies—broad comprehensive reform or specific, targeted reform—and that this decision has consequences for the projected length of the suit, the terms of the sunset clause, and the potential for litigation around the issue of termination.

Part IV turns to the specific terms of IDEA sunset clauses and is divided into three sections. Section one examines five IDEA class actions that contain very different approaches to termination. Section two organizes the sunset clauses described in section one according to 1) the level of compliance that they require and 2) their approach to time-deadlines. To provide a concrete example of termination litigation, section three looks closely at the battles over extension in *Corey H. v. Board of Education.* [13]

Finally, recognizing that this is a qualitative analysis deeply limited by its small sample size, Part V analyzes why there is such variety in IDEA sunset clauses. It suggests that the terms

[13] *Corey H. v. Board of Education.,* No. 92 C 3409 (N.D. Ill. 1992).

of sunset clauses can be explained in large part by the nature and breadth of the remedies that the plaintiffs seek. Part VI concludes.

II. IDEA Class Actions—A General Overview .

1. A Short History of Special Education Class Action Litigation.[14]

Children with disabilities have been subject to a "'lengthy and tragic history,' of segregation and discrimination that can only be called grotesque."[15] Describing the treatment of people with disabilities in the late nineteenth and early twentieth centuries, Justice Marshall explained that, "Fueled by the rising tide of Social Darwinism, the 'science' of eugenics, and the extreme xenophobia of those years, leading medical authorities and others [portrayed] the 'feeble-minded' as a 'menace to society and civilization ... responsible in a large degree for many, if not all, of our social problems.'"[16] As a result, "A regime of state-mandated segregation and degradation soon emerged [in which]. . . [r]etarded children were categorically excluded from public schools, based on the false stereotype that all were ineducable and on the purported need to protect nonretarded children from them."[17] Some state laws deemed students with disabilities as "unfit for citizenship"[18] while others authorized school administrators to exclude

[14] As this story is well-documented, this section describes the history of IDEA in broad strokes. For more detailed accounts, see Cynthia L. Kelly, *Individuals with Disabilities Education Act—The Right 'IDEA' for All Children's Education*, 75-MAR J. KAN. B.A. 24 (2006); Stacey Gordon, *Making Sense of the Inclusion Debate Under IDEA*, 2006 B.Y.U. EDUC. & L.J. 189 (2006); Stanely S. Herr, *Special Education Law and Children with Reading and Other Disabilities*, 28 J.L. & EDUC. 337 (1999).

[15] *Cleburne, TX v. Cleburne Living Center*, 473 U.S. 432, 461 (1985) (Marshal, J., dissenting).

[16] *Id.* at 461-62.

[17] *Cleburne,* 473 U.S at 462-63. Indeed, 49 of 50 states with compulsory attendance laws exempted children with disabilities from attendance. Herr, *supra* note 14, at note 54 (citing Children's Defense Fund, *Children Out of School in America* 55-56 (1978)).

[18] *Cleburne,* 473 U.S at 463 (quoting Act of Apr. 3, 1920, ch. 210, § 17, 1920 Miss. Laws 288, 294).

students deemed to be "uneducable or untrainable."[19] Indeed "[t]his uneducable/untrainable standard was used to justify denying public education to students across the nation."[20]

These views were not directly challenged in the federal courts until the1972 cases *Mills v. Board of Education*[21] and *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania* ("PARC").[22] In *Mills,* the federal district court held that the District of Columbia Board of Education was "required by the Constitution of the United States, the District of Columbia Code, and their own regulations to provide a publicly-supported education for children [labeled as behavior problems, mentally retarded, emotionally disturbed, or hyperactive]."[23] Accordingly, the court ordered the Board of Education to provide a "free and suitable" public education to all students "regardless of the degree of the child's mental, physical or emotional disability or impairment."[24] Similarly, in *PARC,* the Eastern District of Pennsylvania held that students with disabilities had a constitutional right to public education. The defendant school board conceded that children with mental retardation were educable and agreed to provide each

[19] 24 Purd.Stat. Sec. 13-1375. The Pennsylvania statute provided, in full:

> The State Board of Education shall establish standards for temporary or permanent exclusion from the public school of children who are found to be uneducable and untrainable in the public schools. Any child who is reported by a person who is certified as a public school psychologist as being uneducable and untrainable in the public schools, may be reported by the board of school directors to the Superintendent of Public Instruction and when approved by him, in accordance with the standards of the State Board of Education, shall be certified to the Department of Public Welfare as a child who is uneducable and untrainable in the public schools. When a child is thus certified, the public schools shall be relieved of the obligation of providing education or training for such child. The Department of Public Welfare shall thereupon arrange for the care, training and supervision of such child in a manner not inconsistent with the laws governing mentally defective individuals.

*Pennsylvania Ass'n for Retarded Children v. Com. of Pa***,** 334 F.Supp. 1257, 1264 (E. D. Penn. 1971) (quoting Section 1375 of the School Code of 1949, as amended, 24 Purd.Stat. Sec. 13-1375).

[20] Gail Jensen, *Disciplining Students with Disabilities: Problems Under the Individuals with Disabilities Education Act*, 1996 B.Y.U. EDUC. & L.J. 34, 36 (1996); *see also* Therese Craparo, *Remembering the "Individuals" of the Individuals with Disabilties Education Act*, 6 N.Y.U. J. LEGIS. & PUB. POL'Y 467, 472 (2003) ("Prior to the passage of the EAHCA, most children with disabilities were considered "uneducable" and kept at home or in institutions").

[21] 348 F. Supp. 866 (D.D.C. 1972).

[22] 343 F. Supp., 279 (E.D. Pa. 1972).

[23] *Mills,* 348 F. Supp. at 876.

[24] *Id.* at 878.

child with "a free public program of education and training appropriate to his or her leaning capacities."[25]

Mills and *PARC* "exerted great influence on special education and other disability laws."[26] By 1975, lawyers relying on this precedent had filed 36 right to education cases in 27 jurisdictions[27] and, between 1969 and 1975, "forty states passed legislation requiring the education of children with disabilities."[28] Further, the Education of All Handicapped Children Act ("EAHCA")[29] used *Mills* and *PARC* as its blueprint. As the Supreme Court has explained, "immediately after discussing [*Mills* and *PARC*] the Senate Report describes the 1974 statute as having 'incorporated the major principles of the right to education cases.' Those principles in turn became the basis of the [EAHCA]. . . ."[30] The EAHCA "incorporated the substantive and procedural rights of *PARC* and *Mills*, ensuring the basic right of educational opportunity for all children with disabilities, regardless of the nature or severity of disability."[31]

With passage of the EAHCA, students with disabilities received many new educational rights. First, the new law ensured that "all children with disabilities have available to them a free appropriate public education ["FAPE"]."[32] Notably, the law did not explain what a "free and appropriate public education" would substantively require; to the contrary it defined FAPE in procedural terms, as special education and related services that:

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[25] *PARC,* 343 F. Supp. at 302.
[26] Herr, *supra* note 14 at 350; s*ee also Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).
[27] *Id* (citing Reed Martin, *Educating Handicapped Children: The Legal Mandate* 15 (1979)).
[28] Theresa Glennon, *Disabling Ambiguities: Confronting Barriers to the Education of Students with Emotional Disabilities*, 60 TENN. L. REV. 295, 323 note 147 (1993)(citing Alan Abeson & Joseph Ballard, *State and Federal Policy for Exceptional Children, in* PUBLIC POLICY AND THE EDUCATION OF EXCEPTIONAL CHILDREN 14, 83-86 (Frederick J. Weintraub et. al. eds., 1976)).
[29] 20 U.S.C. § 1401 *et seq.*
[30] *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 194 (1982). The Court further explained that "The fact that both *PARC* and *Mills* are discussed at length in the legislative Reports suggests that the principles which they established are the principles which, to a significant extent, guided the drafters of the [EAHCA]. . . . [T]he cases set forth extensive procedures to be followed in formulating personalized educational programs for handicapped children." *Id.* at 193-94.
[31] Herr, *supra* note 14, at 351.
[32] 20 U.S.C. § 1400(c)(3).

> have been provided at public expense, under public supervision and direction, and without charge; . . . meet the standards of the State educational agency; . . . include appropriate preschool, elementary school, or secondary school education in the State involved; and . . . are provided in conformity with the individualized education program required under section 1414(d) of this title.[33]

The "individualized education plan" ["IEP"], referred to as the core FAPE requirement, is defined as "a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 1414(d) of this title."[34] Under 1414(d), an IEP must include, *inter alia*:

> a statement of the child's present levels of academic achievement and functional performance . . . a statement of measurable annual goals, including academic and functional goals . . . a description of how the child's progress toward meeting the annual goals described in subclause (II) will be measured . . . [and] a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child.[35]

Finally, the EAHCA required that FAPE be received in the "least restrictive environment" ["LRE"], meaning that, "[t]o the maximum extent appropriate, children with disabilities . . . are [to be] educated with children who are not disabled."[36] Separation or removal of a child from this environment was to occur only when "education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."[37]

In the first wave of class actions brought under the EAHCA, plaintiffs sought to give concrete meaning to the law's vague and abstract terms such as "appropriate education" and "least restrictive environment." These early lawsuits helped to define the practical meanings of the new rights created under the EAHCA. As Michael Rebell, lead counsel in *Jose P. v.*

[33] 20 U.S.C § 1401(9).
[34] 20 U.S.C § 1401(14).
[35] 20 U.S.C § 1414(d)(1)((A).
[36] 20 U.S.C § 1412(a)(5).
[37] *Id.*

Ambach[38] and Disengagement Officer in *Allen v. McDonough*,[39] has explained, "the legal entitlements to an 'appropriate education' in New York City and Boston can be said to mean the extent of services as defined and enforced in the specific court judgments . . . [the terms of the EAHCA] gain appropriate and practical parameters in practice, through the judicial process."[40]

Since 1975 the EAHCA has been revised multiple times and, in 1990, its name was changed to the Individuals with Disabilities Education Act ("IDEA"), which is how I will refer to it for the remainder of this paper. Despite its revisions, its core provisions remain the same.

2. **Who Litigates IDEA Class Actions?**

Today, most big city IDEA class actions are brought and maintained by non-profit legal organizations, usually in partnership with a law firm or second non-profit.[41] In Washington D.C., for example, the Bazelon Center for Mental Health Law, a national legal advocacy organization, represents the plaintiffs in *Blackman v. District of Columbia*,[42] with the law firm Drinker Biddle & Reath, LLP serving as co-counsel. In Los Angeles, the American Civil Liberties Union of Southern California, Protection and Advocacy, Inc., and Crosby, Heafey, Roach & May, LLP represent the plaintiffs in *Chanda Smith v. Los Angeles Unified School District.*[43] In New York City, Advocates for Children ("AFC") represents plaintiffs in over eight IDEA class actions,[44]

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[38] 669 F.2d 865 (1982). *See infra* note 78 and accompanying text.
[39] Consent Decree, *Allen v. McDonough* (June 23, 1976). *See infra* note 103 and accompanying text.
[40] Rebell *Jose P* Report, *supra* note 1, at 29.
[41] Individual special education attorneys do not typically bring IDEA class actions because the up front costs, especially after years of discovery and depositions, can be prohibitively high. Interview with Sharon Soltman, Esq., Counsel for Plaintiffs in *Corey H. v. Board of Education,* in St. Louis, MO (Apr. l9, 2008) [hereinafter Soltman Interview]. For discussion of large law firms' pro bono practice in civil rights litigation, especially in the prison context, see Margo Schlanger, *Civil Rights Injunctions Over Time: A Case Study of Jail and Prison Court Orders*, 81 N.Y.U. L. REV. 550, 620-21 (2006).
[42] *Blackman v. District of Columbia,* 454 F.Supp.2d 15 (D.D.C. 2006). For a detailed description of the *Blackman* case, see http://www.bazelon.org/incourt/docket/blackman.html.
[43] *Chanda Smith v. Los Angeles Unified School District,* No. CV 93-7044-LEW (C.D. Cal. 1996). For discussion of *Chanda Smith,* see *infra* note 144 and accompanying text.
[44] *See infra* note 91. For a complete list and description of Advocates for Children's IDEA class actions, see http://www.advocatesforchildren.org/lit.php.

including *Jose P v. Ambach.*[45] Advocates for Children partners with a range of legal non-profits and law firms on these cases, including Davis Polk and Wardwell, LLP, Morrison and Foerster, LLP, Dewey Ballantine, LLP, and the Legal Aid Society of New York.[46] And in Chicago, Designs for Change[47] partners with Access Living,[48] Equip for Equality,[49] the Family Resource Center on Disabilities,[50] and the Northwestern University Legal Clinic to monitor *Corey H. v. Board of Education.*[51]

While IDEA class actions appear to be more common in large cities, they are not absent from rural areas. In the rural south, for example, two legal non-profits, the Southern Poverty Law Center[52] and the Southern Disability Law Center,[53] have recently joined forces in an attempt to reform the special education systems of Mississippi and Louisiana. Together, the two organizations have filed suit against the Caddo Parish School System,[54] Calcasieu Parish School System,[55] Jefferson Parish School System,[56] East Baton Rouge School System,[57] and Holmes County School System.[58] Further, they have successfully revived the orphan decree in *Mattie T.*

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[45] 669 F.2d 865 (1982).
[46] *Id.*
[47] Designs for Change is "a 30-year-old, multi-racial, educational research and reform organization [whose] basic mission is to serve as a catalyst for major improvements in the public schools serving the 50 largest cities in the country, with a particular emphasis on Chicago." *See* http://www.designsforchange.org/about.html.
[48] Access Living is a cross-disability organization focused on independent living. It is a premier provider of services for people with disabilities in the Chicago area.
[49] Equip for Equality is a private, not-for-profit entity designated in 1985 by the Governor to administer the federally mandated protection and advocacy system for safeguarding the rights of people with physical and mental disabilities in Illinois.
[50] The Family Resource Center on Disabilities was organized in 1969 by parents, professionals, and volunteers who sought to improve services for all children with disabilities. It is also a Parent Training and Information Center for families of students with disabilities.
[51] *Corey H. v. Board of Education*, No. 92 C 3409 (N.D. Ill. 1992).
[52] The Southern Poverty Law Center is located in Montgomery, AL.
[53] The Southern Disability Law Center is located in Bay St. Louis, MS.
[54] *See* http://www.splcenter.org/legal/docket/files.jsp?cdrID=65&sortID=0. I was unable to locate the case names and docket numbers of the new Southern Poverty and Disability Law Center cases.
[55] *See* http://www.splcenter.org/legal/docket/files.jsp?cdrID=70&sortID=0.
[56] *See* http://www.splcenter.org/legal/docket/files.jsp?cdrID=58&sortID=0.
[57] *See* http://www.splcenter.org/legal/docket/files.jsp?cdrID=64&sortID=0.
[58] *See* http://www.splcenter.org/legal/docket/files.jsp?cdrID=68&sortID=0.

v. Johnson,[59] a case that governs specific areas of special education throughout the state of Mississippi. Special education in each of these school systems is currently operating under settlement or mediation agreements.

3. How is the Special Education Legal Community Organized?

To understand how the IDEA class action case category has evolved, it is important to first understand the nature of the legal community that litigates the cases. As explained above, I was able to locate, with the help of others,[60] 59 IDEA class action suits, and there are undoubtedly more. What's more, IDEA class actions govern special education systems in most of America's major cities—Chicago,[61] Los Angeles,[62] Washington D.C.,[63] New York City,[64] and Boston,[65]--to name a few.

Given the vast and seemingly interrelated scope of these efforts, it was surprising to learn that the special education legal community lacks formal organization. After pointing out the existence of organized networks in other related case categories,[66] Randee Waldman, former AFC attorney and current director of the Barton Juvenile Defender Clinic at Emory Law School, explained that she is "not aware of a network on IDEA class actions at all, which makes absolutely no sense . . . the network does not exist."[67] Affirming Waldman's experience, Sharon

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[59] *Mattie T. v. Johnson,* 74 F.R.D. 498 (N. D. Miss.1976). For further information, see http://www.mscenterforjustice.org/policy/juvenile3.html and http://www.splcenter.org/legal/docket/files.jsp?cdrID=52&sortID=4

[60] Much of the IDEA case category research was conducted for this seminar in the spring of 2007 by Washington University law student Melissa Zolkepy.

[61] *Corey H. v. Board of Education,* No. 92 C 3409 (N.D. Ill. 1992).

[62] *Chanda Smith v. Los Angeles Unified School District,* No. CV 93-7044-LEW (C.D. Cal. 1996).

[63] *Blackman v. District of Columbia,* 454 F.Supp.2d 15 (D.D.C. 2006).

[64] *Jose P. v. Ambach*, 669 F.2d 865 (1982).

[65] Consent Decree, *Allen v. McDonough* (June 23, 1976).

[66] For example, Waldman explained that she is part of the new national school to prison pipeline network, sponsored by the American Civil Liberties Union, Racial Justice Program, Charles Hamilton Houston Institute for Race and Justice at Harvard Law School, NAACP Legal Defense and Educational Fund, Inc., Juvenile Law Center, and Southern Poverty Law Center (see www.schooltoprison.org). Telephone Interview with Randee Waldman, Director, Barton Juvenile Defender Clinic, Emory Law School, in San Francisco, Cal. (Mar. 12, 2008) [hereinafter Waldman Interview].

[67] *Id.*

Soltman, attorney in the Chicago *Corey H.* case, explained that, "there is no national dialogue on class actions [and] no national organization acting as a hub of information."[68]

The fact that there is no formal organization, no regular conferences, and no cohesive network of special education attorneys does not mean, however, that the lawyers operate in complete isolation. First, as Waldman explained, communication happens informally based on whom the individual players know. For example, Waldman would often communicate via telephone with the Bazelon Center in Washington D.C. to share experiences, legal documents, and strategies.[69] Similarly, throughout the settlement negotiation period in *Corey H.,* "the plaintiffs' attorneys sought the advice of dozens of individuals and organizations throughout the country, and relied on the lessons of their organizations' previous research and experience."[70] To this day, Soltman continues to receive phone calls about strategies in IDEA class actions.[71]

Second, special education experts (not only lawyers) collaborate at the local level. In Louisiana and Mississippi, for example, two non-profits have come together to file five different IDEA class actions and to revive a sixth.[72] And in Chicago, a group of special education attorneys and policy experts meets every four to six weeks to brainstorm strategies on subjects throughout the field of special education law.[73] In the fall of 2006, the group met specifically to discuss litigation strategies in *Corey H.*

Third, the fact that there is no formal network of *legal* experts does not mean that there is no national collaboration in the special education class action context. In *Corey H.,* for example,

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[68] Soltman Interview, *supra* note 41. The same is not true for special education lawyers representing the school boards. As Sotlman explained, "the defendant's school board lawyers are more organized, with national meetings." *Id.*

[69] Waldman Interview, *supra* note 66.

[70] Sharon Soltman and Donald Moore, *Ending Illegal Segregation of Chicago's Students with Disabilities: Strategy, Implementation, and Implications of the Corey H. Lawsuit*, prepared for the Conference on Minority Issues in Special Education, The Civil Rights Project of Harvard University, 27 (Nov. 17, 2000) [hereinafter Soltman Report].

[71] Soltman Interview, *supra* note 41.

[72] *See supra* note 56 and accompanying text.

[73] Soltman Interview, *supra* note 41.

the lawyers sought the advice of educators and policy experts throughout the country. Soltman explained that she, "talked to special education teachers and disability organizations focused on LRE and asked them what they believed would be the best remedy in our case."[74] Soltman, herself a long-time educator before she attended law school, explained that, "she thought about *Corey H.* from the perspective of an educator as much as from the perspective of a lawyer."[75] Her experience teaching led her to believe that, more than the lawyers, it was the actors on the ground who best understood the remedies that were most likely to improve the education of students with disabilities. It was incumbent upon lawyers, therefore, to consult teachers, principals, superintendents, special education experts, disability experts, and others.[76]

Finally, although the lawyers litigating special education class actions do not regularly communicate, some level of uniformity is imposed onto the case category via the small circle of experts serving as advisors for "at least half of the special education lawyers litigating IDEA class actions."[77] The same experts in *Gaskin,* for example, also submitted a proposed settlement agreement to the court in *Corey H.* Thus, while the lawyers were not communicating with each other, they were being influenced, albeit if only to a small degree, by the same experts.

III. Different Strategies to IDEA Class Action Litigation: Targeted vs. Comprehensive Reform.

Given the patchwork organization of the legal community, it is perhaps no surprise that IDEA class actions can look very different from region to region. In this section, however, I provide an additional explanation for the varying nature of IDEA consent decrees—the litigation

[74] *Id.*
[75] *Id.*
[76] As Soltman has explained, "Attorneys need to have a clear understanding of how schools work as human systems (so that they can, for example, recommend appropriate improvements in proposed school monitoring protocols proposed by the ISBE). And they need to understand how changes in public policy at one level of the system (such as the state policies that govern the services available to young children with disabilities in state-funded preschool programs) are likely to impact the implementation of the LRE mandate in individual schools." Soltman Report, *supra* note 70, at 38.
[77] Soltman Interview, *supra* note 41.

strategy. This section describes the general parameters of the litigation strategy debate and Part V explains how the chosen strategy might affect the way that IDEA class actions are terminated.

At the most general level, plaintiffs' lawyers approach IDEA class actions in one of two ways. First, many believe that IDEA class actions should seek to reform entire special education systems (the comprehensive reform approach). Others, however, believe that such a comprehensive strategy is deeply flawed. Instead, they argue, real change can be achieved and sustained only through targeted, focused law suits with specific, albeit less ambitious, goals.

1. The Historical Roots of the Litigation Strategy Debate.

These two competing approaches to IDEA class actions have their roots in early IDEA class action litigation. In February of 1979, attorney John Gray filed *Jose P. v. Ambach.*[78] At the same time, Michael Rebell, a private lawyer in Manhattan, had been developing his own special education law suit in the same jurisdiction; upon hearing of Gray's case, Rebell filed his own suit (on behalf of United Cerebral Palsy), in the hope that the two would be consolidated.[79] While their cases were eventually consolidated,[80] the lawyers' approaches to the litigation could not have been more different:

> Gray's *Jose P.* complaint was like a single silver bullet, whereas Rebell's *United Cerebral Palsy* complaint was a broad assault on the board's entire program. . . . [Gray] limited the *Jose P.* complaint to one narrow, easily proved claim: the city's failure to meet the state's timetable requiring an evaluation of a student's needs within thirty days and placement within sixty days. . . . In contrast, Rebell and his client United Cerebral Palsy took their lead from the comprehensive reforms embraced by the federal legislation. Their lawsuit sought a complete overhaul of special education from start to finish, from identification of a child for evaluation through class assignment, facilities, and outcomes.[81]

[78] *Jose P. v. Ambach*, 669 F.2d 865 (1982).
[79] Ross Sandler and David Schoenbrod, DEMOCRACY BY DECREE 24 (Yale University Press, 2003).
[80] On August 13, 1979, the Eastern District of New York issued a separate opinion in Rebell's UCP case. Yet the court, "indicated that the Special Master's report in *Jose P.* would undoubtedly deal with many of the overlapping issues involved in the [UCP] case." Rebell *Jose P* Report, *supra* note 1, at 56, note 38. Thus, during negotiations with the Special Master, "the parties decided to consolidate the proceedings." *Id.*
[81] Sandler and Schoenbrod, *supra* note 79, at 55-56. Michael Rebell describes the differing litigation strategies in a similar fashion. Whereas Gray's complaint focused only on waiting lists and was "succinct and to the point,"

In the end, it was Rebell's strategy that won the day in *Jose P.* As he explained, "barely six months after issuance of the court's basic liability decision, the judgment entered in *Jose P.* committed the Board of Education to reorganize radically its entire approach to providing education to handicapped students."[82]

2. The Litigation Strategy Debate Today.

While Rebell's comprehensive reform approach came to define the *Jose P.* litigation, this litigation strategy debate remains alive and well today. Indeed, two attorneys interviewed for this piece, both extremely committed to the cause of special education reform, have, after years of litigating IDEA class actions, reached opposite conclusions on this question of scope.

Describing the comprehensive reform approaches of *Jose P.* and *Allen v. McDonough* over ten years after they began, Michael Rebell stated, "the achievement of significant structural reform in both cities is beyond dispute."[83] He explained that, "there has been not only improved procedural compliance in New York and Boston, but extensive structural changes reflecting the 'spirit' of the law have also taken hold. The number of students served in New York has more than doubled, an entirely new school-based support team administrative structure has been successfully implemented, and more than 50 school buildings have been renovated to provide

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Rebell's *UCP* complaint, in addition to waiting lists claims, "also alleged a series of substantive educational deficiencies that affected plaintiff's rights to appropriate education. These included a lack of individualized placement procedures, inadequate preparation of [IEP's], unavailability of 'mainstreaming' opportunities, inaccessibility of facilities to the non-ambulatory, a lack of requisite related services, and inefficiencies in contracting procedures for placement in private school." Rebell *Jose P* Report, *supra* note 1, at 31-32. In the end, Rebell explained that, "the *Jose P.* litigation can be said to have resulted from the combination of two complementary strategic approaches: the *Jose P.* plaintiffs' emphasis on a quick, decisive liability finding and the *UCP* plaintiffs' urging of broad structural remedial mechanism." *Id.* at 32.

[82] *Id.* at 35. Indeed, four years after Gray's original *Jose P.* complaint, which focused only on waitlists, the court explained: "No consequences follow from the fact that the *Jose P.* case, when filed, was 'about' waiting lists. It is now 'about' everything in the judgment, and as to many of those things, city defendants do not even suggest that they are in compliance." *Jose P. V. Ambach,* 557 F. Supp 1230, 1240 (E.D.N.Y. 1983).

[83] Michael A. Rebell, *Allen v. McDonough: Special Education Reform in Boston*, *in* JUSTICE AND SCHOOL SYSTEMS: THE ROLE OF THE COURTS IN EDUCATION LITIGATION 92 (Barbara Flicker ed., 1991) [hereinafter Rebell *Allen* Report].

accessibility. . .”[84] Sharon Soltman, an attorney in Chicago’s *Corey H.* litigation, noted that there is an obvious trade-off when selecting between approaches: the comprehensive approach is ambitious and harder to manage and things fall through the cracks. Yet, if you concentrate on a narrow area, what you gain in ease of enforcement you loose in comprehensiveness and broad-based impact.[85]

Like Rebell, Soltman believes that the comprehensive approach is necessary to achieve meaningful change for students. She explained that, “if you want to find real solutions to LRE issues, you can’t focus on only one thing. For example, you can reduce the size of waitlists, which is a good thing. But what does it do? When you fix a piece, it does not fix the system, and it does not improve the overall education for students with disabilities.”[86]

Moreover, Soltman believes that a truly comprehensive litigation strategy should reach beyond traditional legal frameworks to encompass a range of advocacy methods. In her words, “the *Corey H.* lawsuit was pursued consistent with a research based educational advocacy strategy that employed a range of advocacy methods in combination (such as community organizing, media advocacy, and lobbying) in support of the litigation.”[87] From the start, therefore, *Corey H.* was conceptualized as more than a lawsuit; while litigation was the primary vehicle for change, it was to be supported by a range of non-legal efforts (such as lobbying and community organizing) and assistance was to come from a range of non-legal organizations.[88] In the end, the goal was to positively impact the quality of students’ educational experiences and

[84] *Id.*
[85] Soltman Interview, *supra* note 41.
[86] *Id.* Soltman continued: “You cannot win an LRE case without being comprehensive. I mean win for kids.” *Id.*
[87] Sotlman Report, *supra* note 70, at 2.
[88] Even Designs for Change, one of the initiators and primary funders of the *Corey H* suit, is not a legal organization. To the contrary, it is “a non-profit educational research, advocacy, and assistance organization . . .that has as its primary mission the improvement of educational programs for public elementary and secondary students in major U.S. cities, with a focus on improving education for low-income students, minority students, and students with disabilities.” *Id.* at 1, note 1.

improve academic achievement and school completion rates.[89] This would require nothing less than full-scale reform of the culture and practice of special education in Chicago.[90]

Unlike Rebell and Soltman, Randee Waldman, after years of involvement with *Jose P.* and other New York City IDEA class actions,[91] does not believe that the broad, comprehensive strategy is the best approach. To Waldman, it is counterproductive when lawyers "try to fix the whole system with one suit" because, for one, compliance becomes hard to define and monitor and the case rapidly becomes unmanageable. Even Rebell, the original champion of the comprehensive approach, has recognized its inherent challenges. Discussing the "enormity of the [*Jose P.*] enterprise,"[92] Rebell, referring to one of the compliance plans, explains:

> the table of contents . . . listed 30 topic areas for which specific policies and procedures were set forth, ranging from procedures for evaluation of students with limited English proficiency to methods for promoting parental attendance at meetings and contracting with non-public schools. As might be expected from the scope and complexity of the issues listed, the negotiating process itself became expansive. . . . Since literally hundreds of complex issues were being negotiated, there was potential for continuous confrontation and repeated impasses. [93]

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[89] Soltman Report, *supra* note 70, at 46 ("the success of the *Corey H*. agreement must ultimately be judged by its impact on the quality of students' educational experiences and on their academic achievement and school completion").

[90] Soltman believes that, while there remains a long way to go, progress towards such full-scale reform has been made. In her words,

> [O]ne can conclude that, at the very least, significant changes in policy, customary practice, and resource allocations are beginning to occur with respect to both the Chicago Board of Education and the Illinois State Board of Education. Further, the plaintiffs' strategy for catalyzing school level initiative to improve the quality of education in the LRE has, at the very least, resulted in substantial improvements in a number of schools.
>
> Coupled with the authors' past research and reform experience, accomplishments to date in carrying out the *Corey H*. reform strategy strengthen the authors' conclusion that key features of this strategy merit serious consideration by other advocates.

Soltman Report, *supra* note 70, at 49.

[91] Some examples include: *L.V. v. Department of Education,* No. 03-9917 (S.D.N.Y. filed in Sept. 2005) (IDEA class action brought on behalf of parents of children with disabilities. The suit claims, *inter alia,* that students received favorable orders and settlements in impartial hearings that were not being timely enforced. The plaintiffs also claim that the New York City Department of Education does not maintain an adequate due process system and does not track and monitor enforcement of the orders); *E.B. v. Department of Education,* No. CV 02 5118 (E.D.N.Y. filed in July 2003) (IDEA class action filed on behalf of children with disabilities who have been excluded from school without proper notice and due process).

[92] Rebell *Jose P.* Report, *supra* note 1, at 36.

[93] *Id.* at 36-37.

Unlike the comprehensive reform approach, Waldman's strategy in IDEA class actions is to "find an area that has a solution, target it, go in fix that area, monitor it, and then move to another area."[94] For a model of success, Waldman points to the targeted approach taken in the trilogy of "push out" cases[95] litigated when she was a Senior Attorney with AFC. In those cases, AFC discovered, thanks to independent investigation and numerous parent and community complaints, that thousands of students with disabilities were being illegally pushed out of New York City public schools, most often "as a way for schools to maintain the appearance that they were succeeding [because] discharging difficult-to-educate and older students would keep their graduation rates and test scores higher. . ."[96]

In 2003, AFC filed suit in the Eastern District of New York against three high schools for illegally discharging students with disabilities.[97] As AFC explains on its website, "Within a few weeks, the City Department of Education agreed to undertake a mailing to approximately 5,000 students who had been discharged . . . the Department explained that these students each had a right to return to school and to stay in school until the year in which they turned 21."[98] In 2004, the Department of Education "admitted that there was a long-standing citywide problem with schools pushing students out."[99]

By 2005, all three of the school push-out cases settled. Under the settlement agreements, discharged students were "permitted to re-enroll at their high schools and procedures were put in place to provide future students notice of their rights prior to a discharge or transfer. Support

[94] *Id.* Waldman explained that AFC chose the target-issues based on the nature and volume of individual complaints that the organization received through its hotline and other sources. *Id.*
[95] *Ruiz v. Pedota, et. al.,* No. 03-1502 (E.D.N.Y. 2003); *R.V. v. Department of Education,* No. 03-5649 (E.D.N.Y. 2003); *S.G. v. Department of Education*, No. 03-5152 (E.D.N.Y. 2003).
[96] Advocates for Children, *The Trilogy of Push-Out Cases, available at* http://advocatesforchildren.org/pushouts.php.
[97] *Id.*
[98] *Id.*
[99] *Id.*

services were also put in place for the students at the schools at issue."[100] Moreover, "as a result of these lawsuits, the Department of Education put new citywide procedures in place designed to ensure that students would not be illegally pushed out of school and would have notice of their right to stay in school until the age of 21."[101] Such effective and efficient reform, according to Waldman, could happen only because the litigation was targeted and focused, with clear goals and criteria for compliance.

Interestingly, the Plaintiffs in *Allen v. McDonough,* a major special education class action in Boston, chose to combine these two approaches.[102] Plaintiffs lawyers (the Massachusetts Advocacy Center) chose to "litigate narrow issues on which it would be relatively easy to prevail, allowing the focus of the lawsuit to move quickly to the remedy stage."[103] They reasoned that, "even a narrow lawsuit . . . could be used as a means to bring about broader change [by] . . . either directly expanding the scope of the suit at a later stage or by establishing a favorable negotiating position that would give plaintiffs clout to press for broader relief. . ."[104] In the end, the plaintiffs' strategy worked, but only because the defendants acquiesced. Rebell explains that, "[d]efendants realized that the supplemental decree constituted an expansion of the issues in the case. They nevertheless accepted the broadened new directions 'because of their commitment to

[100] *Id.*
[101] *Id.*
[102] *Allen v. McDonough* was filed in 1976 and was brought primarily under a unique Massachusetts state law known as Chapter 766. Chapter 766, enacted in 1972, was considered landmark legislation that the EAHCA and other state acts were later modeled from (in addition to *PARC* and *Mills*). In short, its goal was to "develop the educational potential of children with special needs." Mass. Gen. Laws Ann. Ch. 71B, § I. To accomplish this, it sought to define special needs and design special programs "in a flexible manner that considers each child's individual needs and potential while minimizing categorical labeling." Rebell *Allen* Report, *supra* note 83, at 72. As most of the provisions of the EAHCA were not effective in June of 1976, the time *Allen* was filed, the plaintiffs' lawyers opted to file the case in state court.
[103] Rebell *Allen* Report, *supra* note 83, at 72. Ultimately, "two narrowly focused 'waiting lists issues' were chosen as the immediate noncompliance matters to be litigated. . . . These violations. . .were easy to define and easy to prove; the school district's own data showed that hundreds of children had failed to receive educational plans and reviews in a timely manner." *Id.* at 73
[104] *Id.* at 73. Not everyone agreed with this approach. Rhoda Schneider, General Counsel to the State Education Department, which later intervened as plaintiffs, explained in an interview with Michael Rebell that, "if you are going to have a comprehensive case, at least as a matter of civil procedure, you should plead all the issues at the outset." *Id.* at 96, note 20.

full implementation'—and apparently because they did not anticipate that such implementation would be as long and hard in coming as actually proved to be the case."[105] Indeed, eight years after signing the supplemental decree, Michael Betcher, counsel to the defendant Boston School Committee, seemed to regret his position because, "now everyone assumes these [additional issues] are part of the case and disengagement becomes more difficult."[106] As discussed in detail below, Bechter's comments reveal that the scope of the litigation strategy, in many cases, appears to have important consequences for both how, and by what standards, IDEA class actions are terminated.

IV. The Termination of IDEA Consent Decrees.

With the general framework established, this paper now turns to the issue of termination in IDEA class actions. As is the case throughout institutional reform litigation, there is extensive debate over how court involvement in IDEA class actions should come to an end. Michael Rebell, discussing the issue of termination in institutional reform litigation generally, established the framework for this debate: on the one hand, if one believes that courts serve as "'structural ombudsmen,' [then] their continuing presence arguably will be necessary for as long as countervailing pressure to affirm individual rights against large governmental bureaucracies is needed—that is, forever."[107] On the other hand, "a court that is perceived as a permanent part of the system is likely to become susceptible to many of the same bureaucratic rigidities that it purports to reform. At some point, then, a court must bow out."[108] But when? If the level of compliance required for termination is set too high, "unrealistic expectations may be raised as to what law reform can accomplish in an imperfect world . . .lead[ing] either to unending,

[105] *Id.* at 76 (quoting Interview with Michael Betcher, Counsel to the Boston School Committee, in Boston Mass. (Oct. 23, 1984)).
[106] *Id.* at 98, note 40.
[107] *Id.* at 93.
[108] *Id.*

ineffectual judicial oversight or to frustrated, premature judicial withdrawal."[109] Yet, if the level of compliance is set too low, "major social ills may never be rectified."[110]

While this debate exists throughout institutional reform litigation, it has taken on drastically different forms in different areas. While a comparison of the standards for termination across case categories is beyond the scope of this analysis, it is important to note that such distinctions exist. For example, unlike the IDEA class action context, where termination is most frequently governed by the substantive provisions of negotiated sunset clauses, termination in prison cases is governed by the Prison Litigation Reform Act[111] and termination in school desegregation by a legal framework established by the Supreme Court.[112] Unlike the prison and school desegregation contexts, there are no centralized standards or common analytical frameworks governing IDEA class action termination. To the contrary, the standards in each case, if standards exist at all, are the product of negotiations between the parties and are thus heavily influenced by, *inter alia,* the particular facts of each case and the unique traits and strategies of the lawyers litigating them.

In order to give concrete meaning to this analysis, the next section first describes a representative range of IDEA class action sunset clauses and, second, seeks to organize the range of sunset clauses by categorizing them along two dimensions—timing and standards for

[109] Rebell *Allen* Report, *supra* note 83, at 93.
[110] *Id.*
[111] Under the Federal Prison Litigation Reform Act, defendants are entitled to "'immediate termination' of any prospective relief two years after that relief is granted, unless the court finds 'current and ongoing violation' of federal rights. And defendants can renew their request for termination yearly." Margo Schlanger, *Civil Rights Injunctions Over Time: A Case Study of Jail and Prison Court Orders*, 81 N.Y.U. L. REV. 550, 591 (2006) (quoting 18 U.S.C. § 3626(b)(1) (2000)). Further, "[b]etween one and three months after a defendant moves to terminate relief, the order is automatically 'stayed' until the court reaches its termination decision." *Id.*
[112] The judicial standards for termination in the school desegregation context were established by the Supreme Court in *Freeman v. Pitts*, 503 U.S. 467 (1992) and *Board of Ed. of Oklahoma City v. Dowell*, 498 U.S. 237 (1991). In *Dowell,* the Court required dissolution of a school desegregation decree upon showing that the defendants "had complied in good faith with the desegregation decree since it was entered, and . . . the vestiges of past discrimination had been eliminated to the extent practicable." *Id.* at 249-50.

compliance. This section concludes by providing an in-depth analysis of the extension litigation in one case, *Corey H. v. Board of Education.*

1. A Sample of IDEA Sunset Clauses.[113]

There is no uniform approach to termination in IDEA class action consent decrees. Some decrees, such as in *Allen v. McDonough*, never had a sunset clause and, after decades of court involvement, were terminated in large part because of judicial pressure.[114] Other cases, such as *Jose P.*, have no sunset clause and have been ongoing since the 1970s, with no sign of termination in sight. And others still, such as *Mattie T.*, began without a sunset clause but have since added one.[115] Today, however, cases like *Allen, Jose P.* and *Mattie T.*—cases that operated for decades without standards for termination—describe a very small fraction of IDEA class action decrees. As there are over fifty IDEA class actions, it is beyond the scope of this paper to examine each sunset clause and its surrounding litigation. Therefore, as explained above, this section focuses on a small sample of cases in order to provide a sense of the range of sunset clauses in IDEA class actions.

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[113] This paper defines "sunset clause" in broad terms to include provisions in settlement agreements that govern termination but do not automatically terminate at a given time. Admittedly, this definition may be technically overbroad. Black's Law Dictionary defines a sunset provision as one that "automatically terminates at the end of a fixed period unless it is formally renewed." Black's Law Dictionary (8th ed. 2004). As this section reveals, many IDEA class action settlement agreements include termination provisions that are triggered only when defendant school districts achieve specified goals. By definition, therefore, these provisions do not terminate "automatically" upon the passing of a given date. It is for simplicity sake, therefore, that I define all termination provisions, regardless of whether or not they call for "automatic" termination, as "sunset clauses."

[114] In *Allen v. McDonough,* it was the Chief Justice of the Massachusetts Superior Court, Thomas Morse, who was the driving force behind judicial disengagement. As early as 1984, Chief Justice Morse called on, "all persons that are responsible for compliance to make every effort to achieve the goal of substantial compliance by the end of the current school year. If that is achieved, the Court will entertain a motion to purge the defendants of contempt." Rebell *Allen* Report, *supra* note 83, at 87. Michael Rebell, who by this time was participating in the *Allen* litigation as a Disengagement Master, explained that, "despite. . . continuing compliance problems—or, perhaps because of them—Chief Justice Morse remained undaunted in his determination to bring the case to a conclusion." *Id.* Not only did he hire Rebell as a consultant on disengagement, but, in 1986, he signed a Disengagement Order that established a detailed disengagement process that ultimately led to the termination of judicial oversight, albeit not until 1998 (all Boston schools were not deemed to be in substantial compliance until September 8, 1995). For a summary of this history, see Office of the General Counsel, Boston Public Schools, *Allen v. McDonough Working Files, available at* http://www.cityofboston.gov/archivesandrecords/findingaids/allen.html.

[115] *See infra* note 139.

A. *Gaskin v. Commonwealth of Pennsylvania*[116]

After eleven years of aggressive litigation and intensive settlement negotiations, the parties in *Gaskin v. Commonwealth of Pennsylvania,*[117] a class action brought by the parents of 12 students with disabilities and eleven disability advocacy groups in 1994, reached a settlement agreement. According to the agreement, "The life of the Settlement Agreement will be the five-year period of time commencing on the date on which the Court formally enters an order dismissing the case and ending exactly five years later."[118] The agreement provided no exceptions or standards by which extension of the sunset could be granted.

Class members had the opportunity to file written objections to the proposed Settlement Agreement by June 10, 2005 and all objectors (of which there were nineteen) were given the opportunity to produce evidence and be heard at a Fairness Hearing.[119] At the hearing, Mr. Gaskin, father of the lead plaintiff, testified that "his greatest reservation with the Settlement Agreement had been the limited five-year time frame. . ."[120] Recognizing that the sunset was unlikely to change, however, Mr. Gaskin ultimately "determined that this provision was a better alternative than a lengthy trial without guaranteed results."[121]

Not all class members were willing to concede this point. Two class members objected to the settlement agreement on the grounds that "[the] five-year time frame is inadequate."[122] The court relied on principles of local control to overrule the objection. Judge Robreno

[116] 389 F.Supp.2d 628 (E.D. P.A. 2005).
[117] The *Gaskin* plaintiffs claimed that the Commonwealth of Pennsylvania violated the IDEA by "failing to identify disabled *students*, develop . . .IEP's, and provide a free appropriate public education in the least restrictive environment to the maximum extent possible." Memorandum of Settlement at 2, *Gaskin v. Commonwealth of Pennsylvania,* No. 94-4048 (E.D.P.A. Sept. 16, 2005). For detailed information on the *Gaskin* case, see http://www.pde.state.pa.us/special_edu/cwp/view.asp?Q=109539&A=177.
[118] Memorandum of Settlement at 7, *Gaskin v. Commonwealth of Pennsylvania,* No. 94-4048 (E.D.P.A. Sept. 16, 2005).
[119] *Id.* at 22.
[120] *Id.* at 31.
[121] *Id.*
[122] *Id.* at 46.

concluded that, "any period lengthier than five years will require Court entanglement in the delivery of state educational services for longer than necessary to fulfill the objective of the Settlement Agreement."[123] Notably, the court also suggested that five years would be enough time to spur meaningful change in special education practice in Pennsylvania. Quoting the parties proposed settlement, Judge Robreno explained that "[m]any of the provisions of the settlement, when implemented, will have an impact far longer than the agreement terms and will build the Commonwealth's capacity for inclusive practices."[124] The *Gaskin* sunset, unlike many of the sunsets discussed below, did not include a clause requiring or defining substantial compliance. Further, there is no mention of possible exceptions or escape hatches by which plaintiffs could potentially extend the decree.

B. *Corey H. v. Board of Education*[125]

In 1992, the parents of Chicago students with disabilities brought a class action suit charging that the Chicago Board of Education ("CBE") was illegally segregating students with disabilities, and that the Illinois State Board of Education ("ISBE") had failed to carry out its legal obligation to terminate this illegal segregation. In 1998 the CBE, one week before trial, entered into a detailed settlement agreement in which they agreed, *inter alia,* to take steps to ensure that Chicago students with disabilities would be educated in the "least restrictive environment" with adequate staff. After going to trial and loosing, the ISBE also agreed, in 1999, to a detailed settlement.

As part of its settlement agreements, ISBE agreed to the following sunset clause: "The Court shall retain jurisdiction over this matter for a period of time coextensive with CPS' settlement agreement ending January 16, 2006. Any party may petition the Court for an earlier

[123] Memorandum of Settlement at 47, *Gaskin v. Commonwealth of Pennsylvania,* No. 94-4048 (E.D.P.A. Sept. 16, 2005).
[124] *Id.* at 46-47 (quoting Joint Motion for Final Approval of Settlement Agreement at 30-31).
[125] *Corey H. v. Board of Education,* No. 92 C 3409 (N.D. Ill. 1992).

termination or for an extension of the Agreement, but such a petition will be granted only in extraordinary circumstances."[126]

In 2005, over defendants' objection, the plaintiffs made an oral motion to extend the life of the settlement. In response, Judge Gettlman ordered Kathleen Yannias, the *Corey H.* monitor, to issue a report with recommendations for a "reasonable scenario for a final date" of termination.[127] On September 15, 2006, Yannias proposed a final date of September 1, 2010[128] and, over objections from both plaintiffs and defendants, the Judge upheld the Monitor's determination.[129] Under the current 2010 agreement, there is no "extraordinary circumstances" provision. While Judge Gettleman has repeatedly stated that 2010 "is the final date,"[130] he has also left the door open for further extension if defendants continue to fail to meet their obligations.[131] An extensive analysis of the litigation surrounding the *Corey H.* extension is provided in section three below.

C. *Southern Poverty and Southern Disability Law Center Cases.*

[126] ISBE Settlement Agreement at 22, *Corey H. v. Board of Education,* No. 92 C 3409 (N.D. Ill. Aug. 13, 1999). The settlement with the CBE was approved by the Court on October 23, 1997. That sunset provided: "The duration of this Agreement is eight years from the date of entry of the Agreement by the Court. Except were otherwise specified, all obligations contained herein are also for eight years." CBE Settlement Agreement at 23, *Corey H. v. Board of Education,* No. 92 C 3409 (N.D. Ill. Oct. 23, 1997). While the CBE sunset does not contain an "extraordinary circumstances" clause, it is treated by the Court as if it did. Soltman Interview, *supra* note 41.

[127] Kathleen Yannias, Monitor's Proposal for Final Date of *Corey H.* Litigation, *Corey H. v. Board of Education,* No. 92 C 3409 (N.D. Ill. Sept. 15, 2006) (on file with author).

[128] *Id* ("I am going to set the final date as September 1, 2010").

[129] Implementation Order at 2, *Corey H. v. Board of Education,* No. 92 C 3409 (N.D. Ill. Mar. 7, 2007) ("Plaintiffs' appeal of the Monitor's decision to extend the term of the settlement agreement to September 1, 2010 is denied. . . .The Board of Education of the City of Chicago's appeal of the Monitor's decision to extend the term of the settlement agreement to September 1, 2010 is denied. Consequently, the CPS settlement is extended in its entirety to September 1, 2010").

[130] Soltman Interview, *supra* note 41.

[131] Judge Gettleman recently told the Plaintiffs that, if they believe defendants are not on track to meet the standards for compliance by 2010, he wants to know now, not in 2009. Thus, the plaintiffs are currently establishing documents revealing that the CBE, since 2006, has made little progress toward compliance and that the 2010 date is accordingly unrealistic. Soltman Interview; *see also infra* note 183 and accompanying text (describing the most recent findings (from May 1, 2008) of the *Corey H.* monitor).

Unlike *Gaskin* and *Corey H.,* the six IDEA class actions currently being litigated by the Southern Poverty Law Center and Southern Disability Law Center[132] contain more plaintiff friendly language by effectively placing the burden for termination on the defendant school boards. For example, a Mediation Agreement with the East Baton Rough Parish School System in Louisiana maintains that "This agreement shall terminate at the conclusion of the 2008-2009 regular year *if EBRPSS has complied* with the Agreement's provisions and EBRPSS shall have no obligations under this agreement thereafter."[133] A settlement agreement involving the Calcasieu Parish Public School System in Louisiana, also brought by the Southern Disability and Southern Poverty Law Centers, contained an even more detailed and plaintiff friendly sunset provision:

> This agreement shall terminate three (3) years from the date the Consultant is hired by CPPSS if CPPSS has fully complied with the Agreement's provisions. Upon attaining compliance with the Agreement's provisions, CPPSS shall thereafter have no obligations under the Agreement. If CPPSS is not in full compliance with the provisions of the Agreement (including the measurable benchmarks and outcomes for determining the successful implementation of strategies, objectives, timelines listed in the Agreement) by the date specified herein, the Agreement shall continue until full compliance is manifested.[134]

Unlike the *Gaskin* and *Corey H.* clauses, compliance under the Calcasieu Parish Agreement is a condition for termination.

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[132] *See supra* notes 54-59.

[133] Mediation Agreement, East Baton Rouge Parish School System, September 16, 2006 at 5 (emphasis added). Notably, the Agreement continues by establishing a framework for how the parties are to determine the definition of compliance. The Agreement states:

> If the parties hereto . . . cannot agree on whether there has been compliance with the terms of this agreement and/or with the proper remedy for non-compliance, the parties shall meet and negotiate in good faith to resolve such issues between themselves. If such concerns are not amicably resolved with fifteen (15) days of such meeting, then either party shall have the right to seek enforcement of the terms of this Mediation Agreement in any State court of competent jurisdiction or in a district court of the United States.

Id. at 5.

[134] Negotiated Settlement Agreement at 6-7, Calcasieu Parish Public School System, (Oct. 11, 2007). *available at* http://www.splcenter.org/pdf/dynamic/legal/calcasieu101107.pdf. This Agreement defines compliance with the same language as the East Baton Rouge Mediation Agreement.

The termination provisions in *Mattie T.* are perhaps the most detailed of all the Southern Poverty cases. Unlike the cases referenced above, *Mattie T.* is an old case—it was originally filed in 1977 by the Children's Defense Fund[135] on behalf of all Mississippi school age children regarded by their Local Education Agency as disabled. In 1979 the state entered into a consent decree designed to fix three primary violations: 1) children with disabilities being excluded from an education, 2) African American children being wrongly labeled as having mental retardation, and 3) children with disabilities being isolated in separate and unequal classrooms.[136] Between 1979 and 2001, the Consent Decree "produced only limited changes in educational services with disabilities."[137] In December 2001, the Children's Defense Fund withdrew as plaintiffs counsel and were replaced by the Southern Disability Law Center. In the fall of 2003, after more than a year of extensive negotiations, the parties entered into a new Consent Decree, which established the following standards for termination:

> If after seven years from the entry date of the Decree, the Defendants have not attained the Child Find, LRE, and/or Non-Discriminatory Assessment/Evaluation termination criteria set forth in Paragraphs 11, 14 and 20, a hearing shall be held with the Court. The Defendants shall present a plan that entails additional steps to be taken to achieve the termination criteria. The Court may recommend changes to the plan. The Defendants however shall not be required to submit a plan if they elect to prove at this hearing that they have fulfilled IDEA's requirements governing Child Find, LRE and Non-Discriminatory Assessment/Evaluation and are therefore still entitled to partial or full termination of the Decree.[138]

The parties also agreed that, "during the first seven years after the entry of this Decree the Defendants shall not petition for full or partial termination unless they have attained

[135] Modified Consent Decree at 2, *Mattie T. v. Johnson,* No. DC75-31-S (N.D. Miss. Dec. 15, 2003).
[136] *Mattie T. v. Johnson* Information Page, Mississippi Center for Justice Website, *available at* www.mscenterforjustice.org/policy/juvenile2.html.
[137] *Id.*
[138] Modified Consent Decree at 13, *Mattie T. v. Johnson,* No. DC75-31-S (N.D. Miss. Dec. 15, 2003). The sunset clause also stated that, "failure of the Defendants to meet the termination criteria set forth in paragraphs 11, 14, and 20 shall not be deemed to be a breach of this Decree and contempt shall not be a remedy. *Id.*

the termination criteria established in Paragraphs 11, 14, and 20."[139] Those paragraphs established percentile standards for substantial compliance under the Child Find, LRE, and non-discriminatory assessment/evaluation provisions of the Agreement.

D. *Blackman v. District of Columbia*[140]

In *Blackman v. District of Columbia*, the parties agreed to a straight-forward sunset clause containing two substantive, easy-to-prove conditions:

> After December 15, 2006, Defendants may file a motion seeking termination of the Blackman case if: a) During the preceding 12 months, 90% of hearing requests were timely adjudicated (by the issuance of a final HOD) or settled; and b) No due process hearing requests are more than 90 days overdue.[141]

Notably, this sunset clause, unlike the *Gaskin* and *Corey H.* clauses, does not set a steadfast end date. Instead, termination is contingent on the defendant's achievement of two substantive conditions. The agreement continued to explain, in unmistakable terms, that no exceptions could be granted to these requirements:

> Before filing a motion for termination, Defendants shall give written notice to class counsel and the Monitor that they believe they are in compliance with paragraph 146 a & b [above]. If either class counsel or the Monitor questions the Defendants' compliance, class counsel or the Monitor, within 30 days of receipt of Defendants' notice, shall so notify Defendants in writing of the grounds on which they question compliance. If class counsel and the Monitor are satisfied that such compliance has been shown, the parties shall file a joint motion seeking dismissal of the underlying *Blackman* portion of the case, which includes Sections IV.A (timely hearings); and IV.D. (Student Hearing Office). Plaintiffs shall not unreasonably refuse to join in such a motion. In the event that class counsel refuse

[139] *Id.* Paragraph 11 established the standards for substantial compliance for the child find provision. It maintains that the Child Find rate must be "equal to or greater than seventy five (75) percent of the national average." *Id.* at 9. Paragraph 14 established the standards for substantial compliance with respect to the Least Restrictive Environment provisions. It requires, *inter alia,* that the percentage of students with disabilities in Regular Education Class Settings "increase from the current rate of twenty seven percent (27%) to thirty-two percent (32%). . .[and] [t]he percentage of students with disabilities in Self-Contained Class Settings . . . decrease from the current rate of twenty-nine percent (29%) to twenty-four percent (24%)." *Id.* at 10-11. Finally, Paragraph 20 established the standards for substantial compliance with respect to assessment and evaluation. It requires, *inter alia,* that "Every LEA . . . shall reduce its EMR identification rate differential to 1.15% or less [and] [e]very LEA . . . shall reduce its SLD identification rate differential to 1.85." *Id.* at 12-13.

[140] No.97-1629 (D.D.C. 2007).

[141] Consent Decree, *Blackman v. District of Columbia,* No.97-1629 (D.D.C. Aug. 24, 2006), *available at* http://www.bazelon.org/pdf/blackman-CD.pdf.

> to join in such a motion as requested by Defendants, Defendants may, on their own, file an appropriate motion with the Court. For purposes of determining whether Defendants are in *Blackman* compliance for termination, the requirements set forth in paragraph 146 a & b *have to be met absolutely*. Defendants waive any right they may otherwise have to argue that they are in "substantial compliance" with the requirements of paragraph 146 a & b if they are close to meeting them but have not absolutely met them.[142]

E. *Chanda Smith v. Los Angeles Unified School District*[143]

Chanda Smith is a class action law suit against the Los Angeles Unified School District ("LAUSD") that alleges wide-spread violations of the IDEA. The *Chanda Smith* Consent Decree was reached on April 15, 1996, after two independent consultants concluded that LAUSD was systematically out of compliance with 23 provisions of the IDEA. After five years of slow progress, attorneys for the plaintiffs, on August 14, 2001, filed a formal complaint with the Consent Decree Administrators that oversaw the *Chanda Smith* decree. In their words, the complaint challenged LAUSD to "fulfill the promises it made [in the 1996 Consent Decree], promises that remain only partially fulfilled."[144] The complaint was timely because it was filed, "at a time when [LAUSD] District officials have publicly backed away from the decree."[145]

In 2003-04 the *Chanda Smith* Consent Decree was modified. Under the modified decree, LAUSD was required to satisfy eighteen outcomes, focused on areas such as assessment, graduation/completion rates, suspensions, placement, transition, disproportionality, complaint response time, service delivery, parent participation, translations, teacher quality, and behavioral interventions. The modified decree also appointed an Independent Monitor to oversee implementation.

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[142] *Id.* (emphasis added).
[143] No. CV 93-7044-LEW (C.D. Cal. 1996).
[144] Press Release, ACLU of Southern California, *Chanda Smith* Attorneys Charge that LAUSD Has Failed to Fulfill Its Promises and Legal Obligations to Special Education Students (Aug. 14, 2001) *available* at http://www.aclu-sc.org/News/Releases/2001/100015/.
[145] *Id.*

The standards for termination in *Chanda Smith* are noteworthy for (1) the power that they place in the hands of the Independent Monitor and (2) their piecemeal approach. The decree provides that:

> On June 30, 2006, the Independent Monitor shall determine which outcomes have been achieved by the District. In connection with any outcome that has been achieved, the Independent Monitor shall issue a determination that the District is disengaged from such outcome and such outcome shall no longer be a part of this Modified Consent Decree. If all outcomes have not been met on June 30, 2006, the Independent Monitor shall periodically review the remaining outcomes to determine whether they have been achieved by the District. . . .Upon the Independent Monitor's certification that the District has achieved each of the outcomes . . . and, in the Independent Monitor's judgment, the District's special education program has no systemic problems that prevent substantial compliance . . .then Sections 5, 6, 7, 8, 9, 12, 13, and 18 of this Modified Consent Decree shall automatically terminate and have no further force or effect.[146]

In addition, termination of the modified decree requires that:

> The Independent Monitor has certified that the District has entered into binding commitments to expend the $67.5 million dollars required by Section 10 of this Modified Consent Decree and, in the Independent Monitor's judgment, the District has no systemic program accessibility problems that prevent substantial compliance with the program accessibility requirements of federal special education laws and regulations. Upon such certification by the Independent Monitor, the Modified Consent Decree shall automatically terminate.[147]

If either the plaintiffs or defendants disagreed with any determination of the Independent Monitor, "they may move the Court to set aside such determination. On such a motion . . . [the moving party] shall have the burden of proving that the Independent Monitor's determination or certification is not supported by substantial evidence."[148]

Unlike the standards set forth in the cases above, *Chanda Smith* gave the "impartial, neutral and independent" [149] Monitor primary authority to decide when the standards for termination were satisfied. Who had the burden to seek or deny extension, therefore, depended

[146] Modified Consent Decree at 23-24, *Chanda Smith v. Los Angeles Unified School District,* No. CV 93-7044-LEW (C.D. Cal. Apr. 21, 2003) *available at*.http://www.oimla.com/pdf/mcd_text_05122003.pdf.
[147] *Id.* at 24-25.
[148] *Id.* at 25.
[149] *Id.* at 5.

on the monitor's determinations, which could be overturned only if the party in opposition could prove that those determinations were not supported by substantial evidence.

Finally, unlike the settlements discussed above, under the *Chanda Smith* modified decree, the defendant school district could be released from judicial supervision one provision at time. Indeed, as of January 2008, LAUSD had met and been released from six of the eighteen outcomes; with respect to the remaining eleven outcomes, the modified consent decree remains in effect.[150]

2. Organizing IDEA Sunset Clauses Along a Two Dimensional Framework.

The sunset clauses described above, despite their wide variety, can each be distinguished along two dimensions—time deadlines ["the time dimension"] and the level of compliance required ["substantive dimension"]. First, IDEA sunsets vary with respect to how they treat time deadlines for termination. Some sunset clauses, such as *Gaskin* and *Corey H.*, are time-centered, with the burden for extension (if extension is even option) falling squarely on the plaintiffs. For example, in *Gaskin,* the settlement was to last for five years, without a provision for extension. In *Corey H.*, it was the plaintiffs who had the original burden of proving "extraordinary circumstances"[151] and it is the plaintiffs who currently must prove that the extended termination date of 2010 is not workable.[152]

Unlike *Gaskin* and *Corey H.*, the time provisions in the Southern Poverty and *Chada Smith* sunset clauses are largely aspirational; while time-deadlines are offered, they do not

[150] Office of the Independent Monitor, Report on the Progress and Effectiveness of the Los Angeles Unified School District's Implementation of the Modified Consent Decree during the 2006-07 School Year – Part II at 7 (Jan. 14, 2008) *available at* http://oimla.com/pdf/annrep4_docs/200607ConsentDecree_Report2_Final.pdf. In the Independent Monitor's words: "The IM assumes that the District and Plaintiffs, who developed the MCD [Modified Consent Decree], believed that the eighteen outcomes could be achieved by June 30, 2006. In last years report the IM determined that the District had met six of the outcomes. Of the three outcomes discussed in this Report the District has not met any of them. To date the District has met a total of seven outcomes. Of the remaining eleven it has made significant progress on most and is close to meeting some. Therefore the MCD continues to be in force." *Id*.

[151] *See supra* note 127.

[152] *See supra* note 132.

automatically trigger disengagement and they do not place a burden on the plaintiffs to convince the court to extend. In *Chada Smith,* for example, the passing of the June 30, 2006 deadline had little impact on the life of the consent decree, which remains in operation.[153] Further, while there are time deadlines proposed in the Southern Poverty settlements, they are not triggered unless the defendants satisfy substantive standards. For example, the *Calcasieu Parish* settlement is set to terminate after three years, but *only if* the defendant school district "has fully complied with the Agreement's provisions."[154] If the district fails to comply, "the Agreement shall continue until full compliance is manifested."[155]

Even more plaintiff friendly is the *Blackman* termination provision, which does not even suggest a termination date. Instead, it states simply that defendants "may file a motion seeking termination" after a specific time, but only if a range of substantive standards have been satisfied.[156] Accordingly, sunset clauses differ widely with respect to how they treat time deadlines and the simple existence of a deadline does not always mean that time is the controlling factor. Whereas some sunset clauses emphasize the time deadline and place a high burden on the plaintiff to win extension, others merely suggest a time deadline, to be followed only if defendants succeed in meeting substantive standards.

Second, IDEA sunsets can be categorized according to the level of compliance that they require. On the one end is the *Gaskin* sunset*,* which calls for termination regardless of the level of compliance, and on the other is the *Blackman* sunset, which requires "absolute compliance."[157]

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[153] *See supra* note 151.
[154] *See supra* note 135.
[155] *Id.*
[156] *See supra* note 142 and accompanying text.
[157] *See supra note* 143. Similar to *Blackman*, the *Calcasieu Parish* sunset states that, if the school board is not in full compliance by the termination date, "the Agreement shall continue until full compliance is manifested." Negotiated Settlement Agreement, *supra* note 135 at 6-7.

The *Corey H.* sunset—which requires "substantial compliance"—occupies part of the vast middle ground that lies between *Gaskin* and *Blackman.*[158] In their reply brief on the issue of extension, the *Corey H.* plaintiffs revealed that there are meaningful distinctions between substantial and full compliance standards when they explained that, "As all parties recognize, the standard here does not require that Chicago's performance of its obligations rise to 'exact compliance or perfection'[citation omitted]. To the contrary, as Plaintiffs and the Monitor show, Chicago has not accomplished most of what it was required to accomplish under the Agreement."[159] This is very different from the *Blackman* sunset, which, as explained above, stated that "Defendants waive any right they may otherwise have to argue that they are in 'substantial compliance'. . . if they are close to meeting [the agreement's standards] but have not absolutely met them."[160]

Where a sunset clause falls on the level of compliance continuum and time-based continuum has obvious ramifications for both plaintiffs and defendants. When a sunset clause emphasizes time-deadlines over compliance, the plaintiffs may face an uphill battle in seeking extension, especially when the sunset places the burden of proof on the plaintiffs, as in *Gaskin* and *Corey H.* Conversely, when a sunset clause emphasizes compliance standards over time-deadlines, plaintiffs may more easily convince courts to extend settlements. As the vast majority of IDEA sunset clauses discussed above are set to expire before 2010, this hypothesis should soon be tested.

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[158] The definition of substantial compliance has been at the center of the *Corey H.* litigation and is discussed in detail in section three below.

[159] Plaintiffs' Reply to the Chicago Board's Combined Response to Plaintiffs' Motion for, and the Monitor's Recommendation of, Extension of Chicago's Settlement Agreement at 2, *Corey H. v. Board of Education,* No. 92 C 3409 (N.D. Ill. 2005) (on file with author).

[160] Consent Decree, *Blackman v. District of Columbia,* No.97-1629 (D.D.C. Aug. 24, 2006), *available at* http://www.bazelon.org/pdf/blackman-CD.pdf.

3. The Termination Litigation in *Corey H. v. Board of Education*—A Closer Look.[161]

Corey H. is an especially interesting case because it seems to disprove this logic; the court, after all, approved a four year extension in the face of a time-focused sunset clause that required proof of "extraordinary circumstances." A deeper analysis of the *Corey H.* extension litigation is therefore warranted.

A. *Background to the Corey H. Settlement and Sunset.*

Before discussing the *Corey H.* termination litigation, it is important to understand how and why the case originally settled. In 1993, upon plaintiffs' request, the court appointed a panel of Joint Experts with diverse backgrounds, experiences, and perspectives to investigate and draw conclusions about the plaintiffs' claims. While the Joint Expert report was not publicly released,[162] the experts briefed the parties on their findings and later testified for the plaintiffs at trial. One expert, Dr. Brian McNulty, testified that there were "continuing systemic violations of the LRE mandate in Chicago and Illinois."[163] Another expert, Dr. Alice Udvari-Solner, testified that, *inter alia,*

> there was an overwhelming pattern in which the categorical label given a student through the evaluation process automatically determined the nature of the student's placement. . . . IEPs consistently failed to justify the placement of students in segregated settings, as opposed to less restrictive settings. . . . Regular classroom educators and school administrators did not have a clear understanding of what the LRE meant or how it should be implemented.[164]

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[161] *Corey H.* has a long and complicated history—according to Sharon Soltman, the sheer volume of documents created for the litigation are enough to fill a large garage. Accordingly, it is beyond the scope of this analysis to tell the complete story of *Corey H.* This paper focuses, therefore, only on the litigation surrounding the issue of termination. For a more detailed discussion of the background, history and timeline of *Corey H.,* see Soltman Report, *supra* note 70.

[162] As defendants did not want a devastating report available to the public, they requested, and plaintiffs agreed, that the Experts could testify at trial but that the Report would not be publicly released. Soltman Interview, *supra* note 41.

[163] Soltman Report, *supra* note 70, at 25 (citing *Corey H.* Trial Tr. at 454 and 451 (McNulty)).

[164] *Id.* at 26 (citing *Corey H.* Trial Tr. at 290-298 (Udvari-Solner)).

After the Joint Experts' findings, both sides knew that the plaintiffs' claims had merit and that the potential for extensive findings of liability was real. The comprehensive nature of the Joint Expert findings shaped the breadth and intensity of the plaintiffs' litigation strategy and, consequently, of the ensuing settlement negotiations. The final CBE settlement reflected this understanding; it contained provisions on a vast array of special education services, ranging from student placements, support services, and teacher training to the allocation of staff, the formation of IEP's, the personnel required at IEP meetings, integration during non-academic and extracurricular activities, social work and psychological services, and the provision and training of classroom aids.

Compared to the extensive and complex debate over these substantive areas (negotiations with both the CBE and ISBE lasted for over three years), the sunset clause negotiation was relatively straightforward. While the plaintiffs argued against inclusion of a sunset, the judge supported having one and the defendants refused to proceed without one. In the CBE settlement, which was preliminarily approved by the court on October 23, 1997, one week before trial, the plaintiffs agreed to a sunset with a steadfast termination date and no mention of extension.[165]

At the end of October of 1997, the plaintiffs went to trial with the ISBE and on February 19, 1998 the court found that ISBE was in violation of the IDEA for its continuing failure to ensure that, *inter alia*,

> Placement decisions are based on each student's individual needs as determined by his or her IEP. . . .LRE violations are identified and corrected. . . .Teachers and administrators are fully informed about their responsibilities for implementing the LRE mandate and are provided with the technical assistance and training necessary to implement the mandate. . . .Teacher certification standards comply

[165] *See supra* note 127.

> with the LRE mandate. . . .[and] State funding formulas that reimburse local agencies for educating students with disabilities support the LRE mandate.[166]

The plaintiffs' negotiating strength was obviously enhanced following the trial court's finding of liability against the ISBE. As a result, in the ensuing settlement discussions with ISBE from January until March of 1999, the plaintiffs convinced ISBE to include a provision on extension in the sunset clause. While the plaintiffs argued for terms less extreme than "extraordinary circumstances," they were willing to concede to the language in order to finalize the settlement.[167] Following the ISBE settlement, Judge Gettleman has interpreted both settlements under the "extraordinary circumstances" standard.[168]

B. *The Extension Litigation.*

As time passed, it became clear that neither defendant would be in compliance with the substantive provisions of the settlement by 2006. As explained above, the plaintiffs moved in 2005 to extend the life of the settlement and the court responded by appointing a monitor to issue a report with recommendations for a reasonable termination date, which the monitor ultimately set at September 1, 2010.[169]

Both parties appealed the Monitor's report. In a fifty-nine page appeal, the CBE argued that the settlement should terminate on the established date of January 16, 2006 because, *inter alia,* the plaintiffs failed to meet their burden of establishing a basis for extension while the defendants had demonstrated substantial compliance with the settlement's terms.[170]

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[166] Soltman Report, *supra* note 70, at 31.
[167] Soltman Interview, *supra* note 41.
[168] *Id*.
[169] *See supra* note 128.
[170] The Board of Education for the City of Chicago's Combined Response to Plaintiffs' Oral Motion to Modify the Parties' Settlement Agreement and the Monitor's Report at 58, *Corey H. v. Board of Education,* No. 92 C 3409 (N.D. Ill. 2005) (on file with author). The Chicago Board of Education (CBE) explained that,

> Substantial compliance with a consent decree remains the key factor in determining whether an extension of the consent decree should be deemed appropriate. However, while existing case law does not provide a concrete definition of substantial compliance, it is evident that the Seventh Circuit directs that institutional reform should be handed back to the state governments and freed from judicial supervision as soon as practicably possible.

In its brief against extension, CBE argued that,

> Substantial compliance with a consent decree remains the key factor in determining whether an extension of the consent decree should be deemed appropriate. However, while existing case law does not provide a concrete definition of substantial compliance, it is evident that the Seventh Circuit directs that institutional reform should be handed back to the state governments and freed from judicial supervision as soon as practicably possible.[171]

The CBE continued by arguing that, in the context of settlement agreements, substantial compliance is found "if a party makes good faith efforts to perform its obligations during the term of the settlement agreement."[172] Under these standards, the CBE maintained that its "good faith efforts demonstrate its substantial compliance with these obligations as a whole."[173]

In response, the plaintiffs maintained that "Chicago's argument that good faith effort equals substantial compliance is contradicted by logic and overwhelming case law."[174] After a detailed analysis of the case law, plaintiffs explained that:

> there is simply no justification . . . for Chicago's argument that, if it could show its good faith efforts to comply with the Agreement, such efforts by themselves, in the absence of actual substantial compliance, would be sufficient to establish that the Board has substantially complied with its obligations under the Agreement. In the absence of impossibility, which Chicago has not attempted to show, substantial compliance requires results.[175]

With respect to the 2010 deadline, the plaintiffs argued that, "the Monitor's determination for a date of extension is not based on a realistic assessment of what effort and time will be needed for the Chicago Board to comply with its Consent Decree."[176] The plaintiffs maintained

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Id. at 9. The CBE continued to explain that its good faith efforts to satisfy the terms of the settlement were sufficient. *See infra* notes 173, 180.

[171] *Id.*

[172] Id. at 10 (citing *Covington-McIntosh v. Mount Glenwood Memory Gardens*, No. 00 C 0186, 2003 WL 22359626).

[173] *Id.* at 11.

[174] Plaintiffs' Reply to the Chicago Board's Combined Response to Plaintiffs' Motion for, and the Monitor's Recommendation of, Extension of Chicago's Settlement Agreement at 2, *Corey H. v. Board of Education,* No. 92 C 3409 (N.D. Ill. 2005) (on file with author).

[175] *Id.* at 6.

[176] Plaintiffs' Appeal of the Monitor's Determination to Establish a Final Extension Date of September 1, 2010 for Compliance with the Chicago Board's Obligations Under the Consent Decree at 11, *Corey H. v. Board of Education,* No. 92 C 3409 (N.D. Ill. Jan. 18, 2007).

that, "The termination date . . . should be determined on the basis of relevant data rather than speculation, wishful thinking or frustration."[177] Accordingly, plaintiffs asked the court to rule that the end date "be established as the point at which the Chicago Board has demonstrated to the satisfaction of the Monitor and Court that it is in compliance with its Consent Decree or, alternatively, that the Court shall defer establishing a final date until June 2007 when more information is available."[178] In short, the plaintiffs sought to revamp the sunset clause from a time-centered to compliance-centered focus.

With the 2010 extension, therefore, the court struck a middle ground. The defense did not prevail because, by 2005, there remained extreme non-compliance with the substantive goals of the settlements. The defendants' "good faith" compliance argument was flatly rejected by the court, which held that such an interpretation was "clearly incorrect . . . even a good faith variance from an indicator can result in a finding of a failure of substantial compliance"[179]

The plaintiffs, however, also failed to win an open-ended extension. The 2010 deadline contains no extension provision and the judge appears committed to ending the litigation.[180] As a result, the legal battle over substantial compliance and termination continues. The plaintiffs, concerned that the defendants are intentionally dragging their feet on compliance in the hope that the case will come to a close in two years, recently asked that the monitor file reports detailing everything that has been and remains to be accomplished. If the plaintiffs can establish an ongoing record of non-compliance, so the argument goes, the court will not allow them to escape liability come 2010.

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[177] *Id.* at 1. The Plaintiffs further explained that "the education of Chicago's students with disabilities in the least restrictive environment is too important to decide the date for termination . . . on a guess or on simply the wish to get this long-standing case over with." *Id.*

[178] *Id.* at 11.

[179] Order Regarding Chicago Board of Education's Appeal of Monitor's Decision on Illinois State Board of Education's District-Wide Findings Date November 1, 2005 at 4, *Corey H. v. Board of Education,* No. 92 C 3409 (N.D. Ill. Feb. 28, 2006).

[180] Soltman Interview, *supra* note 41.

In the most recent compliance report, released on May 1, 2008, the monitor provided status updates on a range of key settlement issues. Her findings cast doubt on both the CBE and ISBE's ability to comply with the primary requirements of the settlement by 2010. First, under the "Education Connection" provision of the *Corey H.* settlement, 178 schools must restructure their implementation of the LRE mandate by 2010.[181] The Monitor explained that CBE has not come close to achieving this goal: "The most critical number in this analysis – the number of schools found in compliance – is 38, 140 short of the required number of schools to be found in compliance."[182] Although the Monitor maintained that, "[n]o conclusions can be reached at this time about the ability of the Chicago Board to meet the requirement of 178 EC schools in compliance by 2010," she also explained that reaching these goals "would be a very ambitious undertaking for the Chicago Board and would exceed by a huge factor the number of compliance reports received by the Monitor in the past four years."[183] The Monitor made similar findings for other key settlement issues, such as the ISBE monitoring and sufficient staffing requirements.[184]

[181] To accomplish this goal, the Education Connection program provides participating schools with $110,000 over a three-year period: in year one, the school receives $10,000 to develop its LRE plan and in years two and three, the school receives $50,000 per year to implement the plan. Soltman Report, *supra* note 70, at 41.

[182] Monitor's Status Report at 2, *Corey H. v. Board of Education,* No. 92 C 3409 (N.D. Ill. May 1, 2008) (on file with author).

Id.

[183] *Id.* at 3.

[184] Under the ISBE monitoring requirements, 285 schools must be monitored by ISBE and, as a result, 227 school must be found in compliance after two-years. The Monitor concluded that, "Similar to the [Education Connection] school-based monitoring program, no conclusions can be drawn at this time about whether the ISBE will meet its compliance requirements." *Id.* at 5. However, the Monitor also suggested that compliance by 2010 would be very hard to achieve:

> Unfortunately, there is substantial fall-off of completion in the number of schools found in compliance with *Corey H.* Of the 209 schools with two-year reports completed by the ISBE (four of the original schools have closed), only 57 of the schools have been found in compliance and have thus "exited" the ISBE program as of April 14, 2008. The remaining schools continue to require supplemental continuous improvement activities in order to meet the Benchmarks, LRE Indicators and other *Corey H*. compliance factors.

Id.

With respect to staffing, both settlements provide that the "Chicago Board shall ensure that each school has special education staff, paraprofessional staff and related services sufficient to provide students with disabilities an education in the LRE . . . ." *Id.* The precise standards for compliance under this provision remain in dispute. The Monitor explained that, "The parties still have yet to determine what 'sufficient staff' compliance will actually be. From Court filings, it is clear that the parties have a difference of opinion as to what sufficient staffing would entail. The Monitor will be calling meetings to discuss this

Thus, although there is no extension provision under the current 2010 deadline, it appears as though the parties are on track for further extension litigation. If the defendants continue to fail to meet the substantive requirements, the plaintiffs will likely argue that, for the same reasons extension was granted in 2005, it must again be granted in 2010.

V. The Sunset Clause as a Reflection of the Nature of the Remedy Sought.

Now that we have established that there is wide variety in IDEA sunset clauses, looked closely at one example of extension litigation, and concluded that a sunset clause can have a large impact on the nature and direction of a case, it is appropriate to ask why such variety exists in the first place. In this final section, I suggest that the variety in IDEA sunset clauses is likely a reflection of the variance in the scope of plaintiffs' litigation strategies as well as, to a lesser degree, the particularized strengths and weakness of the individual case prior to settlement. As a precautionary note, it is important to recognize that, because my sample size is small, it is not possible for this paper to draw firm conclusions on this issue. Instead, this analysis, qualitative in nature, is intended only to suggest a plausible hypothesis that, to be properly tested, would require further empirical investigation.

On first impression it may appear that, in cases with stronger indicia of school board non-compliance going in, such as *Corey H.* and *Mattie T.,* plaintiffs should be better positioned to negotiate favorable sunset clauses. While the strength of the case is undoubtedly relevant to the content of its sunset (the *Corey H.* plaintiffs, for example, were able to include an extension provision only after the finding of liability against ISBE), the diversity in IDEA sunset clauses must be attributable to more than factual strengths and weaknesses. *Corey H.* reveals this point well: despite the plaintiffs negotiating leverage following the Joint Expert report and the trial

issue." *Id.* at 6.

court's finding of liability against ISBE, the plaintiffs agreed to a sunset clause that, compared to the many others described above, appears defendant-friendly.

It is more likely that IDEA sunsets vary because they are pragmatic reflections of what the plaintiffs seek to accomplish. To illustrate this point, this section addresses both the substantive and time dimensions of IDEA sunsets. .

1. The Substantive Dimension of IDEA Sunset Clauses.

Both the breadth (the sheer number of issues addressed) and depth (the nature of the remedy for each issue) of a litigation strategy can have an important impact on the terms of a sunset clause. First, the sheer number of issues addressed by plaintiffs is relevant to how the parties might draw up a sunset. For example, there were so many issues on the table during the *Corey H.* settlement that it would have been extremely difficult, unlike in the more targeted cases, to deduce standards of compliance for each element into the sunset.[185]

More critical than the sheer number of issues addressed is the nature and depth of the remedies that the plaintiffs' lawyers seek for each substantive issue. It is possible, for example, to image a litigation strategy that pursues narrow, highly targeted remedies for a wide-range of substantive issues. To illustrate this point, it is useful to compare the LRE relief sought in *Mattie T.* and *Corey H.,* both cases that address multiple IDEA issues.

Both *Mattie T.* and *Corey H.* seek to reform the defendant school district's provision of special education in the least restrictive environment. The nature of the relief that they seek, however, is markedly different. In *Mattie T.,* the parties have established easily quantifiable percentile goals: the settlement states that the percentage of students with disabilities in "Regular Education Class Settings [must]. . . increase from the current rate of twenty seven percent (27%)

[185] Sotlman Interview. *But see* Modified Consent Decree at 23-24, *Chanda Smith v. Los Angeles Unified School District,* No. CV 93-7044-LEW (C.D. Cal. Apr. 21, 2003) *available at*.http://www.oimla.com/pdf/mcd_text_05122003.pdf. In *Chanda Smith,* the parties did create a sunset that included detailed provisions on a large number of issues. *See supra* note 147 and accompanying text.

to thirty-two percent (32%). . . [and] [t]he percentage of students with disabilities in Self-Contained Class Settings . . . decrease from the current rate of twenty-nine percent (29%) to twenty-four percent (24%)."[186]

The plaintiffs in *Corey H.* took a more holistic yet harder to quantify remedial approach. In crafting their litigation strategy, they reasoned that percentile changes, while important and easy to measure, would not be enough to bring about real change in the quality of special education. Thus, in addition to seeking improvements in the number of students in integrated settings, the *Corey H.* plaintiffs sought to improve the actual delivery of that education by addressing, *inter alia,* the adequacy of supports and services in LRE, the level at which administrators and teachers understand LRE, the amount of common planning time for specialists and regular classroom teachers, the level of integration during non-academic activities, the provision of individual and classroom aids, the quality of transition planning to the less restrictive environment, and the quality of classrooms and materials.

Whereas the percentage of students taught in integrated settings is statistically quantifiable, most of these other efforts are non-tangible and therefore extremely difficult to measure. The lawyers in *Corey H.* chose this more difficult road because they believe that it is the only way to change how teachers and administrators behave and therefore impact what actually goes on in the classroom.[187] While the numbers are a good start, they reasoned, they are not enough to effect the needed systemic change.

This is critical to the issue of termination because it makes "compliance" very difficult to establish. Accordingly, the potential for extensive litigation on termination—and more

[186] Modified Consent Decree, *Mattie T. v. Johnson,* No. DC75-31-S, at 10-11 (N.D. Miss. Dec. 15, 2003)
[187] Soltman Interview, *supra* note 41.

specifically on the definition of compliance—becomes far more likely when the plaintiffs seek holistic, hard-to-quantify remedies.

In a focused litigation with clear, narrow goals, to the contrary, there is likely to be less controversy, and thus less litigation, over the substantive conditions that should trigger judicial disengagement. In the Southern Poverty cases, for example, the goals were narrow and targeted enough that the parties were able to craft specific, substance-driven sunset clauses. Similarly, in *Blackman,* a case about the enforcement of impartial hearing orders, it was possible to create a straight-forward sunset clause containing two easy-to-prove conditions: as explained above, the parties agreed to termination if 90% of hearing requests were timely adjudicated during the preceding 12 months and no due process hearings were over 90 days overdue.[188]

Finally, in addition to the factors listed above, it is important to mention that in comprehensive cases, when the goal is whole-sale reform of special education, the parties may craft vague and open-ended sunset clauses out of necessity. In *Corey H.*, for example, the plaintiffs recognized that the standards for compliance were dynamic and likely to fluctuate over time. They reasoned, and the defendants and court agreed, that compliance would inevitably be a moving target that would have to be defined and continually assessed and reassessed over time.[189] From this perspective, *Corey H.,* unlike many other IDEA class actions, appears consistent with what Professors Charles Sabel and William Simon have labeled the "experimentalist" approach to public law litigation.[190]

[188] *See supra* note 142.

[189] In addition, the parties in *Corey H.* recognized that a vague sunset clause was necessary in order to settle the case. As both sides were eager to settle, the vague sunset was an implicit agreement that the precise definitions of compliance would be hammered out over the course of the settlement.

[190] Sabel and Simon argue that public law litigation has "moved away from remedial intervention modeled on command-and-control bureaucracy toward a kind of intervention that can be called 'experimentalist.' Instead of top-down, fixed-rule regimes, the experimentalist approach emphasizes ongoing stakeholder negotiation, continuously revised performance measures, and transparency. Experimentalism is evident in all the principal areas of public law intervention--schools, mental health institutions, prisons, police, and public housing." Charles Sabel and William Simon, *Destabilization Rights: How Public Law Litigation Succeeds,* 117 HARV. L. REV. 1015, 1016 (2004). Writing specifically about IDEA class actions, the authors explained that much of the litigation, "seems to have

2. The Time Dimension of IDEA Sunset Clauses.

The relationship between the scope of the litigation strategy and the time-dimension of sunset clauses is less certain and, because this paper only draws on a small sample of IDEA class actions, it is beyond its scope to draw conclusions on the subject. The cases that this paper does address, however, suggest that a pattern may exist: the cases that most heavily emphasized time over substance, *Gaskin* and *Corey H.,* both adopted a comprehensive approach, whereas those that emphasize substance over time, such as *Blackman* and the Southern Poverty Cases, adopted a more targeted, narrow approach.

The stronger emphasis on time-deadlines in comprehensive cases, if indeed such a pattern exists, could be explained by America's historic and ongoing commitment to the idea of local control of public education.[191] In the comprehensive cases like *Corey H.*, where the goal is whole-sale special education reform, there is high potential that compliance, if reachable at all, may take decades to achieve.[192] The same fears do not exist in the context of targeted cases with limited remedies because the goals are smaller, more precise, and therefore more easily attainable over a short timeframe. Absent the fear of perpetual judicial involvement, it may become easier for defendants to agree to, and courts to accept, sunset clauses that emphasize substance over time.

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taken on a command-and-control orientation involving elaborate rule-bound administrative regimes focused on such matters as the timeliness of processing student evaluations, the number and qualifications of personnel, and student placement practices." *Id.* at 1027. *Corey H.,* because it breaks this mold, appears to be part of a new, experimentalist approach to IDEA class actions.

[191] The Supreme Court has explained, in the desegregation context, that the "ultimate objective" of a remedy is to "return schools districts to the control of local authorities." *Freeman v. Pitts,* 503 U.S. 467, 489 (1992).

[192] For proponents of local control, the story of *Jose P.* highlights the point that sunset clauses are necessary in comprehensive cases. Sandler and Schoenbrod explain that, "In 1979, the Board of Education consented to a court order [*Jose P.*] controlling special education. Now, 24-years, three mayors, and nine chancellors later, the special-ed budget is still protected by judicial fiat . . . [the] judge's order has transformed a desirable city program into an untouchable judicial fiefdom." Ross Sandler and David Schoenbrod, *Schools in Handcuffs, How Courts (Mis)rule N.Y.C,* N.Y. POST (March 14, 2003). The authors explain that sunset clauses are a critical solution to limiting such ongoing judicial supervision, arguing that, to prevent decrees from taking on "a life of their own," Congress should "compel termination of decrees after a fixed time. . ." Ross Sandler and David Schoenbrod, *Consent Decrees: Governance by Lawyers*, THE NATIONAL LAW JOURNAL, (Jan. 20, 2003).

In addition to the potential for longer terms of judicial involvement, comprehensive cases are viewed as democratically problematic because they tend to pose a greater threat to local autonomy. In cases with narrow, targeted goals—such as the enforcement of a certain percentage of orders in a specific amount of time or the education of a specific percentage of students in integrated classrooms—the threat to local control is minimal. Local officials are told that they must reach certain benchmarks, but they are left free to decide for themselves how to get there. In comprehensive cases, to the contrary, decisions that are traditionally the central responsibility of local officials—such as budget allocations and setting policy priorities—fall under the purview of the court. Consequently, there is greater fear that education will be run by unelected officials, such as judges, lawyers, and court-appointed referees, rather than by the officers elected to express the will of the people.[193] Under this framework, it is easy to imagine how strict time-deadlines can be especially important in comprehensive cases; because the threat of local usurpation appears much greater, courts concerned with local control issues are likely to prefer sunset clauses with strict time limits.

VI. Conclusion.

Unlike other areas of public law litigation, the standards for termination in IDEA class actions, most often lodged in negotiated sunset clauses, vary widely from case-to-case. Whereas some sunset clauses emphasize finality by setting strict time deadlines for termination, others emphasize substantial or total compliance by requiring defendants to achieve specific results before any "deadlines" can be triggered. This paper—subject to limitations because of its small

[193] Sandler and Schoenbrod argue that, "despite the conventional wisdom that decrees put the judge in charge of government agencies, judges usually turn over operative control of the mandates to a group composed of plaintiffs' attorneys, court-appointed functionaries and unelected officials. This "controlling group" often acts in secrecy and directs the programs outside democratically accountable channels of government. The decrees written and administered by the controlling group are highly detailed and often stay in force for decades." Ross Sandler and David Schoenbrod, Democracy by Decree Talking Points, *available at* http://www.democracybydecree.com/html/talking_points.html.

data set—has suggested, *inter alia,* that the terms of sunset clauses may be influenced by the types of remedies that the plaintiffs seek. When the plaintiffs seek targeted, easily defined remedies, the parties may more likely agree to sunset clauses that contain precise compliance goals, in large part because the exacting nature of the remedy leads to easily quantifiable standards that both parties can agree to. Further, when the remedies are targeted, the sunset clause is more likely to emphasize compliance over time-deadlines because, *inter alia,* traditional local control fears have less force; whereas comprehensive cases threaten to usurp local authority on critical matters such as the allocation of spending and the creation of policy, targeted cases create particularized goals, but tend to leave local officers with wide discretion on how to reach them. This greater threat to local control in comprehensive cases raises separation of powers and judicial legitimacy questions that carry much force throughout this country. Sunset clauses with strict time-deadlines may be more common in comprehensive cases, therefore, because they are one way to assuage that threat.

This paper focused on Chicago's *Corey H.* case in large part because it continues to live through the tensions between finality and compliance. *Corey H.*, arguably the most comprehensive of all IDEA class actions, was governed until 2005 by an ambiguous sunset clause that required "extraordinary circumstances" for extension. Because the defendants failed to comply with the settlement's most basic terms, however, the court extended the life of the case until 2010. As the defendants are again far behind schedule, and as the plaintiffs are already building their case for a second extension, the court, come 2010, may very well be forced to once again juggle the competing goals of finality and substantial compliance.

The issue of termination has been central to the debates over institutional reform litigation since its inception. The IDEA class action case category, because of the immense

diversity in the standards for termination, presents a fertile ground for analysis of this issue. This paper has attempted to reveal not only the range of standards that govern termination in the IDEA context, but also the factors—such as the scope of the litigation strategy—that influence the creation of those standards as well as how they are interpreted and applied by lawyers, court-appointed officers and judges over the life of individual cases. As most of the sunset clauses discussed above are set to expire within the next two years, the hypotheses addressed in this paper are likely to soon be tested.

APPENDIX: CASE CATALOG

Mattie T. et al. v. Johnston
Trial Court Docket #:
Civil Action No. DC75-31-S

Citations:
74 F.R.D. 498 (N.D.Miss. Oct 04, 1976)

Plaintiff Organization
Jim Comstock-Galagan, Southern Poverty Law Center
Southern Disability Law Center

Filing Date
12/15/2003

Notes/Parties of Interest
-Ongoing
-Plaintiffs**:** All Mississippi students with educational disabilities
-Defendants: The Superintendent of the Mississippi Department of Education

Caddo Parish Special Education
Plaintiff Organization
Southern Poverty Law Center
Juvenile Justice Project of Louisiana
Walker and Lyons

Filing Date
12/13/2006

Notes/Parties of Interest
-Ongoing
-A class administrative complaint against the Caddo parish, Louisiana, school district. The complaint was filed on behalf of all special education students who manifest behavioral issues and are subject to repeated disciplinary removals from school (including suspensions and placement in alternative schools).

Calcasieu Parish Public School System
Plaintiff Organization
Southern Poverty Law Center
Southern Disability Law Center

Filing Date
09/21/2007

Notes/Parties of Interest/\
-Settled, October 11, 2007.
-Defendant = Calcasieu Parish Public School System, LA.
-At the Calcasieu Parish Public School System in Louisiana, students with disabilities or emotional disturbances found themselves pushed out of the classroom by a school system that arbitrarily shortened their school day and removed students from class with little reason.

East Baton Rouge Special Education
Plaintiff Organization
-Southern Poverty Law Center (Eden B. Heilman)
-Southern Disability Law Center (James Comstock-Galagan)
-Juvenile Justice Project of Louisiana

Filing Date
05/10/2006

Notes/Parties of Interest
-Mediation Agreement, Sept 18, 2006
-Defendant = Calcasieu Parish Public School System, LA.
-Plaintiffs = This case is a class administrative complaint on behalf of all special education students in the Calcasieu Parish Public School System.

-In May 2006, the Southern Poverty Law Center obtained a class-wide settlement agreement affecting all special education students with Emotional Disturbance in Jefferson Parish.

Emma C. v. Delaine Eastin, et al.
Trial Court Docket #:
Case No. C-96-4179

Citations:
-985 F.Supp. 940 (N.D. California, 1997)
-Not Reported in F.Supp.2d, 2001 WL 1180638 (N.D.Cal. 2001)
-Not Reported in F.Supp.2d, 2001 WL 1180636 (N.D.Cal. 2001)
- 2007 WL 4554321 (N.D.Cal. 2007)

Plaintiff Organization
-Disability Rights Education & Defense Fund (Diane Lipton—lawyer)
-East Palo Alto Community Law Project (Bill Koski-lawyer)
-Sagy Law Associates (Rony Sagy)

Filing Date
1996

Notes/Parties of Interest
-Settled
-Defendant's = California Department of Education; Ravenswood School District in East Palo Alto

-A suit filed in 1996 on behalf of hundreds of children with disabilities in the Ravenswood School District in East Palo Alto, California demanded that the District and the California Department of Education comply with federal laws ensuring a "free appropriate public education" to all children with disabilities.

Holmes County
Plaintiff Organization
Southern Poverty Law Center
Citizens For Quality Education
Mississippi Youth Justice Project

Filing Date
05/30/2007

Notes/Parties of Interest
-Settled, Aug.16, 2007.

-Plaintiffs: Lavonta Anderson, et. al
-Defendants: Holmes County School District

Jefferson Parish
(In Re: G.D.; K.S.; and J.T., et. al. v .Louisiana Department of Education, Board of Elementary and Secondary Education)

Trial Court Docket #:
Log 45-H-41

Plaintiff Organization
Southern Disability Law Center and Southern Poverty Law Center

Filing Date
02/01/2005

Notes/Parties of Interest
•In August 2005, the Southern Poverty Law Center obtained a class-wide settlement agreement affecting all special education students with Emotional Disturbance in Jefferson Parish.

Ray M. v. Board of Education et. al.
Trial Court Docket #:
No. CV 94-1103.

Citations:
884 F.Supp. 696; 100 Ed. Law Rep. 599; 10 A.D.D. 958.

Plaintiff Organization
Advocates for Children of New York; Puerto Rican Legal Defense Fund; Davis, Polk; Wardwell, Stults and Balber.

Filing Date
03/11/1994, in the Eastern District of New York.

Notes/Parties of Interest
Settled in 1999.

Lopez v. S.F. Unified Sch. Dist.
Trial Court Docket #:
No. C99-03260 SI.

Citations:
385 F. Supp. 2d 981, 1002-04 (N.D. Cal. 2005)

Notes/Parties of Interest
Awarding attorney's fees to the plaintiff in systemic litigation over the provision of services in the least restrictive environment.
Note—this case was brought under ADA.

Background---Student and adult users of school properties brought disability access case against school district under Americans with Disabilities Act and parallel state laws. Following settlement, plaintiffs moved for an award of attorney fees and costs.

Larry P. v. Riles
Trial Court Docket #:
71-2270

Citations:
793 F.2d 969, C.A.9 (Cal. 1984); 495 F.Supp. 926, N.D.Cal.1979;502 F.2d 963, C.A.9 (Cal. 1974); 343 F.Supp. 1306, N.D.Cal.1972

Notes/Parties of Interest
Settled

Defendant = Wilson Riles, Superintendent of Public Instruction for the State of California,

Black students brought class action challenging process, especially use of I.Q. tests, used in placing children in special classes for the educable mentally retarded.

Panitch v. State of Wisconsin
Trial Court Docket #:
72-461

Citations:
79 F.R.D. 452, E.D.Wis 1978; 451 F.Supp. 132, E.D.Wis.1978; 444 F.Supp. 320, E.D.Wis.1977; 76 F.R.D. 608, E.D.Wis.1977; 70 F.R.D. 577, E.D.Wis.1976; 390 F.Supp. 611, E.D.Wis.1974; 371 F.Supp. 955 1974

Plaintiff Organization
Peregrine, Marcuvitz, Cameron & Pelton
Amicus→ Bruce Meredith, Staff Counsel, Wis. Ed. Ass'n Council, Madison, Wis.

Notes/Parties of Interest
Settled

Defendants = The State of Wisconsin, Barbara Thompson, State Superintendent of Public Instruction, the State Department of Public Instruction, Board of School Directors of the City of Milwaukee, Individually, and as a member of a class.

Outcome→ injunctive order in civil rights class action requiring defendant state and local school district officials to properly provide all members of plaintiff class of handicapped children with education at public expense sufficient to their needs and generally equivalent to education provided to non-handicapped children.

Lora v. Board of Education
Trial Court Docket #:
No. 75 Civ. 917.

Citations:
587 F.Supp. 1572 (1984); 623 F.2d 248, C.A.2 (N.Y. 1980); 456 F.Supp. 1211 (1978); 4 F.R.D. 565 (1977); 429 U.S. 980 (1976); 538 F.2d 311 (1976);

Plaintiff Organization
Lenore Gittis, The Legal Aid Society, Juvenile Rights Division

Notes/Parties of Interest
Dismissed
Defendant = NYC Board of Education

Battle v. Pennsylvania* (combined with *Armstrong v. Kline)
Trial Court Docket #:
79-2158, 79-2188 to 79-2190, and 79-2568 to 79-2570

Citations:
513 F.Supp. 425 (1980); 629 F.2d 269, C.A.3 (Pa.1980); 476 F.Supp. 583, E.D.Pa. 1979

Plaintiff Organization
Janet F. Stotland, Education Law Center, Philadelphia, Pa., Sylvia Meek, Philadelphia, Pa., for plaintiff.

Notes/Parties of Interest
-Settled
-Five handicapped children and their parents commenced three class action suits alleging that State Secretary of Education, school districts, private schools and others violated children's rights by denying them free publicly funded education in excess of 180 days.

S-1 v. Turlington
Trial Court Docket #:
79-8020

Citations:
646 F.Supp. 1179 (1986); 454 U.S. 1030 (1981); 635 F.2d 342, C.A.5 (Fla. 1981); 476 F.Supp. 583, E.D.Pa. 1979

Plaintiff Organization
Kathleen B. Boundy and Robert Pressman, Center for Law and Education, Cambridge, Mass

Notes/Parties of Interest
-Settled
-Defendant→ Ralph D. TURLINGTON, individually and in his capacity as Commissioner of Education, FL.

Jose P. v. Ambach (also called Jose P. v. Mills)
Trial Court Docket #:
79 C 560 (EHN) (SMG), 79 C 270, and 79 C 2562

Citations:
557 F.Supp. 1230 (1983); 669 F.2d 865 (1982);

Plaintiff Organization
Advocates for Children (NY) now monitors implementation of the *Jose P* judgment and orders, along with Roger Maldonado of Balber Pickard Battistoni Maldonado &Van Der Tuin, PC and Chip Grey, Esq.

Notes/Parties of Interest
•Settled

Parents in Action on Special Education (PASE v. Hannon)
Trial Court Docket #:
No. 74 C 3586

Citations:
506 F.Supp. 831 (1980);

Plaintiff Organization
Wallace C. Winter, Legal Advocacy Service;
David A. Goldberger, American Civil Liberties Union;
Linda Lipton, Better Government Ass'n;
James L. Pittman, Lord, Bissell & Brook, Chicago, Ill.

Notes/Parties of Interest
-Dismissed
-Defendants: Chicago Board of Education, Illinois State Board of Education

Riley v. Ambach
Trial Court Docket #:
No. 79 C 2783

Citations:
668 F.2d 635, C.A.2 (N.Y. 1981); 508 F.Supp. 1222 (1980);

Plaintiff Organization
Richard C. Cahn, Susan O'Grady, Huntington, N. Y., and Muldon & Horgan, New Rochelle, N. Y. by Edward D. Loughman, Jr., New Rochelle, N. Y., for plaintiffs.

Notes/Parties of Interest
-Defendant = State of NY and State of New York's Commissioner of Education, Gordon M. Ambach.

Tonya K. v. Bd. of Educ. Of Chicago
Trial Court Docket #:
No. 81 C 0580

Citations:
847 F.2d 1243 (1988); 551 F.Supp. 1107 (1982)

Plaintiff Organization
Legal Assistance Foundation of Chicago

Notes/Parties of Interest
-Settled
-Defendant = Chicago Board of Ed.
-Class action was brought against city board of education and the Illinois Superintendent of Education under the Education for All Handicapped Children Act.

Yaris v. Special School District County of St. Louis
Trial Court Docket #:
No. 81-423C(2)

Citations:
661 F.Supp. 996 (1987); 780 F.2d 724 (1986); 604 F.Supp. 914 (1985); 599 F.Supp. 926 (1984); 728 F.2d 1055, (1984); 558 F.Supp. 545 1983;

Plaintiff Organization
Kenneth M. Chackes, Herbert A. Eastman, Chackes & Hoare, St. Louis, Mo

Notes/Parties of Interest
Settled
Defendant = Special School District of St. Louis County

Outcome
The Court of Appeals held that injunction against state policy of refusing to consider or provide for more than 180 days of education for school year for severely handicapped children, which denied those children a free appropriate education in violation of the Education for All Handicapped Children Act, but declining to require defendants to provide an extended school program for handicapped children, provided a total remedy for violation identified.

J.G. v. Board of Education
Trial Court Docket #:
No. CIV-81-173T

Citations:
193 F.Supp.2d 693 (2002); 648 F.Supp. 1452

Plaintiff Organization
Jonathan Feldman, Bryan D. Hetherington, Public Interest Law Office of Rochester, Rochester, NY.

Notes/Parties of Interest
Dismissed
Defendant = Rochester Board of Ed.

Association for Retarded Citizens of Alabama, Inc. v. Teague
Trial Court Docket #:
85-1133

Citations:
830 F.2d 158 (1987)

Plaintiff Organization

Capouano, Wampold, Prestwood & Sansone, P.A., Alvin T. Prestwood, Leon M. Capouano, Ellis D. Hanan, Montgomery, Ala., for plaintiffs-appellants.

Notes/Parties of Interest
-Dismissed
-Defendant = Superintendent of Education of the State of Alabama

Mrs. W. v. Tirozzi
Trial Court Docket #:
85-389

Citations:
124 F.R.D. 42; 706 F.Supp. 164; 832 F.2d 748;

Plaintiff Organization
Douglas N. Crockett, Conn. Legal Service, Willimantic, Conn., Sharon Langer, Conn. Legal Service, New Britain, Conn., Mary Conklin, Conn. Legal Service, Waterbury, Conn., for plaintiffs.

Notes/Parties of Interest
Settled

Hoeft v. Tucson Unified School District
Trial Court Docket #:
4:92-cv-00354-JW

Citations:
967 F.2d 1298;

Plaintiff Organization
Thomas J. Berning, Tucson, Ariz., for plaintiffs.

Notes/Parties of Interest
-Dismissed
-Defendant = Tucson Unified School District

Cordero v. Pennsylvania Dept. of Educ.
Trial Court Docket #:
3:1991cv00791

Citations:
795 F.Supp. 1352

Plaintiff Organization
Christina Aborlleile, Education Law Center PA, Philadelphia, Pa.

Notes/Parties of Interest
Settled
Defendant = Pennsylvania Dept of Ed

Association for Community Living in Colorado v. Romer
Trial Court Docket #:

1:91-cv-00776-ZLW-DEA

Citations:
992 F.2d 1040,

Plaintiff Organization
William R. Baesman, of Gorsuch, Kirgis, Campbell, Walker and Grover, Denver, CO, for plaintiffs-appellants.

Notes/Parties of Interest
-Settled
-Defendants Roy S. ROMER, Governor of the State of Colorado; William T. Randall, Commissioner of the Colorado Department of Education; Colorado Department of Education

Evans v. Evans
Trial Court Docket #:
Civ. No. 2:91-cv-00216

Citations:
818 F. Supp. 1215

Plaintiff Organization
Ivan E. Bodensteiner, and Donald J. Evans, Evans & Evans, Valparaiso, IN, for plaintiffs.

Notes/Parties of Interest
Settled

Vaughn G. v. Mayor and City Council of Baltimore.
Trial Court Docket #:
No. MJG-84-1911.

Citations:
-Not Reported in F.Supp.2d, 2004 WL 3467057 (D.Md. 2004)
- Not Reported in F.Supp.2d, 2005 WL 1949688 (D.Md. 2005)

Plaintiff Organization
Andrew L. Lipps, Timothy A. Ngau, Swidler Berlin Shereff Friedman LLP, Thomas Richard Lotterman, Jonathan Philip Guy, Swidler Berlin LLP, Donna L. Wulkan, Law Office of Donna L. Wulkan, Elizabeth McCallum, Howrey Simon Arnold and White LLP, Helen Michael, Karen F. Boyd, Thomas Reed, William L. Webber, Law Office PH, Abbey G. Hairston, Seyfarth Shaw LLP, Washington, DC, Elliott D. Andalman, Andalman and Flynn PC, Silver Spring, MD, Janice Kay Johnson Hunter, Luanne P. McKenna, Leslie Seid Margolis, Maryland Disability Law Center, Elliott L. Schoen, State of Maryland Office of the Attorney General, Baltimore, MD, Winifred R. De Palma, Andrew David Freeman, Brown Goldstein and Levy LLP, Kalman R. Hettleman, William H. Murphy, III, George C. Doub PC, Baltimore, MD, Steven Ney, Takoma Park, MD.

Notes/Parties of Interest
Defendants---MAYOR and City Council of Baltimore

Sabel and Simon state (117 HVLR 1015):

The emerging "output-oriented" perspective is evident in Vaughn G. v. Mayor and City Council of Baltimore. In 2000, when the case was nearly two decades old, the parties agreed that the complexity of the decree hampered both enforcement and renegotiation efforts. Noncompliance was pervasive, and both plaintiffs and defendants were mired in arguments over small details that distracted them from their central goals. They thus agreed to replace their detailed "Long Range Compliance Plan" with a "Consent Order Approving Ultimate Measurable Outcomes." The six-page order prescribes sixteen outcomes and specifies procedures for measuring progress toward attaining them. Some of the outcomes involve data collection and monitoring systems for performance measurement; others involve procedural norms, and here, compliance rates are specified (for example, the order requires ninety-five percent compliance with application processing deadlines).

The other outcomes Vaughn G. prescribes concern educational goals. For example, the defendants committed to increase school completion rates for disabled students from fifty percent to fifty-seven percent within three years, to increase the participation of disabled students in vocational programs to the same rate as that of nondisabled students, and to provide at least eighty percent of disabled students with required services in the schools they would attend if they were not disabled. These norms were derived from statewide data on special education performance, with negotiated adjustments. The defendants' performance under the new approach has been mixed, but it seems to have improved, and the plaintiffs find that their own monitoring efforts are more focused.

Chanda Smith v. Los Angeles Unified School District
Trial Court Docket #:
CV 93-7044-LEW

Plaintiff Organization
American Civil Liberties Union of Southern California, Protection and Advocacy, Inc., and Crosby, Heafey, Roach & May, LLP.

Notes/Parties of Interest
Settled
Defendant --Los Angeles Unified School District

Gaskin v. Commonwealth of Pennsylvania
Trial Court Docket #:
No. 94-CV-4048 (Judge Robreno)
[2:94-cv-04048-ER]

Citations:
197 Fed.Appx. 141; 389 F.Supp.2d 628; 231 F.R.D. 195;

Notes/Parties of Interest
Settled, 9/19/2005
Defendant—Penn Dept of Ed

-*See* http://www.pde.state.pa.us/special_edu/cwp/view.asp?a=177&Q=109539 for all documents, summaries, etc.

Petties v. District of Columbia
Trial Court Docket #:
Civ. A. No. 95-0148 (PLF) and c(PLF)

Citations:
298 F.Supp.2d 60,276 F.Supp.2d 89, 268 F.Supp.2d 38,263 F.Supp.2d 55,238 F.Supp.2d 114, 238 F.Supp.2d 88, 211 F.Supp.2d 141, 183 F.Supp.2d 73, 227 F.3d 469, 55 F.Supp.2d 17, 897 F.Supp. 626, 894 F.Supp. 465, 888 F.Supp. 165, 881 F.Supp. 63,

Plaintiff Organization
Kelly Bagby, Lisae C. Jordan, Jesse D. Stein, University Legal Services, Washington, DC, for Plaintiffs.

Notes/Parties of Interest
-Settled
-Special education students and their parents brought class action against District of Columbia under IDEA…

Evans v. Tuttle
Trial Court Docket #:
No. 73A04-9404-CV-158; No. 73A05-9206-CV-200

Citations:
645 N.E.2d 1119, 613 N.E.2d 854,

Plaintiff Organization
Kenneth J. Falk, Christopher B. Haile, Legal Services Organization Of Indiana, Inc., Dana Long, Milo G. Gray, Jr., Indiana Advocacy Services, Indianapolis.

Campbell v. Nye County Sch. Dist.
Trial Court Docket #:
No. 94-15747

Citations:
68 F.3d 480, 1995 WL 597706

Notes/Parties of Interest
Dismissed
Defendant = Nye County School District

Emma C. v. Eastin
Trial Court Docket #:
No. C96-4179 TEH.

Citations:
985 F.Supp. 940

Plaintiff Organization
Daniel J. Lipton, Disability Rights Educ. & Defense Fund, Inc., Berkeley, CA, David R. Giles, East Palo Alto Community Law Project, Palo Alto, CA, Rony Sagy, San Francisco, CA

Notes/Parties of Interest
Settled
Defendants— California Superintendent of Public Instruction, the California Department of Education (CDE), and several members of the California Board of Education,

Lemon v. District of Columbia
Trial Court Docket #:
Civil Action No. 95-2192

Citations:
124 F.3d 1309; 920 F.Supp. 8,

Notes/Parties of Interest
Dismissed

Upper Valley Ass'n for Handicapped Citizens v. Mills
Trial Court Docket #:
No. 2:94-CV-320

Citations:
168 F.R.D. 167, 928 F.Supp. 429

Plaintiff Organization
Olcott Whitman Smith, Kochman & Smith, Burlington, VT, for Upper Valley Association for Handicapped Citizens, Winnie Pineo, Michelle VanNamee.

Notes/Parties of Interest
-Settled
-Defendants--Vermont Department of Education; and Members of the Vermont State Board of Education

Doe. v. Oak Park
Trial Court Docket #:
No. 94 C 6449 (CPK)

Citations:
522 U.S. 998, 115 F.3d 1273,

Notes/Parties of Interest
-Dismissed
-Defendant—Board of Ed of Oak Park & River Forest High School District
-Learning disabled student, expelled for possession of pipe and marijuana at school dance, brought action against board of education, alleging violations of IDEA and due process clauses. Board filed counterclaim challenging hearing officer's determination that board's failure to stay student's placement or to provide alternative educational services violated student's due process and IDEA rights. The United States District Court for the Northern District of Illinois, Eastern Division, Charles P. Kocoras, J., 1996 WL 392160, granted board's summary judgment motion, and student appealed. The Court of Appeals, Walter J. Cummings, Circuit Judge, held that: (1) board did not violate IDEA when it did not provide alternative educational services to student during his expulsion; (2) IDEA's "stay-put" provision was not implicated; (3) student was not prejudiced by having less than ten days in which to obtain attention deficit hyperactivity disorder (ADHD) evaluation for student, and thus, board did not violate IDEA; and (4) board violated neither state nor federal due process clauses in connection with student's expulsion.

Marie O. v. Edgar
Trial Court Docket #:
94-1471

Citations:
131 F.3d 610, 157 F.R.D. 433,

Plaintiff Organization
Richard L. Fenton, Jill Thompson Calian, David E. Lieberman, Sonnenschein, Nath & Rosenthal, Maria Woltjen, Karen M. Berman (argued for Marie O.), Amy Zimmerman, Chicago Lawyers' Committee for Civil Rights Under Law, Chicago, IL.

Notes/Parties of Interest
-Settled
-Defendats--Jim EDGAR, Governor of Illinois, and Joseph H. Spagnolo, State Superintendent of Education

Blackman& Jones v. District of Columbia
Trial Court Docket #:
No. CIV.A. 97-1629 (PLF)

Citations:
454 F.Supp.2d 15, 454 F.Supp.2d 1,445 F.Supp.2d 35,456 F.3d 167, 397 F.Supp.2d 12,398 F.Supp.2d 145, 390 F.Supp.2d 16,382 F.Supp.2d 3, 374 F.Supp.2d 168, 355 F.Supp.2d 171, 328 F.Supp.2d 36, 328 F.Supp.2d 46, 321 F.Supp.2d 99, 294 F.Supp.2d 15, 294 F.Supp.2d 10, 277 F.Supp.2d 71,277 F.Supp.2d 89, 277 F.Supp.2d 70, 278 F.Supp.2d 1,265 F.Supp.2d 51, 150 F.Supp.2d 133, 145 F.Supp.2d 47, 59 F.Supp.2d 37,185 F.R.D. 4,

Plaintiff Organization
Bazelon Center for Mental Health Law

Filing Date
1997

Notes/Parties of Interest
-Settled in 2006.
-*See* http://www.bazelon.org/incourt/docket/blackman.html for info on the case.

Corey H. by Shirley P. v. Board of Educ. Of the City of Chicago
Trial Court Docket #:
92-3409

Citations:
289 F.3d 1009, 995 F.Supp. 900,

Plaintiff Organization
Designs for Change
Northwestern University Legal Clinic

Notes/Parties of Interest
Settled

A.S.K. v. Oregon State Board of Education
Trial Court Docket #:

No. CV 99-263 KI

Notes/Parties of Interest
Settled

Jones v. The Government of the Virgin Islands
Trial Court Docket #:
Civil Action Number 1984-47 (D.V.I.)

Citations:
896 F.Supp. 488

Plaintiff Organization
Sarah Weyler, Legal Services of the Virgin Islands, Christiansted, St. Croix, VI,

Notes/Parties of Interest
-Settled
-Defendant--Governor of the Virgin Islands

Spieler v. Mt. Diablo School District
Trial Court Docket #:
No. C 98-00951 CW MEJ

Citations:
2007 WL 3245286 (N.D.Cal.)
2007 WL 2344996 (N.D.Cal.)
2007 WL 1795701 (N.D.Cal.)

Plaintiff Organization
Lisa Margaret Burger, Sidney M. Wolinsky, Disabilty Rights Advocates, Berkeley, CA, Mark Andrew Chavez, Maxwell Singer Peltz, Chavez & Gertler LLP, Mill Valley, CA,

Notes/Parties of Interest
Settled

Rene ex re. Rene v. Reed
Trial Court Docket #:
No. 49A02-9907-CV-457

Citations:
774 N.E.2d 506, 751 N.E.2d 736,726 N.E.2d 808,

Plaintiff Organization
Kenneth J. Falk, Indiana Civil Liberties Union, Indianapolis, Indiana.

Notes/Parties of Interest
-Settled
-Defendant--Dr. Suellen Reed, in her official capacity as Indiana State Superintendent of Public Instruction

-Students with disabilities filed motion for certification of two proposed classes in their action against state Superintendent of Public Instruction under § 1983 and the Individuals with Disabilities Education Act (IDEA), with respect to state standard graduation qualification examination.

Schuler v. Bd of Educ Of Cent. Islip Union Free Sch. Dist.
Trial Court Docket #:
No. 96-CV-4702 (JG)
Citations:
2000 WL 134346 (E.D.N.Y. 2000)

Filing Date
September 24, 1996

Notes/Parties of Interest
Dismissed

Defendant—Board of Ed of the Central ISLIP Union Free School District

A.A. v.Bd. of Educ. Of Cent. Islip Union Free Sch. Dist.
Trial Court Docket #:
CV 96-4966

Citations:
386 F.3d 455, 255 F.Supp.2d 119,196 F.Supp.2d 259,

Plaintiff Organization
Long Island Advocacy, Inc.

Amicus
New York Lawyers for the Public Interest

Notes/Parties of Interest
-Settled
-Defendants--Board of Education, Central Islip
-Holding**:** The Court of Appeals held that plaintiffs had burden of proof in establishing that SED failed to satisfy its IDEA monitoring and supervisory duties.

J.S. ex rel N.S. v. Attica Central Schools
Trial Court Docket #:
No. 00-CV-513S(F)

Citations:
386 F.3d 107

Amicus Curiae
-National Association of Protection
-Advocacy Systems and Western New York Disability Law Coalition.

Notes/Parties of Interest
Settled

Brandon A. v. Donahue
Trial Court Docket #:
No. CIV. 00-025-B

Citations:
2002 WL 1349529

Notes/Parties of Interest
-Dismissed
-Defendant--Nicholas Donahue, in his Official Capacity as Commissioner of the New Hampshire Department of Education
-Brandon brought a class action complaint for declaratory and injunctive relief against the Commissioner of the New Hampshire Department of Education ("NHDOE"), alleging that he and his fellow class members have been denied their right under the IDEA to a due process hearing and a decision within 45 days after a request for a hearing is filed with the NHDOE.

Chapman v. CA Dept. of Educ.
Trial Court Docket #:
No. C 01-01780 CRB

Citations:
53 Fed.Appx. 474, 45 Fed.Appx. 780, 2002 WL 31856343

Notes/Parties of Interest
-Settled
-Listed in PACER as *Smiley v. CA Dept. of Educ*.
-Defendant—California Dept of Education.

Akinseye v. District of Columbia
Trial Court Docket #:
No. 01CV1769(RBW)

Citations:
339 F.3d 970, 193 F.Supp.2d 134,

Notes/Parties of Interest
Dismissed

E.B. v. New York City Bd. of Educ. (listed in PACER as NT et al. v. New York
Trial Court Docket #:
CV 02 5118 (CJS)

Citations:
233 F.R.D. 289(E.D.N.Y. 2005).

Plaintiff Organization
Advocates for Children, NY

Notes/Parties of Interest
-Action was brought by class of disabled students who alleged illegal exclusion from schools and denial of free and appropriate public education.

L.V. v. Department of Education
Trial Court Docket #:
Civ. No.: 03-9917

Citations:
Not Reported in F.Supp.2d, 2005 WL 2298173 (S.D.N.Y.).

Plaintiff Organization
Advocates for Children, with Milbank Tweed Hadley and McCloy.

Notes/Parties of Interest
-Pursuant to the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act and New York State law, the New York City Department of Education (NYC DOE) is required to maintain a due process hearing system whereby parents are able to challenge the actions of the Department of Education in providing special education services to their children with disabilities. In the LV case, parents of children with disabilities filed suit claiming, among other things, that they had received favorable orders and settlements in impartial hearings that were not being timely enforced. The parents also claim that the NYC DOE does not maintain an adequate due process system and does not track and monitor enforcement of the orders.

Schmelzer v. New York
Trial Court Docket #:
No. 01-CV-1864JSARL

Citations:
363 F.Supp.2d 453,

Plaintiff Organization
Lewis M. Wasserman, Wasserman Steen, LLP, Patchogue, NY

Notes/Parties of Interest
Settled

Defendants--State of NY; New York State Education Department; New York City Board of Education

Noon v. Alaska
Trial Court Docket #:
No. A04-0057 CV (JKS)

Citations:
Not Reported in F.Supp.2d, 2005 WL 2414994 (D.Alaska)

Notes/Parties of Interest
-Settled
-Defendant = Alaska State Board of Ed

Reid L. v. Illinois State Bd. of Educ.
Trial Court Docket #:
No. 02-3655

Citations:
-358 F.3d 511, 289 F.3d 1009 (7th Cir. 2002) (NO. 01-2707, 01-3432), rehearing en banc denied (Jun 20, 2002).
-358 F.3d 511 (7th Cir. 2004) (NO. 02-3655), rehearing and rehearing en banc denied (Mar 18, 2004).

Notes/Parties of Interest
Dismissed

D.D. v. New York City Bd. of Educ.
Trial Court Docket #:
CV-03-2489
(NO. 04-2542-CV)

Citations:
-2004 WL 633222, (E.D.N.Y. Mar 30, 2004)
-465 F.3d 503 (2nd Cir. 2006) (NO. 04-2542-CV)
480 F.3d 138 (2nd Cir. 2007) (NO. 04-2542-CV)

Plaintiff Organization
Emery Celli Brinckerhoff, & Abady LLP.

Amicus:
Advocates for Children; Juvenile Rights Division of the Legal Aid Society; the Early Childhood Strategic Group; Legal Services for Children, Inc.; New York Lawyers for the Public Interest; Lawyers for Children, Inc.; and the Cooke Center for Learning and Development

Notes/Parties of Interest
Dismissed

Bradley v. Arkansas Dept. of Educ.
Trial Court Docket #:
No. 04-3520

Citations:
443 F.3d 965,301 F.3d 952,189 F.3d 745

Plaintiff Organization
Public Interest Law Center of Philadelphia, Michael Churchill & Thomas K. Gilhool

Filing Date
April 7, 2006

Notes/Parties of Interest
Dismissed

DL v. District of Columbia
Trial Court Docket #:
No. CIV.A.05-1437(RCL)

Citations:
450 F.Supp.2d 21, 237 F.R.D. 319, 450 F.Supp.2d 11,

Plaintiff Organization
Bruce J. Terris, Terris, Pravlik & Wagner
Jeffrey S. Gutman The George Washington University Law School,

Filing Date
Aug. 3, 2006