

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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:  
JOSE P., a minor under the age of 21 years,  
by his mother PASCUALA S.; MARK P., a  
minor under the age of 21 years, by his  
mother ELAINE P.; MILTON C., a minor under  
the age of 21 years, by his mother  
JACQUELINE C.; JOSEPH N., a minor under  
the age 21 years, by his mother MARIA N.;  
STEVEN R., a minor under the age 21 years,  
by his mother EDITH R.; DAVID R., a minor  
under the age 21 years by his mother ANA  
AYALA R.; individually and upon behalf  
of all other persons similarly situated,  
:

Plaintiffs, :

-against- :

GORDON M. AMBACH, individually and as New  
York State Commissioner of Education;  
FRANK J. MACCHIAROLA, individually and as  
Chancellor of the New York City Board of  
Education; STEPHEN R. AIELLO, individually  
and as President of the New York City  
Board of Education; JAMES R. REGAN, MIGUEL  
O. MARTINEZ, JOSEPH G. BARKAN, AMELIA ASHE,  
ROBERT J. CHRISTEN, MARJORIE A. LEWIS,  
individually and as Members of the New York  
City Board of Education  
:

Defendants. :

79 C 270  
(Nickerson, J.)

JUDGMENT

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1. WHEREAS plaintiffs, handicapped children,  
commenced this action February 1, 1979, under 28 U.S.C.  
§§1331, 1343, 2201, 2202 and 42 U.S.C. §1983, on their  
own behalf and on behalf of a class of handicapped children  
living in New York City who are allegedly being deprived  
of the free appropriate public education to which the law  
entitled them, alleging that defendants have failed promptly  
to evaluate and place such children in suitable programs; and

ii. WHEREAS plaintiffs seek declaratory and injunctive relief directing defendants to evaluate and provide them promptly with appropriate educational opportunities and to establish and implement an effective plan to assure that all New York City handicapped children will receive such prompt evaluation and placement; and

iii. WHEREAS the Education of All Handicapped Children Act, 20 U.S.C. §1401 et seq., and the regulations promulgated pursuant to that Act, 45 C.F.R. Part 121a, require each state receiving payments under the legislation to develop a plan to assure that a free appropriate public education is available by specific dates to all handicapped children within specified age ranges; and

iv. WHEREAS the New York State Education Department submitted a plan to the Office of Education of the United States Department of Health, Education and Welfare and in turn received federal funds pursuant to the above Act and regulations, some of which were thereafter allocated to the Board of Education of the City of New York; and

v. WHEREAS the Rehabilitation Act of 1973, 29 U.S.C. §701 et seq., prohibits discrimination against handicapped persons in any program which receives federal assistance, 29 U.S.C. §794; and the regulations adopted pursuant to that Act, 45 C.F.R. Part 84, require that recipients of federal financial assistance provide a free appropriate public education to each qualified handicapped

person "regardless of the nature or severity of the person's handicap," 45 C.F.R. §84.33(a); and these requirements are applicable to elementary and secondary education programs, 45 C.F.R. §84.31; and

vi. WHEREAS the New York Education Law requires that local school districts provide suitable special education programs for handicapped children or contract for such programs if no appropriate public school programs are available and that the State Education Department stimulate efforts to provide such education and formulate rules as to the educational needs of such children (§4401 et seq.); and under the regulations of the New York State Commissioner of Education, 8 NYCRR §200, et seq., when notified in writing that a child is believed to be handicapped and in need of special education, the Board must evaluate the child within thirty days of referral and offer placement in an appropriate program within thirty days thereafter, 8 NYCRR §200.5(d); and

vii. WHEREAS similar regulations under the federal statutes require that there be a meeting of the child's teacher, his parents, and appropriate educational experts to develop an individualized education program for the child within 30 days of the determination that the child needs special education and that the plan must be implemented as soon as possible after the meetings, 45 C.F.R. §§121a.342-.344; and

viii. WHEREAS the court has ordered that this action shall proceed as a class action on behalf of all handicapped children between the ages of five and twenty-one living in New York City who the Board has been notified, pursuant to 8 NYCRR §200.5(d), may be handicapped and who have not been evaluated within thirty days or placed within sixty days of such notification; and

ix. WHEREAS the City defendants acknowledged that not all children referred for evaluation were being evaluated and placed in accordance with the time requirements established by defendant New York State Commissioner of Education's regulations, 8 NYCRR §200.5(d); and

x. WHEREAS the court has ordered, declared, and adjudged that with respect to the plaintiff class defendants have failed to comply with the requirements of federal and New York statutes and regulations concerning the timely evaluation and placement of handicapped children; and

xi. WHEREAS the court has ordered, in accordance with a stipulation signed by the parties, that the Public Education Association and Advocates for Children of New York be permitted to participate in these proceedings as amici curiae; and such organizations have, in fact, actively participated in this action; and

xii. WHEREAS the court appointed Marvin E. Frankel as special master in this case pursuant to Rule 53 of the Federal Rules of Civil Procedure and the inherent

powers of this court to make recommendations to the court as to what decree should be entered in this action; and

xiii. WHEREAS in a memorandum decision dated August 10, 1979, in a related case, United Cerebral Palsy of New York, Inc. v. Board of Education, 79 C. 560, this court held in abeyance further decisions pending the special master's report herein and recognized the continuing active participation of the United Cerebral Palsy plaintiffs in this action pursuant to this court's invitation to community groups to participate in proceedings before the special master (for purposes of this judgment the term "amici" is understood to include the United Cerebral Palsy plaintiffs); and

xiv. WHEREAS plaintiffs in Dyrcia S. v. Board of Education, 79 C. 2562, a related case filed on October 3, 1979, on behalf of handicapped Hispanic children with limited English proficiency, have actively participated in this action pursuant to the court's invitation (for purposes of this judgment the term "amici" is understood to include Dyrcia S. plaintiffs); and

xv. WHEREAS City defendants (all defendants other than Commissioner Ambach) have developed a plan which is entitled "Special Education in Transition," dated September 10, 1979, which is intended to reorganize and improve their special education programs, consistent with Public Law 94-142 and Section 504 of the Rehabilitation Act of 1973; and

xvi. WHEREAS City defendants have health screening procedures to implement the pupil health certificate requirements of Section 903 of the New York Education Law and a screening program for vision and hearing defects under Special Circular No. 17 of the Chancellor of the New York City Board of Education (Oct. 5, 1979); and

xvii. WHEREAS State defendant has agreed to propose to the State Board of Regents of the University of the State of New York that 8 NYCRR §200.12 be amended to include in its census provision the requirement that the census record by language the number of children who normally use a language other than English and State defendant has agreed to permit City defendants to submit the census required by 8 NYCRR §200.12 on December 1 of each year instead of on September 1; and

xviii. WHEREAS the parties, the amici, other interested persons, and the special master have engaged in a period of information exchange and a period of negotiation;

#### I. DECLARATORY JUDGMENT

IT IS HEREBY DECLARED AND ADJUDGED AS FOLLOWS:

1. Defendants have not made available to the plaintiff class a free appropriate public education in a timely manner, thus violating the requirements of federal and New York law and regulations.

2. Defendants have the responsibility under federal and New York law to make available on a timely basis a free appropriate public education with appropriate related services in the least restrictive environment for all children, ages 5 to 21, with handicapping conditions who live in New York City consistent with 45 C.F.R. §121a.300 and New York Education Law §3202.

3. For purposes of this judgment "timely" provision of a free appropriate public education shall be provision of such an education within the time limits set out below:

(a) Except as set forth in paragraph 12, for the period from the entry of this judgment until April 15, 1981, City defendants are required to evaluate each child referred to them and to arrange a placement, where necessary, in an appropriate educational program and related services, including transportation, as needed, within sixty days of written notification as provided for in paragraph 4(b) that there is reason to believe the child may have a handicapping condition and be in need of special education and related services.

(b) After April 15, 1981, City defendants are required to evaluate each child referred within 30 days of written notification that the child may have a handicapping condition and be in need of special education and related services. For students found in need of special

education or related services, defendants are required to arrange a placement in an appropriate educational program and related services, including transportation as needed, within thirty days of evaluation or sixty days of referral, whichever is shorter.

(c) Periods of delay attributable to parental non-cooperation shall not be counted toward the time limitations of subparagraphs (a) and (b), provided that City defendants have taken all steps to notify and involve the parents specified by paragraph 25 and the January plan to be developed pursuant to paragraphs 52-60.

4. For purposes of this judgment the terms listed below shall be defined as follows:

(a) "Days" are school work days except during the months of July and August, when days are defined as every day except Saturdays, Sundays, and legal holidays.

(b) "Written notification" that there is reason to believe that a child may have a handicapping condition and be in need of special education and related services shall mean written communication by an individual authorized to make a referral under applicable law to the principal or assistant principal of the child's school, the child's teacher, the committee on the handicapped, a special education official, or other official designated by the City defendants.

(c) "Special education and related services" shall mean special education instruction with or without related services and related services as an adjunct to regular class instruction provided to a handicapped child as required by the child's individualized education program.

5. Defendants have the responsibility under federal and New York law to have appropriate staff conduct annual reviews and triennial reevaluations of all students placed in special education programs or receiving related services.

## II. INJUNCTIVE RELIEF - GENERAL OBLIGATIONS OF DEFENDANTS

IT IS HEREBY ADJUDGED, ORDERED, AND DECREED  
AS FOLLOWS:

6. Defendants shall take all actions reasonably necessary to accomplish timely evaluation and placement in appropriate programs of all children with handicapping conditions including, but not limited to, the actions specified in the remainder of this judgment.

7. Most of the provisions of this judgment require "defendants" to perform specified actions. Where the general term "defendants" is used, the initial responsibility for performing the action shall lie with the City defendants. State defendant has responsibilities, prescribed by State law and federal law and regulations,

to assure the provision of a free appropriate public education to children with handicapping conditions in New York City in compliance with this judgment. To fulfill this responsibility, State defendant shall take all necessary actions consistent with State law and with federal law, including 29 U.S.C. §794, 45 C.F.R. §§ 84.31-84.39, 20 U.S.C. §§ 1412-15, 45 C.F.R. §§ 121a.193, 121a.194, 121a.341, 121a.360-71, 121a.600-02. Any disputes concerning State defendant's responsibility under 45 C.F.R. §121a.360 shall be resolved by the special master or the court upon the application of any party.

### III. CITY DEFENDANTS' PLAN

8. Defendants shall implement City defendants' plan entitled "Special Education in Transition," dated September 10, 1979, to the extent necessary to carry out the provisions of this judgment.

### IV. IDENTIFICATION AND REFERRAL FOR EVALUATION

9. By December 1, 1980, defendants shall complete a district-by-district census of all handicapped children under 21 in New York City in a manner consistent with New York Education Law §4403.1. In addition, the census shall record by language the number of children who normally use a language other than English. For non-verbal children, the

language recorded shall be the language normally used by the parent. Copies of the census shall be made available to the special master, parties, and amici.

10. Defendants shall maintain and adequately staff an identifiable outreach office for the purpose of disseminating information about defendants' programs for children with handicapping conditions and locating children potentially in need of the service of those programs. The staff of the office shall widely publicize its availability in a variety of public media. These publicity efforts shall be conducted by methods and in languages reasonably calculated to reach speakers of all native languages used by substantial numbers of people in New York City. The office shall have bilingual staff and access to additional bilingual personnel sufficient to provide oral information to persons of limited English proficiency.

11. Defendants' outreach office shall maintain regular contacts with public and private agencies and community groups which may have knowledge of children with handicapping conditions who are unserved or who will require service in the future, including health care, pre-school, day care, and court-related agencies. Copies of an annual report of the outreach office summarizing the office's activities for the preceding year, including groups contacted, publicity efforts made (including the languages in which these efforts are made) and the number of children

found shall be made available to the parties, amici, and the court by July 15 of each year.

V. EVALUATION PROCESS

A. Immediate expansion of existing program

12. By March 1, 1980, defendants shall have evaluated and arranged a placement in an appropriate educational program and provision of appropriate related services for each child referred by proper written notification prior to October 23, 1979. By April 1, 1980, defendants shall evaluate and arrange an appropriate placement and appropriate related services in a timely manner for each student referred by proper written notification.

13. Defendants shall take all actions reasonably necessary to comply with the provisions of paragraph 12 including but not limited to the following:

(a) Defendants shall make maximum reasonable efforts to have on staff sufficient personnel to accomplish timely evaluations and placements.

(b) Defendants shall enter into contracts with non-Board of Education facilities selected from those meeting applicable State certification requirements as needed to perform at least such number of evaluations or parts of evaluations as cannot be completed by staff personnel in a timely manner. City defendants shall promptly take all steps necessary to negotiate such contracts, including requirements

contracts as needed, and make maximum reasonable efforts to obtain all necessary approvals to assure compliance with paragraph 12. City defendants shall make maximum reasonable efforts in negotiating and enforcing contracts under this paragraph to assure prompt performance by contractors. If City defendants have complied with the preceding sentence, they shall not be responsible for delays attributable to contractors. Defendants shall promptly provide the special master, parties and amici with the names of all agencies contracted with and copies of the contracts.

(c) Defendants reserve the right to apply to the special master and the court for a modification of the requirements of paragraph 12. Such modification shall be granted only on a showing that defendants are unable to comply notwithstanding maximum reasonable efforts.

14. Defendants shall assign all evaluation and placement staff in accordance with the needs identified in monthly assessments conducted in accordance with paragraph 45 of this decree.

15. Defendants shall not reassign clinical staff providing mandated support services from providing such services to performing evaluation or placement functions. Such staff may be integrated into school-based teams pursuant to paragraphs 16-17. Any other clinical staff reassigned to perform evaluation or placement functions shall remain available in regular schools to provide crisis-intervention services.

B. Creation of school-based teams

16. By April 15, 1981, defendants shall have fully staffed and operating sufficient school-based support teams ("school-based teams") to serve all children in need of evaluation and placement by such teams. There shall be at least one school-based team in each public school in New York City. All clinical, supervisory and support programs and all staff necessary for those teams to work successfully will be provided. During the period until the development of the April plan pursuant to paragraphs 63-69, school-based teams shall be staffed in a manner generally consistent with the staffing patterns set forth in "Special Education in Transition," subject to reasonable variation for experimentation and management analysis. Staffing ratios for the full implementation of the school-based teams will be set forth in the April plan, as approved pursuant to paragraph 69.

17. A school-based team shall include at least the following people:

- (a) the parent of the child being considered by the team,
- (b) the child, if appropriate,
- (c) the principal or the principal's non-special education designee,
- (d) a guidance counselor (if assigned),
- (e) a psychologist (shared time),

- (f) a social worker (shared time),
- (g) an educational evaluator/resource room teacher (shared time where school population does not require assignment of a full-time educational evaluator/resource room teacher),
- (h) regular or special education teachers or other persons on an ad hoc basis.

A school-based team shall be supported by at least the following personnel:

- (i) a school neighborhood worker (shared time),
- (j) sufficient clerical staff.

18. The school-based teams may, among other things, evaluate and make placement recommendations for resource room programs and related services. Appropriate members of school-based teams may, consistent with 45 C.F.R. §121a.344, conduct annual reviews for children in resource room programs or in regular programs receiving related services.

19. School districts shall be converted to school-based operations as fast as is feasible, but at least three districts and one high school shall be fully converted by December 15, 1979. At least ten community school districts and all the high schools in those districts shall be converted to school-based operations by June 30, 1980. Whenever possible, districts with the longest waiting lists

for evaluation and placement shall be given priority in conversion to school-based operations.

C. Evaluation of students whose native language is other than English.

20. As part of the January plan to be developed pursuant to paragraphs 52-60:

(a) City defendants shall set out interim procedures to provide for evaluation of students with limited English proficiency in the native language or mode of communication of the student involved, except where it is clearly not feasible to do so. (As used in this judgment, the term "native language" is defined in the text of and comment to 45 C.F.R. § 121a.9 (42 Fed. Reg. 42479, Aug. 23, 1977)).

(b) State and City defendants shall jointly set out a plan and schedule for establishing permanent procedures for the evaluation of students with limited English proficiency, including methods for identifying appropriate non-English or bilingual tests and evaluative procedures, to provide for non-discriminatory and properly validated testing of the educational needs of such students.

(c) The procedures for evaluation of students with limited English proficiency required by subparagraphs (a) and (b) shall include procedures for determining the language or mode of communication in which a student will be evaluated.

21. In providing for evaluation teams or services as required by paragraphs 12 and 13 and in hiring or re-assigning the evaluation staff required by paragraphs 12, 13, 16 and 17, defendants shall make maximum reasonable efforts to assure that the evaluations of students of limited English proficiency are conducted by professional persons bilingual in the student's native language or mode of communication.

#### VI. PARENTS' RIGHTS

22. Upon referral for evaluation, the committee upon the handicapped or the principal of the child's school shall assure that the parents are given a copy of "Your Child's Rights to Special Education in New York City," a copy of which is annexed to this judgment. This booklet will be available in at least English and Spanish, and will be translated into other languages as needed.

23. As part of the January plan required by paragraphs 52-60 of the judgment, defendants shall prepare new versions of "Your Child's Rights" in at least English and Spanish, changed to be fully consistent with the procedures, standards, and programs to be defined in the January plan and the other provisions of this judgment. The new booklet shall be considered as a part of the January plan and shall be subject to the procedures in paragraph 60.

24. Defendants shall provide parents all the rights set forth in the booklets described in the two preceding paragraphs.

25. No later than February 1, 1980, defendants shall assure that a parent or a person acting in a parental relationship is offered a reasonable opportunity to attend each meeting of a committee on the handicapped held to discuss a child's needs. This provision shall not be interpreted to require parental participation at informal meetings of staff which constitute less than the whole committee. If inviting parents to meetings of the committees on the handicapped results in an increase in the time children are awaiting evaluation or placement, defendants reserve the right to present for approval to the special master and the court an alternative set of procedures for parent involvement in districts which have not been converted to school-based teams.

26. Until the procedures required by paragraph 55(q) are implemented, defendants shall provide to parents of limited English proficiency all documents relating to evaluation and placement in those parents' native languages to the extent that those documents have been translated into languages other than English. Spanish language documents shall be provided to parents whose native language is Spanish and those with Spanish surnames when the referral form does not indicate language.

VII. PLACEMENTS OF STUDENTS IN  
APPROPRIATE EDUCATIONAL  
PROGRAMS

A. Placement Process

27. By February 1, 1980, defendants shall have on staff at each district committee on the handicapped location at least one professional educator familiar with all special education programs available in the district and City to advise the committee on specific sites for appropriate placement. This educator shall be provided with necessary clerical and administrative assistance.

B. Immediate Expansion of Existing  
Programs and Services

28. Defendants shall create, staff, and operate an appropriate resource room with appropriate related services for each child found to be in need of such a program.

29. Defendants shall make maximum reasonable efforts to have in operation on the following dates at least the following numbers of resource rooms:

February 1, 1980                      500

September 1, 1980                    750

February 2, 1981                    resource room services  
in every school except  
alternative day schools.

These numbers may be superseded by new projections accepted

pursuant to the April plan developed pursuant to paragraphs 63-69 of this judgment.

30. As part of the January plan to be developed pursuant to paragraphs 52-60, defendants shall provide an interim assessment of staff needs for bilingual resource rooms, high-incidence programs, and related services, and shall set forth an interim plan to hire, train and assign such staff, or reassign existing staff on an expedited basis. Pending implementation of the interim plan, defendants shall immediately begin to recruit professionals and shall give priority to the hiring of bilingual professionals for resource rooms. For purposes of this judgment, "bilingual" programs and services shall include, where appropriate, instruction consistent with the consent decree in Aspira of New York, Inc. v. Board of Education, 72 Civ. 4002 (S.D.N.Y. August 29, 1974), and 20 U.S.C. §3223(a)(4)(A)(i).

31. Defendants shall operate or contract for a sufficient range of appropriate special education programs in addition to resource room programs for all children in New York City who have been found in need of special education programs. This paragraph shall not be interpreted to require defendants to operate their own residential programs.

32. In response to identified needs, State defendant shall stimulate and coordinate public and private efforts to develop residential programs in New York City.

33. By January 2, 1980, defendants shall operate or contract for a sufficient number of special education programs for children with handicapping conditions of low incidence (including but not limited to programs for the multiply handicapped, the severely physically handicapped, the autistic, the sensory impaired, and the profoundly retarded) so that all such children awaiting placement as of November 1, 1979, will have been placed, and all children subsequently found to be in need of such programs shall not be denied placement in a timely manner because of lack of facilities.

34. Whenever the vacancy rate in a geographical area in a program for children with handicapping conditions of high incidence is 15% or less as determined in the monthly report and assessment required by paragraph 43 of this judgment, defendants shall identify and secure space, and create a hiring pool of qualified teachers, to meet the requirements of timely and appropriate placement. A seat is vacant when it is immediately available to be filled in an existing fully staffed classroom.

35. Defendants shall provide all related services identified as needed in the individualized education programs of students.

36. City defendants shall instruct in writing all appropriate staff that individualized education programs shall include such special education programs and specific

related services as are required to assist the child to benefit from special education, regardless of whether those services are currently available.

37. Commencing immediately, City defendants shall make maximum reasonable efforts to hire sufficient numbers of additional full-time or full-time equivalent clinical and support staff (including but not limited to occupational therapists, physical therapists, adaptive physical education teachers, nurses, speech therapists, pediatricians, industrial arts teachers, psychologists and social workers) to provide necessary instructional and related services to students in special education programs.

#### VIII. FACILITIES ACCESSIBILITY

38. Defendants shall assure that no later than September 1, 1980, all facilities housing centers for the multiply-handicapped and programs for the physically handicapped and profoundly retarded, including classes currently designated "H.C. 10", "H.C. 20", and "Track IV", shall be readily accessible to physically handicapped and non-ambulatory students in accordance with the requirements of 45 C.F.R. §84.22 and Board of Education, Bureau of Facilities Planning and Design, "Architectural Accessibility Design Manual" filed with this judgment. Defendants shall promptly implement plans to assure full accessibility, as defined above, of at least one elementary school and one intermediate

school in each community district and one high school in each high school region.

39. The April plan developed by defendants pursuant to paragraphs 63-69 shall assure that each program included in the continuum of services described therein shall be readily accessible to physically handicapped and non-ambulatory students as required by 45 C.F.R. §84.22. Such plan shall include specific information to assure that all students have full access within a reasonable distance from their homes to all services from which they are capable of benefitting including, but not limited to, gymnasiums, libraries, lunch rooms, auditoriums, and other mainstreaming opportunities, that proper ventilation is provided to meet the needs of incontinent students, and that proper toilet facilities are provided for wheelchair-bound students. Such plan shall also provide a specific timetable for completion of all the designs and structural renovations required by paragraph 38.

40. Defendants shall provide for the physical accessibility of each of the 32 committees on the handicapped and the reasonable accessibility of the same to public transportation no later than the date that each such district is converted to school-based operations, except that such accessibility in all districts in which the committee on the handicapped is now located above the third floor in buildings without elevators shall be provided for no later

than August 1, 1980. Planning for relocation or necessary physical modifications of existing sites shall be part of the planned conversion for each district. Specific information on relocations and modifications already accomplished and a timetable for full city-wide COH accessibility no later than April 15, 1981, shall be included in the April plan to be developed pursuant to paragraphs 63-69.

#### X. PERIODIC REPORTS

41. Beginning in January, 1980, with a report covering December, 1979, defendants shall serve on the special master, parties, and amici a monthly report on their special education program containing at least the information outlined in paragraphs 42-45.

42. The monthly report shall include a statistical report on evaluation and placement detailing the following information on a city-wide basis and by community school district and high school region:

- 13
- (a) the number of children referred for initial evaluation,
  - (b) the number of children referred for reevaluation,
  - (c) the number of children for whom program recommendations have been made,
  - (d) the number of children whose cases were closed, broken down by reason for closings as contained in paragraph 75(n)(B),

- (e) the total number of children currently awaiting a program recommendation (A) less than 30 days from referral and (B) more than 30 days from referral,
- (f) the total number of children offered placement sites,
- (g) the total number of children for whom program recommendations have been made and who have not begun attendance in that program and who have been waiting since the date of referral (A) less than 60 days, and (B) more than 60 days.

43. The monthly report shall include a summary of vacant seats in existing special education programs broken down by type of program and community school district or high school region.

44. The monthly report shall include a summary of vacant classrooms available for use as special education classes broken down by community school and high school district.

45. The monthly report shall include an assessment of all staffing needs by district and central program for each job category related to the referral, evaluation, or placement of children with handicapping conditions, including the number of persons currently on staff in each job category. The

assessment shall take account of the number of evaluations to be completed, placements to be made, and programs or services to be provided.

46. A progress report shall summarize for each quarter by program and community school and high school region (a) the number of special education programs opened and (b) the number of children who began receiving special education services or attending special education classes.

47. Beginning in November, 1980, the information provided in the monthly report required by paragraph 42 shall be broken down by the child's native language. No later than April 15, 1980, and thereafter annually commencing October 31, 1980, defendants shall provide a report and assessment of the staff assigned to bilingual special education programs and services, broken down by district and central program, indicating the language, license, and job category of each person currently on staff. This annual report shall be updated periodically to reflect any changes in existing staff, as well as changes in the need for additional staff. Periodic updates, where required, shall be provided on December 31, March 15, and April 30.

48. Defendants' January and April plans pursuant to paragraphs 52-60 and 63-69 shall specify any modifications or additions to the monthly reports which would be necessary to provide the required information in a manner consistent with any new procedures or terminology being proposed.

49. The periodic reporting requirements of this judgment shall terminate on April 15, 1981, or when the court finds or the parties agree that for a period of three months no significant number of children referred to defendants for evaluation has not been evaluated and placed in a timely manner, whichever is later. If the court makes the finding required by the previous sentence or the parties so agree before April 15, 1981, defendants may provide all reports otherwise required monthly on a quarterly basis.

#### XI. MONTHLY HIRING PLAN

50. Based on the facts set out in each monthly report defendants shall (a) identify the total need for staff in each type of position, (b) make a maximum reasonable effort to hire or transfer qualified persons for all positions identified, (c) form a pool of candidates from qualified applicants not hired to meet future needs in those positions, and (d) provide appropriate pre-service and in-service training to persons hired.

#### XII. STAFF NEEDS ASSESSMENT

51. State defendant shall conduct a needs assessment survey as required by 45 C.F.R. §121a.382 to determine if a sufficient number of qualified special education personnel are available in the State. By January 9, 1980, State defendant shall provide to the parties and amici a copy of the survey.

XIII. JANUARY PLAN--OPERATING  
PROCEDURES, STANDARDS AND  
DEFINITION OF CONTINUUM OF  
SERVICES

52. By January 9, 1980, City defendants shall serve on State defendant, plaintiffs, and the amici and file with the special master a detailed plan (hereinafter "the January plan") covering at least the following topics:

- (a) the responsibilities and procedures of evaluation groups, school-based teams, committees on the handicapped, and other units and persons involved in evaluation, placement, annual reviews, triennial re-evaluations, or provision of programs and services to children with handicapping conditions,
- (b) standards for evaluation, placement, and the provision of related services, which are consistent with this judgment and with federal law; and
- (c) a definition and description of each program and service in a full continuum of educational programs and services for children with handicapping conditions in New York City, including bilingual programs and services for students with limited English proficiency.

53. In support of the January plan (but not as part of it) defendants shall serve with the plan copies of all directives, forms, and other documents intended to be used by staff in implementing changes in City defendants' special education division developed pursuant to paragraph 52.

54. At least ten days prior to issuance, defendants shall forward to the parties and amici all documents which amend, supplement, or supersede documents submitted pursuant to paragraph 53. In the event that City defendants are unable to forward these documents ten days prior to issuance, City defendants shall forward these documents as soon as possible, with a statement by the executive director of City defendants' special education division or his immediate assistant certifying that pressing needs require a shorter period of notice. The forwarding of these documents to plaintiffs' attorneys is for informational purposes only, and nothing in this paragraph requires defendants to seek the advice or consent of plaintiffs in amending, supplementing or superseding any of the documents developed pursuant to this judgment.

55. The elaboration of standard operating procedures required by paragraph 52 (a) shall be consistent with 45 C.F.R. Part 121a and shall include at least the following:

- (a) procedures for requiring that all reasonable efforts are made to assure that the parent or person in parental relationship

for a child attends meetings held by the committee on the handicapped or school-based team to discuss the development of the child's individualized education program;

- (b) procedures to provide for parent participation where the parent is unable to attend the meeting in person;
- (c) procedures for assuring that the parent understands the proceedings at meetings held to discuss the child's needs;
- (d) procedures to be followed to contact the parent before a child's case may be closed or placed on inactive status as a result of not appearing at evaluation appointments or the parent's failure to participate in the proceedings;
- (e) procedures where the school officials believe that the child would benefit from evaluation or the provision of special education services, and the parent does not consent to the evaluation or provision of services;
- (f) procedures to be followed before a child who has been found to be handicapped may be discharged from a program for non-appearance or non-attendance, including attendance procedures when the child is identified as a potential truant;

- (g) procedures, consistent with State law, to be followed when a student between the ages of 16 and 21 who has been found to have a handicapping condition asks to be discharged from school, which assure that the parent and student are aware of the full range of special education and related services available until the age of 21;
- (h) procedures providing that the district committee on the handicapped retains responsibility for the monitoring of all procedures, placements, and delivery of services by the local school-based teams and is responsible for assuring that all evaluations and placements, including those undertaken by school-based teams, shall be made on a timely basis;
- (i) procedures providing that all placement recommendations for self-contained classes and any placements outside the child's regular school shall be made by the committee on the handicapped;
- (j) procedures for providing that the committees on the handicapped are responsible for all specialized evaluations;

- (k) procedures providing that parents have a right to appeal immediately to the committee on the handicapped for prompt action on any problems or grievances concerning any actions or failures to act by a school-based team; such appeal rights shall be in addition to existing impartial hearing and statutory appeal procedures;
- (l) procedures for timely preparation of students' individualized education programs,
- (m) procedures establishing the relationship among school-based teams and other school staff in implementing each part of the continuum of services in a particular school, including mainstreaming opportunities for students in self-contained programs;
- (n) procedures to provide the assistance of competent interpreters to parents of limited English proficiency in any discussion with committees on the handicapped, school-based teams, or other Board of Education personnel regarding the evaluation, placement, or individualized education program of their child;
- (o) procedures including the designation of a responsible person in each school, under which

- the case of each student with a pattern of truancy is reviewed to determine whether the student may have a handicapping condition;
- (p) procedures for exit interviews concerning discharge of students over 16, under which a responsible official shall consider whether the student may benefit from a referral for evaluation and, where appropriate, inform the student and parent of defendants' special education program;
  - (q) procedures to provide that parents with limited English proficiency who use a language spoken by substantial numbers of people in New York City will receive appropriate documents in their native language relating to the evaluation and placement of their children;
  - (r) procedures for parents to obtain an independent evaluation of their child at public expense, consistent with the requirements of 45 C.F.R. §121a.503.

56. The standards for evaluation, placement, and provision of programs and services required by paragraph 52(b) shall detail:

- (a) each component of the evaluation and placement process and how that component relates to planning appropriate instruction and related services, and

- (b) standards to be met before a student may be placed in each type of program or service on the continuum required to be defined under paragraph 52(c), including the options considered and the reasons those options were rejected.

57. The description of the continuum of programs and services required by paragraph 52(c) shall include, but not be limited to, the following types of programs and services:

- (a) a preventive services program;
- (b) a transitional support program;
- (c) resource room programs;
- (d) all related services, including at least all those services described in 45 C.F.R. §121a.13 and 45 C.F.R. §§84.33(b) and 84.34(b);
- (e) full or part-time self-contained class programs, including appropriate interaction with non-handicapped students and full use of building facilities, where appropriate;
- (f) alternative day school center programs, encompassing groups of self-contained classrooms for students whose needs can best be met by having full-time support service teams on the premises, and who cannot presently substantially benefit from opportunities for

interaction with non-handicapped students. Alternative day school centers shall have all necessary clinical and supportive staff available on the premises, organized to the maximum extent feasible in full-time resident multi-disciplinary teams to provide services as indicated in the students' individualized education programs. Such centers shall be under the direct control of City defendants' central division or regional administrative offices except that special day schools for the emotionally handicapped need not be under such control;

(g) residential programs for students whose needs can best be met by round-the-clock educational support services in a residential center for special education. The plan will specify efforts to be made to provide or secure weekday and full-time programs located in New York City and programs for children rejected by other existing programs;

(h) home, hospital, and institutional instruction.

58. Nonpublic facilities approved by State defendant with which City defendants have contracted shall be considered alternative day school centers or residential programs for purposes of placement, coordination, and program

planning. State defendant shall continue to approve only nonpublic facilities with non-discriminatory admissions practices. City defendants shall continue to contract only with such facilities. The plan shall include mechanisms for City defendants to meet on a regular basis with representatives of such nonpublic schools to develop plans to:

- (a) assure the provision of coordinated services to meet best the needs of students and to aid in reducing existing waiting lists;
- (b) foster communication concerning individual students referred from the nonpublic sector to the public sector or vice versa;
- (c) foster opportunities for publicly-funded students in nonpublic schools to participate in activities with students in public schools;
- (d) foster sharing of information about new instructional techniques, equipment, and devices;
- (e) assure improved mechanisms to avoid unnecessary administrative problems or delays in payment for services.

59. The January plan shall report the results of a survey to determine the number, qualifications, and geographical assignments of all evaluation staff members bilingual in each language other than English.

60. On or before January 28, 1980, plaintiffs, State defendant, and amici may serve on the other parties and amici and file with the special master their comments on the January plan. On or before February 14, 1980, City defendants may serve and file a reply. If there are any issues still in dispute on February 21, 1980, the parties may submit those issues to the special master on that date for resolution, subject to the right of any party to appeal to the court. The plan accepted by the court shall become part of a modified judgment as of the date of acceptance. The parties intend that the modifications in the judgment resulting from the acceptance of the plan shall be appealable.

#### XIV. IMPLEMENTATION OF JANUARY PLAN

61. Upon approval of the January plan by the special master and the court, if necessary, defendants shall implement and enforce any element of the plan not already being implemented. Defendants shall issue copies of the plan to all appropriate personnel involved in the referral, evaluation, placement, or provision of programs or services to children with handicapping conditions in New York City.

62. With respect to students already receiving special education services, a review of the appropriateness of their individualized education programs in accordance with the standards and procedures then in effect shall take place upon parental request, or, in any event, not later than the time of the next annual review of the student's placement.

XV. APRIL PLAN - FULL IMPLEMENTATION  
OF SCHOOL-BASED TEAMS AND CONTINUUM  
OF SERVICES

63. By April 15, 1980, defendants shall serve on State defendant, plaintiffs, and the amici and file with the special master a detailed plan for the full implementation by April 15, 1981, of City defendants' system of school-based teams and by February 2, 1981, of the continuum of services defined in the January plan. The plan shall specify:

- (a) anticipated staff needs based on specific ratios of staff to students for each category of program and service;
- (b) methods and schedules for hiring and re-assigning needed staff;
- (c) anticipated needs for classroom space, specialized instructional material and equipment based on specific ratios of such resources to students for each category of program and service; and
- (d) methods and schedules for obtaining such resources.

64. The April plan shall include provisions for the hiring, training, and assignment of additional bilingual staff and for the reassignment of existing bilingual staff to assure that students with limited English proficiency are timely evaluated and placed in appropriate programs by qualified bilingual personnel.

65. In support of the plan, defendant shall serve and file explanatory material including at least the following items:

- (a) the probable incidence of need for each type of program and service in the continuum on elementary, intermediate, and high school levels;
- (b) the factual basis for the estimates of incidence required by the preceding subparagraph including both past experience and anticipated response to changes in the programs and services offered;
- (c) an explanation of why the elements of the plan set out pursuant to the preceding paragraph will be sufficient to meet anticipated needs for each category of program and service; and
- (d) based on anticipated needs, the proposed number and location of all instructional programs.

66. Under the April plan defendants shall provide within each district a full continuum of programs and related services except where the low incidence of particular handicapping conditions results in so few students being in an individual district that those students cannot be appropriately educated in a school in the district.

67. Whenever possible the plan will be structured to allow students to attend their neighborhood schools or, in the alternative, schools as close as possible to where they live.

68. The April plan shall provide for defendants to take all steps necessary to assure that the employees of the City defendants' special education division are State certified.

69. Any comments which plaintiffs, State defendant, or amici wish to make regarding the April plan shall be served on the other parties and amici and filed with the special master on or before May 6, 1980. City defendants may serve and file a reply to any comments on or before May 20, 1980. If there are any issues in dispute on May 29, 1980, the parties may submit on that date the issues in dispute to the special master for resolution, subject to the right of any party to appeal to the court. The plan accepted by the court shall become a part of a modified judgment as of the date of acceptance. The parties intend that the modifications in the judgment resulting from the acceptance of the plan shall be appealable.

#### XVI. MANAGEMENT INFORMATION SYSTEMS

70. City defendants shall maintain in an understandable format, and shall make available for inspection and copying by the parties, amici, and the special master a list of all special education programs and classes.

67. Whenever possible the plan will be structured to allow students to attend their neighborhood schools or, in the alternative, schools as close as possible to where they live.

68. The April plan shall provide for defendants to take all steps necessary to assure that the employees of the City defendants' special education division are State certified.

69. Any comments which plaintiffs, State defendant, or amici wish to make regarding the April plan shall be served on the other parties and amici and filed with the special master on or before May 6, 1980. City defendants may serve and file a reply to any comments on or before May 20, 1980. If there are any issues in dispute on May 29, 1980, the parties may submit on that date the issues in dispute to the special master for resolution, subject to the right of any party to appeal to the court. The plan accepted by the court shall become a part of a modified judgment as of the date of acceptance. The parties intend that the modifications in the judgment resulting from the acceptance of the plan shall be appealable.

#### XVI. MANAGEMENT INFORMATION SYSTEMS

70. City defendants shall maintain in an understandable format, and shall make available for inspection and copying by the parties, amici, and the special master a list of all special education programs and classes.

71. Defendants shall maintain a list by school district of the assignment locations of all special education personnel and make such list available to the special master, parties, and amici for inspection and copying at a time and place convenient to them.

72. Defendants shall inventory all appropriate space available for classroom use, whether or not currently used for that purpose, and maintain a list of all unused rooms. Such list shall be made available to the special master, parties, and amici at a time and place convenient to them.

73. With respect to all children receiving special education instructional or support services or being evaluated to determine their need for such services, the defendants shall maintain the information specified in paragraph 74 (Data Bank) and paragraph 75 (COH Tracking System). The information shall be made available for inspection by the special master or the court, the parties, and amici at a time and place convenient to them and shall be maintained in a comprehensible format which may exclude personally identifiable references.

74. The "Data Bank" shall include:

- (a) name of child,
- (b) birth date,
- (c) language in which child communicates,
- (d) language spoken in home,
- (e) sex,
- (f) home district,

- (g) current school,
- (h) source and type of referral,
- (i) program placement,
- (j) type of transportation,
- (k) date of first class attendance or receipt of related services,
- (l) for children for whom special education services are terminated,
  - (A) date of termination,
  - (B) reason for termination,
    - (i) moved,
    - (ii) returned to regular class.

75. The "COH Tracking System" shall include:

- (a) name of child,
- (b) birth date,
- (c) sex,
- (d) current school,
- (e) source of referral,
- (f) date of referral to school-based team (to committee on the handicapped where no school-based team is operating),
- (g) type of referral (initial, reevaluation, reapplication for funding),
- (h) date of each evaluation appointment and nature of the evaluation administered,
- (i) date of completion of recommendation,
- (j) category of program recommendation,
- (k) date of first letter to parent offering placement,

- (l) date of parent's response,
- (m) parent's response (consent/no consent),
- (n) for any child whose case was closed without a placement, the following additional information will be maintained:
  - (A) date case closed,
  - (B) reason for closing, including a specific breakdown based on at least the following categories:
    - (i) at request of parent,
    - (ii) missed appointments (procedures to be developed),
    - (iii) moved,
    - (iv) closed in consultation.

76. The Data Bank and COH Tracking System shall be capable of communication no later than June, 1980, and shall be interfaced as soon thereafter as feasible.

77. As soon as possible but no later than September 1, 1980, defendants shall develop the capacity to collect, upon referral for evaluation, data on the language spoken by a child of limited English proficiency and the language spoken in such child's home.

78. As soon as feasible, but no later than March 1, 1981, defendants shall develop (a) the capacity to maintain information on program recommendations and the type and amount of related services for all students receiving special education services, (b) the capacity to maintain information regarding the neighborhood school which would normally serve a student

who is referred for evaluation of a potential handicapping condition or who receives special education services, and (c) the capacity to maintain the date of the completion of the short-term component of each student's initial individualized education program.

79. As an appendix to the monthly reports filed in April, 1980, and October 1980, defendants shall report on the status of the modifications of their computer capabilities as specified in paragraphs 76 and 78.

80. As the capacity to maintain such information is developed pursuant to paragraphs 76 and 78, City defendants shall make available to the court, the parties, and amici at reasonable intervals aggregate information pertaining to special education programs and services, broken down by type of program or service.

81. Defendants shall assure that all personally identifiable information on students shall be collected and maintained in accordance with the confidentiality protections of 45 C.F.R. §§ 121a.560-121a.576.

82. Counsel for plaintiffs and amici and their designees who have access to any personally identifiable information for the purpose of monitoring the implementation of this judgment shall not disclose this information to any person for any purpose not directly related to the implementation of this judgment without obtaining the permission of the court on notice to defendants' counsel.

XVII. CONTINUATION OF SPECIAL MASTER

83. The special master shall continue to serve with all powers and under the terms and conditions set forth in the order of the court dated May 16, 1979, for the purpose of considering any issues in dispute under this judgment until such time as the process set forth in paragraph 69 is completed.

84. The court shall retain jurisdiction to make additional orders or judgments necessary to protect the rights of plaintiff class and defendants.

/s/ Eugene H. Nickerson  
United States District Judge

DATED: Brooklyn, New York  
December 14, 1979.