

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

JAMES O., KELLY E., and WILLIAM B., and :
ETHAN H., GEORGE B., REBECCA G. :
and KEVIN B., *et al.*, :

Plaintiffs :

v. :

Civil Action # 86-6-M

Nicholas Donahue, in his official capacity :
as Commissioner of the New Hampshire :
Department of Education, *et al.*, :

Defendants :

STIPULATION REGARDING CONTINUATION OF THE JAMES O. CONSENT
DECREE AND CORRECTIVE ACTION PLAN

Following a period of negotiation, Plaintiffs and the Defendants have agreed to the continuation of the Consent Decree and a corrective action plan as set forth below. This Stipulation does not resolve all issues. A Motion To Amend the Pretrial Order to Identify Outstanding Issues has been filed contemporaneously with this Stipulation and is incorporated herein by reference.

1. The terms of paragraph 2, 3, 4, 6, 7, 8, 19, 23, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 of the Consent Decree, except as modified by this stipulation and corrective plan, shall remain in effect as to New Hampshire Division for Children, Youth, and Families (hereinafter, DCYF) and the New Hampshire Department of Education (hereinafter, DOE) for the duration of this stipulation and corrective action.

2. Paragraph 19 of the Consent Decree shall be interpreted to refer to the database and software currently in use by DCYF and DOE.

3. DCYF currently employs two individuals, whose job titles are “education specialist” and whose job functions involve ensuring DCYF compliance with the Consent Decree. The requirements of paragraph 32 of the Consent Decree are amended to reflect the current process of forwarding the following documents to the DRC on a quarterly basis by the DCYF special education specialists: a) New rules, policies and forms; b) James O. forms 2242, 2243, 2245, 2246, and 2225; c) Court Orders affecting special education; d) Requests for district of liability determinations; and e) Correspondence from or to the education specialists regarding compliance with the decree. The DOE will continue to provide the DRC documents required by paragraph 32 of the Consent Decree as they are generated.

4. Paragraph 34 of the Consent Decree is amended to reflect the current address counsel for the parties as follows:

Plaintiffs: Ronald K. Lospennato, Esq., Disabilities Rights Center, PO Box 3660, 18 Low Avenue, Concord, New Hampshire 03302-3660.

Defendants: Nancy J. Smith, Esq. Senior Assistant Attorney General, Office of the Attorney General, 33 Capitol Street, Concord, NH 03301.

5. Paragraph 39 of the Consent Decree is amended to reflect that, to the extent agreed upon in this stipulation, the jurisdiction of the Court is extended to July 1, 2002.

6. Defendants will provide each school district and state district court with a copy of this stipulation regarding continuation of the James O. Consent Decree and corrective action plan and the paragraphs of the Consent decree referred to herein. This stipulation regarding continuation of the James O. Consent Decree will be added to the database available to all CPSWs and JPPOs.

7. DCYF will provide the DRC with the monthly Bridges Report identifying James O. class members and monthly reports regarding residential or facilities program placements of James O. class members.

8. DCYF has formalized policy directive 2000-05 regarding monitoring by DCYF education specialists and imposition of sanctions for failure to meet work standards. This policy became effective January 31, 2000 and will be in effect during the term of this stipulation and corrective action plan. Defendants will summarize the corrective action and enforcement steps taken under this policy in the reports outlined in paragraph 21 of this stipulation. Defendants will continue to provide DRC information concerning corrective action and enforcement steps taken regarding school districts in the reports required under paragraph 21.

9. The monitoring results of the last annual report have been provided to each supervisor and worker. The reports referred to in paragraph 21 of this stipulation will also be provided to each supervisor

10. The education specialists shall meet with each CPSW and JPPO unit supervisor and develop an action plan to bring the unit into compliance.

11. The education specialists shall meet with supervisors and staff of each CPSW and JPPO unit as a group and conduct refresher training on James O. compliance at least one time per year. DCYF shall provide Plaintiffs' counsel with a copy of any material pertaining to the Consent Decree that is utilized by the education specialists, or handed out to supervisors and staff, as part of the training. DCYF shall also provide Plaintiffs' counsel with an opportunity for input in the content of refresher training. The refresher courses provided to CPSWs and JPPOs on the Consent Decree shall include the special education placement process, the surrogate parent provisions of the Consent Decree, and the right to related services and residential placement and issues regarding school discipline under the IDEA. The Department of Education, DCYF and DRC will offer to provide a training session to the school districts at the school districts' annual education conference or such other times as may be convenient to the school districts.

12. DCYF shall request an additional position effective July 1, 2001, for a third educational specialist in the next fiscal process.

13. On a quarterly basis, DCYF will compare the information the education specialists gather from the James O. documents they receive to a report from Bridges identifying new James O. class members for that quarter or any James O. class member whose placement changed during that quarter. In all cases in which joinder of school districts or notice of placement changes was not received by the education specialist, a request will be made to the caseworkers for the documentation. Failure to provide the requested documentation will be handled in accordance with policy directive 2000-05.

14. In a letter jointly signed by counsel, the Parties shall make the following requests to Judge Kelly:

(a) That the District Court form be amended to require joinder of both the sending and receiving school district;

(b) That an administrative directive be issued apprising all District Courts that notice of hearings in cases under 169-B, 169-C and 169-D must be sent to the school districts that have been joined; and

(c) That the State and the Disabilities Rights Center be allowed to present a training session for District Court Judges at the annual Judges Conference.

15. A Bridges form entitled "Notice of Non Compliance" in essentially the format attached and incorporated herein as Attachment #1 will be implemented by DCYF for use by case workers and JPPOs to report problems

with school district compliance to the education specialist who shall forward the form to the New Hampshire Department of Education.

16. SERESC and PIC will be provided with the "Notice of Non Compliance form," Attachment #1, and the DOE will ensure that adequate training is provided to surrogate parents to ensure that surrogate parents are able to identify and report to the Department of Education any school district non-compliance with the James O. Consent Decree.

17. The interagency agreement on Surrogate Parent Procedures that was developed in accordance with the Decree shall remain in effect during the term of this stipulation and corrective action.

18. DCYF monitoring shall include assessing whether CPSWs and JPPOs are annually reviewing the need to refer cases to the Department of Education and local school districts for the appointment of surrogate parents. DOE monitoring shall include assessing the length of time it takes SERESC to actually appoint a surrogate parent.

19. DOE currently monitors school district and private special education providers' compliance with the New Hampshire Standards for the Education of Children with Disabilities and the James O. Consent Decree through the on-site approval process using two forms, Appendix F, New Hampshire Special Education James O. Case Study Review and New Hampshire Department of Education Chapter 402 Reimbursement Claims Review. During the term of this Stipulation and Corrective Action, DOE shall modify the forms to include the following information: 1) the name

of the educational facility in which the student is placed; 2) the date of placement in the educational facility; 3) the name of the residential facility in which the student is placed; 4) the date of placement in the residential facility; 5) As to school districts, if the placement is in a residential facility that also provides special education and related services, whether a representative from the residential facility was in attendance (including by teleconference) at the meeting which considered the appropriateness of the residential facility, and whether the written prior notice advises parents of the determination of whether placement in a residential facility is necessary for the student to benefit from special education.

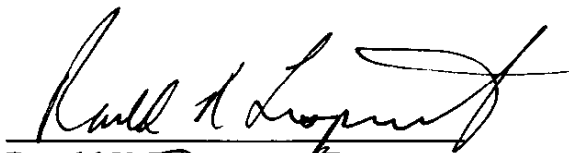
20. School Districts and providers are scheduled for review as required by the State Standards. For each school district or provider scheduled for review, all class members' files, up to a maximum of three, shall be reviewed for compliance. If there are more than three class members, the three files shall be chosen at random. For school districts, the DOE forms described in paragraph 19 above will be completed for each residential placement the student was in for more than ten days during the preceding school year. The reports and notices to class members whose files are reviewed in the on-site approval process will be provided to the DRC within ten days of receipt by the DOE. An Assented-to Motion for Protective Order and Protective Order has been filed contemporaneously with this Stipulation and Corrective Action.

21. An annual report covering the specific provisions of this stipulation will be provided within 30 days following finalization of this stipulation for the time period

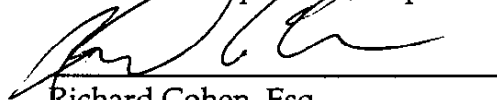
June 30, 1999 to July 1, 2000. Corrective action will be taken regarding non-compliance occurring during the reporting period. A report shall thereafter be prepared covering each additional six month period through July 1, 2002. The six month reports shall be provided to the DRC within 60 days of the end of the preceding six month time period. By July 1, 2002, if the compliance figures under the decree for each of the items covered by the forms that are sent to the DRC by DCYF and the DOE pursuant to paragraphs 9, 14, 19 and 20 herein are 90% or greater, the decree and this stipulation shall be terminated. By July 1, 2002, if the compliance figures are 70% to 90%, the implementation and reporting herein shall continue for one additional year. If compliance has not reached 90% by July 1, 2002 or compliance is below 70%, the parties shall immediately meet to attempt to modify this plan to address the lack of improvement. If agreement is not reached, DRC may renew its motion for contempt regarding the provisions of the decree continued by this stipulation.

Dated this 20th day of December, 2000,

ATTORNEYS FOR THE PLAINTIFF CLASS:



Ronald K. Lospennato, Esq.



Richard Cohen, Esq.

Appearing Pro Hac Vice

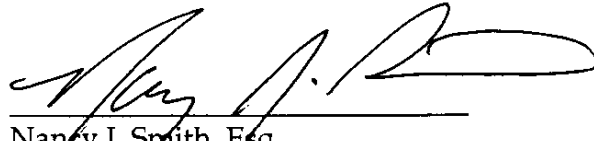


Christina Deslauriers, Esq.

Disabilities Rights Center, Inc.
18 Low Avenue, P.O. Box 3660
Concord, NH 03302-3660
Tel. No. 603-228-0432

Dated this 22 day of December, 2000,

FOR THE DEFENDANTS:



Nancy J. Smith, Esq.
Senior Assistance Attorney General,
Office of the Attorney General,
33 Capitol Street,
Concord, NH 03301

Tel. No. 603-271-3658

SO ORDERED, this _____ day of _____, 200__

Steven J. McAuliffe,
United States District Judge