

FILED

FEB 16 1990

CLERK, U. S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

ORIGINAL

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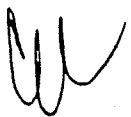
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18  UNITED STATES DISTRICT COURT

19 EASTERN DISTRICT OF CALIFORNIA

20 NICK O., by his mother, and Guardian Ad
21 Litem, JANE O., on behalf of himself
and all others similarly situated,

22 Plaintiff,

23 v.

24 C.A. TERHUNE, in his official capacity
25 as Director of the California Youth
Authority; RICHARD TILLSON, in his
26 official capacity as Superintendent

Case No. CIV
S-89-0755-RAR-JFM

STIPULATION
AND ORDER

ORDER RETURNED FOR SERVICE

Feb 16, 1990

John K. Van de Kamp, Attorney General

1 of the Northern Reception Center -)
2 Clinic,)

3 Defendants.)

4 This Stipulation and Order ("Stipulation") is made and
5 entered into by and between counsel for plaintiff and counsel for
6 defendants to resolve the above entitled class action lawsuit.

7 RECITALS AND REPRESENTATIONS

8 A. The complaint in this action was filed on May 25, 1989,
9 on behalf of plaintiff, Nick O., and all others similarly situated
10 and alleges that defendants violated plaintiffs' rights under the
11 Education of the Handicapped Act, 20 U.S.C. §§ 1401 et seq., (EHA),
12 the Rehabilitation Act of 1973, 29 U.S.C. § 794, the Federal Civil
13 Rights Act, 42 U.S.C. § 1983, and the due process and equal
14 protection clauses of the Fourteenth Amendment to the United States
15 Constitution.

16 B. The defendants filed an answer to the complaint on
17 September 20, 1989, denying any such violations.

18 C. The undersigned counsel are authorized by their clients
19 to enter into this Stipulation and to take all steps required
20 pursuant thereto.

21 D. The parties represent to the Court that this Stipulation
22 is fair, reasonable, and adequate to protect the class in accordance
23 with the standards of Rule 23(e) of the Federal Rules of Civil
24 Procedure.

25 E. The Stipulation is not to be construed as an admission
26 of liability or violation of law by the defendants. Defendants have

1 entered into this Stipulation for the purpose of settling disputed
2 contentions and controversies arising from this action.

3 F. This Stipulation shall not be effective until it has
4 been signed by counsel on behalf of the parties listed on
5 the signature page, and approved by a United States District Judge
6 for the Eastern District of California. If the Stipulation does not
7 become effective, it will be deemed part of negotiations for
8 settlement purposes only; it will not be admissible to prove or
9 disprove the allegations in the complaint; and all rights, claims
10 and defenses that existed apart from the Stipulation shall be
11 automatically restored to the parties.

12 NOW THEREFORE, the parties hereby stipulate that a judgment
13 be entered which shall incorporate the following terms and
14 conditions.

15 I. JURISDICTION

16 1. This court has jurisdiction of the subject matter of
17 this action pursuant to 28 U.S.C. §§ 1331, 1343(3) and 1343(4) and
18 personal jurisdiction over the named defendants to this
19 action.

20 II. PARTIES AND THE SETTLEMENT CLASS

21 2. Plaintiffs in this action are the named plaintiff, Nick
22 O., by and through his guardian ad litem, Jane O., and the plaintiff
23 class which includes all current and future wards of the California
24 Youth Authority who are educationally handicapped. The term
25 "educationally handicapped" as used throughout this Stipulation
26 shall also include the term "individuals with exceptional needs".

1 3. The parties stipulate that this action is properly
2 maintained as a class action under Rule 23(a), Federal Rules of
3 Civil Procedure and is appropriately designated as coming within the
4 provisions of Rule 23(b) of the Federal Rules of Civil Procedure.

5 4. The defendants are C. A. Terhune, in his official
6 capacity as Director of the California Youth Authority, and Richard
7 Tillson, in his official capacity as Superintendent of the
8 California Youth Authority's Northern Reception Center-Clinic.

9 5. When finally filed with the Court, this Stipulation
10 shall be binding on the plaintiffs and the named defendants, their
11 agents, employees, assignees, and successors.

12 6. California Education Code provisions are referred to in
13 this Stipulation to help assure that individuals with exceptional
14 needs are provided the programs and services that they are entitled
15 to under federal law, and are in no way intended to abrogate or
16 restrict any rights such individuals have under federal law.

17 III. NOTICE TO THE CLASS

18 7. Pursuant to Rule 23(e), the defendants shall, within
19 fourteen (14) days after the Court's approval of the proposed notice
20 attached as Exhibit A, post at all facilities operated by the
21 California Youth Authority, in conspicuous places which the youth
22 frequent, the notice in the form approved by the Court. Members of
23 the class shall have 30 days after such posting within which to
24 submit to counsel for the plaintiffs any inquiries or objections
25 they may have. Counsel for plaintiffs shall promptly forward copies
26 of any such inquiries or objections to counsel for the defendants

1 and to the Court. On the copies to be submitted to the defendants,
2 the names of the wards will be deleted if the wards so request.
3 Following the expiration of the time for submitting any objections,
4 the Court will approve the Stipulation as submitted or schedule a
5 hearing for the purposes of considering approval of the Stipulation.
6

7 IV. DEFENDANTS' OBLIGATIONS

8 A. Appropriate Education for Handicapped Children

9 8. Defendants will ensure that all class members are
10 provided with a free appropriate public education, including special
11 education and related services, in the least restrictive environment
12 consistent with their unique needs in compliance with 20 U.S.C.
13 §§ 1400, 1401, 1412, 1414(a)(1)(C)(iv); 34 C.F.R. §§ 300.1, 300.300,
14 300.550-556; California Education Code (EC) §§ 56001, 56026(a),
15 56030.5, 56031.

16 B. Identification and Screening

17 9. The defendants will develop and implement procedures and
18 policies to identify wards entering the California Youth Authority
19 (CYA) facilities who are or may be handicapped as defined in 20
20 U.S.C. §§ 1401(a)(1), (15), 1412(2)(C); 34 C.F.R. § 300.5; EC
21 §§ 56026, 56300-56303. This will include but not be limited to:

- 22 a. A system sufficient to accomplish within five
23 working days of each ward's delivery to a CYA
24 institution or facility, (i) identification of
25 each ward previously identified by public schools
26 or other qualified agency as eligible for special

1 education and related services, (ii) a telephonic
2 or written request of prior school or other agency
3 records and documentation regarding the ward's
4 special educational needs, and (iii) communica-
5 tions with the ward's parent or guardian and
6 administrator of last public school attended by
7 the ward concerning the special educational needs
8 of such ward.

9 b. A system sufficient to assure effective
10 screening by qualified personnel of all
11 entering wards for the purpose of identifying
12 within 15 working days of entry into CYA each
13 handicapped ward who has not been previously
14 identified by a public school or other
15 qualified agency as meeting the criteria for
16 assessment as an individual with exceptional
17 needs.

18 C. Development and Implementation of Individual Educational
19 Programs

20 10. The defendants will develop and implement an assessment
21 system for development of Individual Educational Programs (IEP) that
22 complies with the requirements of 20 U.S.C. §§ 1401(19), 1412(2)(B),
23 (4), (5)(C), (6); 1414(a)(5); 34 C.F.R. §§ 300.340-300.349, 300.530-
24 300.543; EC §§ 56320-56329, 56333, 56337-56338, 56340-56347, 56380-
25 56381. The term "assessment" as used throughout this Stipulation
26 shall also mean "evaluation" as used in 34 C.F.R. §§ 300.1 et. seq.

1 11. For each ward identified as handicapped or as an
2 individual with exceptional needs by a public school or other
3 qualified agency prior to the ward's commitment to CYA, the
4 defendants will immediately place the student in a comparable
5 program as required by Education Code section 5625 for a period not
6 to exceed 30 days by which time an IEP review will have been
7 conducted in conformity with paragraphs 13-17 of this Stipulation.

8 12. Each ward not covered by paragraph 11 who CYA has
9 identified as an individual who may have exceptional needs (as
10 described in paragraph 9(b)), shall be referred for a full and
11 complete assessment by an appropriate assessment team with
12 specialists in any areas in which a ward has, or is suspected to
13 have, a handicap, in compliance with 20 U.S.C. §§ 1411, 1412(5)(C);
14 34 C.F.R. §§ 300.532, 300.540--300.543; EC §§ 56320-56324, 56326-
15 56327, 56329, 56333, 56337, 56341.

16 a. Within 15 days of a referral for assessment, the
17 defendants shall prepare and mail to the ward's
18 parent, guardian, or surrogate parent a proposed
19 assessment plan.

20 b. Testing used in assessments shall be
21 appropriate for and applicable to the
22 establishment of the existence of disabilities
23 that affect learning, in compliance with 20
24 U.S.C, §§ 1412(5)(C); 34 C.F.R. § 300.532; EC
25 § 56320.

26 13. An IEP required as the result of an assessment of a

()

ward, shall be developed within 50 days from the date of the receipt of the parent's, guardian's, or surrogate parent's written consent for assessment, unless the parent, guardian or surrogate parent agrees to an extension.

14. If the parent, guardian, surrogate parent or qualified staff person so requests, an IEP meeting to review an IEP that was developed subsequent to the ward's entry into CYA shall be held within 30 days after the receipt of the request.

15. The defendants shall ensure that the ward's parent, guardian, or surrogate parent, as defined in 34 C.F.R. §§ 300.10, 300.514; EC § 56028, 56050, is present at each IEP meeting or is afforded the opportunity to participate, in compliance with 20 U.S.C. §§ 1401(19), 1415(a); 34 C.F.R. § 300.345; EC 56321, 56341(b)(3)(F), 56506.

16. The IEP shall be individualized and shall contain a statement of the student's present level of educational performance, a statement of specific short-term measurable instructional objectives within the capability of the ward, and a statement of the special education and related services to be provided to the student, in compliance with 20 U.S.C. §§ 1401(19) 1412(4), 1414(a)(5); 34 C.F.R. § 300.346; EC § 56345. When the IEP team determines that the ward needs such services, the IEP shall include a statement of short-term instructional objectives for vocational programs to be provided to the student and the integration of vocational programs into the special education program of the student.

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1 17. The IEP shall specifically require related services as
2 defined in 20 U.S.C. § 1401(17); 34 C.F.R. § 300.13, EC § 56363
3 where these are necessary to enable a student to benefit from an
4 educational program.

5 18. The goals and short term instructional objectives of
6 the IEP shall be reviewed regularly by the school staff to determine
7 whether the goals and objectives are being met, whether specified
8 services are being provided, and whether modifications are
9 necessary, in compliance with 20 U.S.C. §§ 1401 (19), 1412(4),
10 1414(a)(5); 34 C.F.R. §§ 300.343(d), 300.346; EC §§ 56343, 56347,
11 56380-56381.

12 D. Provision of Special Education and Related Services

13 19. The defendants shall provide special education and
14 related services in the amount and type specified in each ward's
15 IEP as required by 20 U.S.C. §§ 1401(16), (17), (19), 1412(4),
16 (5)(B); 1415(a)(5); 34 C.F.R. §§ 300.13-300.14, 300.346, 300.551; EC
17 §§ 56031, 56345, 56360-56361, 56363. Education services shall be
18 individualized and shall address the specific disabilities of wards
19 in compliance with 20 U.S.C. §§ 1401; 34 C.F.R. § 300.1(a); EC §§
20 56000-56001, 56031.

21 20. The defendants will ensure that there are adequate and
22 appropriate numbers of qualified staff, as defined in 34 C.F.R.
23 § 300.12, to provide special education and related services to
24 wards. Special education teachers shall meet all state
25 certification requirements in the area in which they will be pro-
26 viding special education or related services, in compliance with 20

1 U.S.C §§ 1413(a)(3); 34 C.F.R. § 300.12; EC §§ 56060-56063, 56362,
2 56362.5, 56362.7, 56368.

3 21. The obligation to provide appropriate special
4 education and related services and to ensure that there are adequate
5 numbers of qualified staff to carry out this responsibility applies
6 to all facilities operated by the California Youth Authority,
7 including the Northern Reception Center-Clinic in Sacramento.

8 22. In compliance with 20 U.S.C. § 1413 (a)(3); 34 C.F.R.
9 § 300.380-387; EC §§ 56240-56243, the defendants will provide
10 ongoing training to appropriate personnel to assure proper
11 identification of handicapped students and provision of needed
12 special education services.

13 E. Procedural Safeguards

14 23. The defendants will ensure that the procedural safe-
15 guards mandated by 20 U.S.C. §§ 1415, 1417(c); 34 C.F.R. §§ 300.500-
16 514 and 300.560-576; EC 56340, 56342-56347; 56500.1-56507, are
17 provided to all class members and their parents.

18 V. PLAN TO FULFILL DEFENDANTS' OBLIGATIONS

19 24. Defendants will make all revisions in their Special
20 Education Procedures Manual necessary to fulfill their obligations
21 within 30 days from entry of this Stipulation by the Court.

22 25. a. Defendants will implement a system to identify and
23 screen wards who are or may be handicapped, as described in
24 Paragraph 9 within 90 days of the entry of this Stipulated Judgment.

25 b. Defendants will fill needed special educational
26 staff positions or retain any needed contractual services within 90

1 days from the entry of this Stipulated Judgment. As positions
2 become vacant defendants will fill needed special education staff
3 positions or retain any needed contractual services within 90 days
4 of such vacancies.

5 26. Defendants shall assure that all of the obligations and
6 responsibilities set forth in this agreement are fulfilled and all
7 necessary policies and procedures are fully implemented within six
8 months from the date of the entry of this Stipulated Judgment.

9 VI. ASSESSMENT AND MONITORING

10 27. Defendants will provide plaintiff's counsel with a
11 monthly report no later than the 20th day of the following month
12 setting forth the following information for each CYA institution:
13 (a) the number of wards referred to the school consultation team;
14 (b) the number of wards the school consultation team referred
15 to special education; (c) the number of interim special education
16 placements reviewed; (d) the number of wards screened for special
17 education eligibility; (e) the number of wards referred for special
18 education assessments; (f) the number of wards who had special
19 education assessment plans developed and who were assessed; (g) the
20 number of wards who had an IEP developed and were placed for
21 services; (h) the number of wards who had an annual special
22 education review; (i) the number of wards given a tri-annual special
23 education review; (j) the number of wards not receiving any needed
24 special education services (with a description of the type of
25 service that was not provided); (k) the total number of special
26 education wards; (l) the number of wards entering CYA who had IEPs;

1 (m) copies of all corrective action plans for any area out of
2 compliance; and (n) copies of any comments, program updates or
3 personnel changes relating to the monthly special education report.
4 Items (c) through (i) of this report will also indicate the number
5 of wards who received each of the special education activities
6 referred to within the proper timelines.

7 28. Defendants, no later than the 20th day of the months of
8 January, April, July and October, will provide plaintiffs' counsel
9 with a report setting forth the following information: (a) the
10 total number of wards in custody in each CYA facility as of the end
11 of each month during that quarter; (b) the total number of new wards
12 admitted to a reception facility during each month in the quarter;
13 (c) a description and the number of staff positions at each CYA
14 facility engaged in providing special education evaluations and
15 services. Additionally, defendants on a semi-annual basis will
16 provide plaintiffs' counsel with a report setting forth the total
17 number of wards identified as eligible for special education at CYA
18 broken down for each institution and for each handicapping
19 condition. Defendants' providing plaintiffs' counsel with a copy of
20 the semi-annual report entitled, "The Special Education Pupil Count
21 Report" which CYA is required to submit to the State Department of
22 Education, setting forth the total number of wards identified as
23 eligible for special education at CYA broken down for each
24 institution and for each handicapping condition, will satisfy
25 Subdivision (c) of the above agreement.

26 29. Defendants will also provide plaintiffs' counsel with

1 copies of policies and procedures adopted or modified in compliance
2 with this Stipulation. Defendants will also afford plaintiffs'
3 counsel reasonable access to CYA facilities and documents for
4 purposes of ascertaining compliance with this Stipulation.

5 30. Dr. Robert R. Rutherford and Dr. Kenneth Howell, on
6 behalf of plaintiffs, will evaluate defendants' compliance with this
7 Stipulation. The CYA will reimburse plaintiffs' compliance
8 evaluators for all reasonably incurred costs, including compensation
9 for the time spent in monitoring and evaluating compliance and
10 travel expenses. The total reimbursement for time and expenses of
11 plaintiffs' compliance evaluators shall not exceed \$25,000 in any
12 12-month monitoring period, and compensation for their time shall
13 not exceed \$400 per day per person.

14 31. In the event that either of the two individuals
15 selected to evaluate defendants' compliance with this agreement is
16 unable to fulfill this role, plaintiffs may select a replacement.
17 Any such replacement shall have an advanced degree in special
18 education, be associated with an accredited college or university,
19 shall have experience working with educationally handicapped
20 children, and shall reside in California, Washington, Oregon, or
21 Arizona. Plaintiffs shall submit the name and qualifications of an
22 appropriate replacement to defendants at least 30 days prior to any
23 proposed compliance evaluation. Defendants shall submit any
24 objections that they may have to plaintiffs' selection within 15
25 days after being so notified. Defendants shall not have the power
26 to reject plaintiffs' selection or to withhold payment of the

1 monitor's reasonable fees and expenses.

2 32. Plaintiffs' compliance evaluators will be permitted to
3 make on-site inspections at CYA facilities, review documents, and
4 interview staff, subcontractors, agents, employees, and wards as
5 needed in order to evaluate compliance with this Stipulation,
6 provided that not more than one compliance evaluation in any CYA
7 facility will be conducted in any 12-month calendar period following
8 entry of this Stipulation. Plaintiffs may also select additional
9 special education experts to participate in these compliance
10 evaluations, however, CYA will not reimburse for any costs for any
11 such additional persons.

12 VII. CONTINUING JURISDICTION AND DISPUTE RESOLUTION

13 33. Upon final approval by the Court, this Stipulation and
14 any modifications thereto shall be incorporated in a Judgment in the
15 form annexed hereto as Exhibit B.

16 34. The parties will use all reasonable means to resolve
17 disputes that arise under this agreement prior to seeking the
18 involvement of this Court. In the event that the parties are unable
19 to resolve a dispute informally, plaintiffs' counsel shall notify
20 defendants in writing of the alleged violation of the Stipulation
21 and the remedial action demanded. Defendants shall have 30 days to
22 respond in writing. The defendants' response shall describe the
23 corrective action that will be taken and the timetable for
24 implementation, or shall explain why defendants believe that no
25 remedial action is warranted. The parties will also attempt to meet
26 in good faith to resolve any disputes. Only if the parties are

1 unable to resolve a dispute through exhaustion of this process shall
2 the matter be submitted to the Court for further orders as may be
3 appropriate.

4 35. This Stipulation will remain in full force and
5 effect for three years from the date of its entry by this Court.

6 36. The Court's approval and filing of the Stipulation
7 referred to in paragraph 35 shall not be construed to prevent new
8 litigation on constitutional or federal statutory claims alleged to
9 be in existence following the date of the filing of the Stipulation.

10 37. Upon agreement of the parties, or upon motion of the
11 plaintiffs and a finding of good cause by the Court, the
12 Stipulation may be extended for additional periods of time to be
13 fixed by this Court from time to time. The failure of the defen-
14 dants to comply with the obligations set forth in this Stipulation
15 shall be grounds for extending the Stipulation. The jurisdiction of
16 the Court to extend or modify the Stipulation and to enter any order
17 that may be appropriate shall continue until the Stipulation
18 expires.

19 38. Within twenty days of the filing of the Stipulation
20 with the Court, the defendants shall post copies of this Stipulation
21 in housing and school areas of each CYA facility. Thereafter, staff
22 will make reasonable, good faith efforts to maintain the posting of
23 the Stipulation in those areas for as long as the Stipulation is in
24 effect.

25 VIII. ATTORNEYS FEES AND EXPENSES

26 39. Plaintiffs as the prevailing parties, may request from

1 the Court an award of reasonable attorneys' fees and cost, and
2 defendants reserve the right to contest the amount o. any such
3 request.

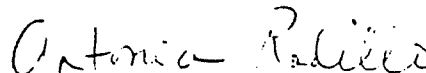
4 IT IS SO STIPULATED

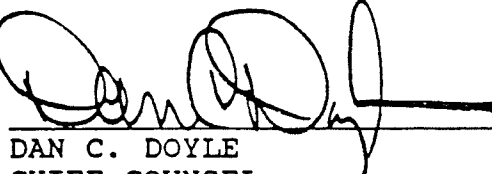
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6 Dated: February 7, 1990


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14 Dated: February 9, 1990


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DAN C. DOYLE
CHIEF COUNSEL
STATE OF CALIFORNIA, DEPARTMENT OF
THE YOUTH AUTHORITY

23
24 IT IS SO ORDERED

25 Dated: 2/15/90


United States District Judge