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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PENNSYLVANIA ASSOCIATION FOR
RETARDED CHILDREN, et al.

: CIVIL ACTION

v.

COMMONWEALTH OF PENNSYLVANIA,
et al.

: NO. 71-42

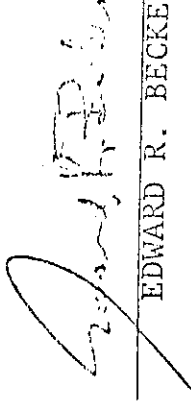
MEMORANDUM AND ORDER

EDWARD R. BECKER, J.

OCTOBER 21, 1976

Following the filing by plaintiffs Drew Pinder, et al. of a complaint for enforcement of decrees under the above caption, we conferred with counsel for the plaintiffs and counsel for the Lower Merion School District and the members of the Lower Merion School Board. As the result of that conference the dispute between the parties has been amicably resolved. See letters attached. We take this opportunity to commend counsel and the parties for their cooperative and constructive efforts. We will therefore mark the complaint for enforcement of decrees withdrawn without prejudice. 1/

BY THE COURT:


EDWARD R. BECKER, J.

-
1. We have also entered an order, pursuant to the oral motion of four of the defendants, to strike the allegations of paragraph 19 of the complaint.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PENNSYLVANIA ASSOCIATION FOR
RETARDED CHILDREN, et al. : CIVIL ACTION

v. :

COMMONWEALTH OF PENNSYLVANIA, :
et al. : NO. 71-42

O R D E R

AND NOW, this 26th day of October, 1976, in
consideration of the foregoing memorandum, IT IS ORDERED
that:

1. Paragraph 19 of the complaint for enforcement of
decrees is stricken.
2. The complaint for enforcement of decree is marked
"withdrawn without prejudice".

BY THE COURT:


EDWARD R. BECKER, J.

LAW OFFICES OF

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OF COUNSEL
PAUL P. WISLER

October 19, 1976

K. Robert Conrad, Esq.
20th Floor
Fidelity Building
Philadelphia, Pennsylvania 19109

Dear Mr. Conrad:

At a meeting of the Board of School Directors of Lower Merion School District held on Monday, October 18, 1976, and as a result of further discussion concerning the transportation of pupils to the Benchmark and Elwyn Schools, the Board undertook to do the following.

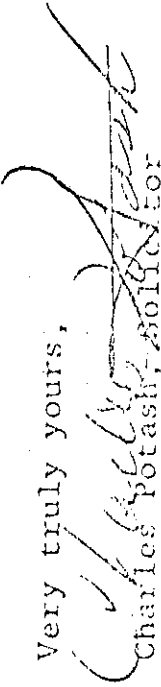
- (1) Separation of the transportation of the pupils attending the Benchmark and Elwyn Schools.
- (2) Door to door service for Elwyn pupils by taxi.
- (3) The time requirements for transportation to these two schools will be reduced.

Note: Under the foregoing plan, Benchmark pupils will continue to take District owned vehicles to Ardmore Junior High School and transfer to a Tote Tots bus. (The reverse takes place in the afternoon.)

In addition, the President of the School Board will appoint a committee on special education to meet with parents and administrators periodically to review all phases of special education of the District, to review concerns of parents and to invite their participation.

Any problems not solved in the interim by the administrators shall be referred to the President of the Board who shall be a member of that committee.

Very truly yours,


Charles Potash, Solicitor
Lower Merion School District

CP/ap

cc: Mr. Henry Parkin
Thomas O'Neil, Esq.
Dr. Donald R. Van Wagenen
Mr. Henry Clay

PEPPER, HAMILTON & SCHEETZ

ATTORNEYS AT LAW

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202-467-6500

P. O. BOX 1181

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717-233-8483

BOX 26

NUMBER ONE RADNOR STATION

KING OF PRUSSIA ROAD

RADNOR, PA. 19037

215-687-8440

October 25, 1976

Hon. Edward R. Becker
16614 United States Court House
601 Market Street
Philadelphia, Pa. 19106

Re: Pennsylvania Association for Retarded
Children, et al. v. Commonwealth of
Pennsylvania, et al. Civil Action No. 71-42

Dear Judge Becker:

As agreed in your chambers today, the plaintiffs are prepared to dismiss their complaint without prejudice based on the letter supplied us by Mr. Potash under date of October 19, 1976. Accordingly, Mr. Potash's letter and this letter may be attached to Your Honor's Memorandum and Order.

Thank you again for your assistance in resolving this matter.

Respectfully submitted,



K. Robert Conrad

KRC:msb

Enclosures

cc: Charles Potash, Esquire
Thomas N. O'Neill, Jr., Esquire

152-153

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE PENNSYLVANIA ASSOCIATION FOR :
RETARDED CHILDREN, NANCY BETH BOWMAN, :
et al., on behalf of themselves and :
all others similarly situated :

Plaintiffs

v.

COMMONWEALTH OF PENNSYLVANIA, ROBERT :
HENDERSHOT, Acting Secretary of Education :
of the Commonwealth of Pennsylvania, :
PHILADELPHIA SCHOOL DISTRICT, Philadelphia, :
Pennsylvania, et al. :

Civil Action
No. 71-42

Defendants

THE PHILADELPHIA ASSOCIATION FOR :
RETARDED CITIZENS; :
JOHN GARRETT ARMSTRONG, :
by his mother, Patricia Armstrong; :
GREGORY PROODIAN, :
by his mother, Rosette Proodian; :
MARK HORVAT, :
by his mother, Diane Horvat; :
JEANNE MC CREERY, :
by her mother, Margaret McCreery; :
JAMES LEROY GREEN, :
by his mother, Daisy Green; :
LAWRENCE DESTRALO, :
by his mother, Helen Destralo; :
DOROTHY SCHAEFFLER, :
individually and by her mother, :
Dora Schaeffler; :
MICHAEL HELDUSER, :
by his mother, Mary Helduser; :
DONNETTA THOMPSON, :
by her mother, Gloria Thompson; :
WESLEY GORE, :
by his mother, Carrie Gore; :
on behalf of themselves and all others :
similarly situated, :

Petitioners for
Contempt and
Enforcement

NOTICE OF MOTION

TO: ALL COUNSEL OF RECORD

Take notice that the attached Motion for Contempt and
Enforcement and Supporting Memorandum will be filed in the

United States District Court on March 4, 1977. Notice is given

A I A

pursuant to Local Rule 36.

Caryl Andrea Oberman

CARYL ANDREA OBERMAN
Counsel for Petitioners
1211 Chestnut Street
12th Floor
Philadelphia, PA 19107

CERTIFICATION

This is to certify that today, true and correct copies of this Motion and Supporting Memorandum were served upon all counsel listed below by certified mail, return receipt requested.

2/23/77

Date

Caryl Andrea Oberman

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE PENNSYLVANIA ASSOCIATION FOR RETARDED :
CHILDREN, NANCY BETH BOWMAN, et al., on :
behalf of themselves and all others :
similarly situated :

Plaintiffs

Civil Action
No. 71-42

v.

COMMONWEALTH OF PENNSYLVANIA, :
ROBERT HENDERSHOT , Acting Secretary of :
Education of the Commonwealth of Pennsylvania, :
PHILADELPHIA SCHOOL DISTRICT, Philadelphia, :
Pennsylvania, et al. :

Defendants

THE PHILADELPHIA ASSOCIATION FOR RETARDED
CITIZENS;

JOHN GARRETT ARMSTRONG, :
by his mother, Patricia Armstrong; :
GREGORY PROODIAN, :
by his mother, Rosette Proodian; :
MARK HORVAT, :
by his mother, Diane Horvat; :
JEANNE MC CREERY, :
by her mother, Margaret McCreery; :
JAMES LEROY GREEN, :
by his mother, Daisy Green; :
LAWRENCE DESTRALO, :
by his mother, Helen Destralo; :
DOROTHY SCHAEFFLER, :
individually and by her mother, :
Dora Schaeffler; :
MICHAEL HELDUSER, :
by his mother, Mary Helduser; :
DONNETTA THOMPSON, :
by her mother, Gloria Thompson; :
WESLEY GORE, :
by his mother, Carrie Gore; :
on behalf of themselves and all :
others similarly situated, :
:

Petitioners for Contempt
and Enforcement

MOTION OF THE PHILADELPHIA ASSOCIATION FOR
RETARDED CITIZENS, JOHN GARRETT ARMSTRONG,
et al., FOR A FINDING OF CONTEMPT AGAINST
THE SCHOOL DISTRICT OF PHILADELPHIA, FOR
ENFORCEMENT OF ORDERS, FOR SANCTIONS, AND
FOR OTHER RELIEF

The Philadelphia Association for Retarded Citizens, John Garrett Armstrong, et al., members of the plaintiff class in this action, individually or by their parents and next friends Patricia Armstrong, et al., through their counsel, Caryl Andrea Oberman, Esquire, move this Honorable Court for a finding that the School District of Philadelphia and its officers are in contempt of the Order of this Court in this action, for the enforcement of its orders, for sanctions, and for other appropriate relief. In support of this motion, petitioners file herewith the sworn affidavits of Patricia Armstrong, Rosette Proodian, Diane Horvat, Margaret McCreery, Daisy Green, Helen Destralo, Dora Schaeffler, Dorothy Schaeffler, Mary Helduser, Gloria Thompson and Carrie Gore, attached hereto as Exhibits A through K, and incorporated as if fully stated herein, and further aver as follows:

1. On May 5, 1972, this Court approved and ordered into effect an Amended Stipulation and an Amended Consent Agreement in this action.

2. This Court ordered the School District of Philadelphia, its officers, employees, agents and successors to provide no later than September 1, 1972, to every retarded person between the ages of six and twenty-one as of the date of the Order and thereafter, "access to a free public program of education and training appropriate to his learning capacities." (Order and Injunction of May 5, 1972, Paragraph(g)).

3. Paragraph 48 of the Amended Consent Agreement approved and ordered into effect by this Court required the defendants to formulate and submit to the Masters for approval a satisfactory plan to identify, locate, and evaluate all mentally retarded persons between the ages of six and twenty-one within thirty days of the date of the Order.

4. Paragraph 49 of the Amended Consent Agreement approved and ordered into effect by this Court required the defendants to identify, locate, give notice to, and provide for the evaluation of all mentally retarded persons between the ages of six and twenty-one within ninety days of the date of the Order. These evaluations were to be performed in compliance with the plan written

pursuant to Paragraph 48.

5. In compliance with Paragraph 48, Commonwealth defendants duly promulgated the Commonwealth Plan for Identification, Location and Evaluation of Mentally Retarded Children, (COMPILE), pertinent portions of which are appended hereto as Exhibit L.

6. COMPILE provides in pertinent part:

The Plan is designed in keeping with the findings of the Order: "that all mentally retarded persons are capable of benefiting from a program of education and training--" and that "It is the Commonwealth's obligation to place each mentally retarded child in a free public program of education and training appropriate to the child's capacity... Further, since the Plan uses the evaluation process to determine program, it has also been designed to re-formulate existing methods and procedures for evaluating children in Pennsylvania. From now on it is anticipated that the educational evaluation of subnormally functioning Commonwealth children will be a continuing multidisciplinary process of individualized assessment leading to prescriptive program decisions and ready access to appropriate developmental education and training programs for each child. (COMPILE, pp. 1-2.)

7. COMPILE mandates a two step evaluation process, consisting of a screening and an in-depth evaluation by a multidisciplinary team, culminating in a joint conference of the examiners to develop a "continuing diagnostic prescriptive and psycho-educational plan" to meet the needs of the student. (COMPILE, pp. 6-10, paragraph 3a-f.)

8. COMPILE mandates that each School District or Intermediate Unit "shall have primary responsibility for the initial evaluation process and shall assemble a local evaluation team..." (COMPILE, p. 10, Paragraph 3h.)

9. In violation of this Court's Order, the School District of Philadelphia continues to exclude mentally retarded children from free public programs of

education and training by offering them no programs, or programs that are inappropriate to their learning capacities. Affidavits of Patricia Armstrong, Rosette Proodian, Diane Horvat, Margaret McCreery, Daisy Green, Helen Destralo, Dora Schaeffler, Mary Helduser, Gloria Thompson, and Carrie Gore, Exhibits A-G, I-K.

10. In violation of this Court's Order and of COMPILE, the School District of Philadelphia has failed to provide multidisciplinary team evaluations for the vast majority of mentally retarded children, has failed to hire and to train persons to provide such evaluations, and has failed to establish a procedure for providing such evaluations. Affidavit of Patricia Armstrong, Exhibit A 4-5; Affidavit of Rosette Proodian, Exhibit B 3; Affidavit of Diane Horvat, Exhibit C 4; Affidavit of Margaret McCreery, Exhibit D 5; Affidavit of Daisy Green, Exhibit E 3; Affidavit of Helen Destralo, Exhibit F 13; Affidavit of Dora Schaeffler, Exhibit G 6; Affidavit of Gloria Thompson, Exhibit S 4; Affidavit of Carrie Gore, Exhibit K 4.

11. In violation of this Court's Order to provide evaluations and programs in accordance with COMPILE, the School District of Philadelphia has failed to provide individual prescriptive educational programs for children deemed to be mentally retarded and has failed to hire and to train personnel to develop such programs as part of the multidisciplinary team. The School District of Philadelphia has failed to provide or to establish a procedure for providing the multidisciplinary evaluations necessary as a precondition to effective programming. Affidavit of Patricia Armstrong, Exhibit A 6; Affidavit of Rosette Proodian, Exhibit B 4, and 6; Affidavits noted in Paragraph 10, above.

12. In violation of this Court's Order, the School District of Philadelphia has failed to provide education appropriate to the needs of mentally retarded students. The provision of adequate supportive services is essential to the provision of education appropriate to the learning capacities of mentally retarded students.

13. The School District of Philadelphia has failed to provide adequate speech, occupational and physical therapy to meet the educational needs of its mentally retarded students. Affidavit of Patricia Armstrong, Exhibit A 17; Affidavit of Diane Horvat, Exhibit C 5 and 6; Affidavit of Gloria Thompson, Exhibit J 7-8

14. The School District of Philadelphia has failed to provide access to appropriate programs of education by making access to these services dependent upon gross diagnostic categories and not upon the assessed educational needs of individual children. Affidavit of Dora Schaeffler, Exhibit G 3.

15. The School District of Philadelphia has failed to provide adequate transportation and medical services to mentally retarded children. Affidavit of Patricia Armstrong, Exhibit A 11; Affidavit of Rosette Proodian, Exhibit B 11; Affidavit of Gloria Thompson, Exhibit J 9-10; Affidavit of Carrie Gore, Exhibit K 8-9.

16. The School District of Philadelphia has failed to provide adequate vocational education services and programming to meet the educational needs of its mentally retarded students. Affidavit of Daisy Green, Exhibit E 11; Affidavit of Dora Schaeffler, Exhibit G 8-11.

17. The School District of Philadelphia has neither hired nor trained sufficient personnel to meet these educational needs, and has thereby denied to mentally retarded children access to public education appropriate to their needs.

Affidavit of Patricia Armstrong, Exhibit A 17; Affidavit of Rosette Proodian, Exhibit B 6 and 11; Affidavit of Diane Horvat, Exhibit C 7; Affidavit of Gloria Thompson, Exhibit J 10.

18. The Order of this Court made it clear that there are preferential priorities in determining the setting in which education must be provided to mentally retarded children. This Court has ordered that education of mentally retarded children be provided in the least restrictive setting possible.

19. Paragraph 7 of the Amended Consent Agreement ordered into effect by this Court provides:

It is the Commonwealth's obligation to place each mentally retarded child in a free, public program of education and training appropriate to the child's capacity, within the context of the general educational policy that, among the alternative programs of education and training required by statute to be available, placement in a regular public school class is preferable to placement in a special public school class and placement in a special public school class is preferable to placement in any other type of program of education and training.

20. Paragraph 33 of the Amended Consent Agreement provides in pertinent part:

...that homebound instruction is the least preferable of the programs of education and training administered by the Department of Education and a mentally retarded child shall not be assigned to it unless it is the program most appropriate to the child's capacities...that an assignment to homebound instruction shall be reevaluated not less than every three months, and notice of the evaluation and an opportunity for a hearing thereon shall be accorded to the parent or guardian, as set out in the Order of this Court dated June 18, 1971, as amended.

21. In violation of the policy established by the Order of this Court, the School District of Philadelphia has segregated many mentally retarded students from their

non-handicapped peers and has condemned them to a restrictive educational placement, by placing them in special education "centers." More than one thousand mentally retarded children are in such centers. In Subdistrict Eight, all trainable mentally retarded children are in such centers. In Subdistrict Five, more than half of all trainable mentally retarded children and all educable children in secondary school placements are in such centers. In Subdistrict Six, more than seventy per cent of all trainable mentally retarded children are in such centers. Affidavit of Rosette Proodian, Exhibit B 6; Affidavit of Dora Schaeffler, Exhibit G 5. These assignments violate these children's right to education, their First Amendment right to freedom of association, their Fourteenth Amendment right to equal protection, and their right to freedom from discrimination under Section 504 of the Vocational Rehabilitation Act of 1975.

22. In violation of Paragraph 33 of the Amended Consent Agreement, the School District of Philadelphia has misused homebound instruction to deny mentally retarded children access to a free appropriate program of public education in the least restrictive setting. The School District of Philadelphia has assigned children to homebound instruction inappropriately, has failed to provide three month reevaluations, and has failed to give parents notice of the evaluation and to inform them of their right to a hearing. Affidavit of Helen Destralo, Exhibit F 6-8; Affidavit of Mary Helduser, Exhibit I 10-12; Affidavit of Carrie Gore, Exhibit K 6 and 9.

23. In its Order of May 5, 1972, this Court approved and ordered into effect the provisions of the Amended Stipulation in this action providing for the due process rights to be accorded to mentally retarded children and to their parents. Prominent among these are the rights to notice and to hearing.

24. Paragraph 3(j) of the Amended Stipulation provides:

The hearing shall be scheduled not sooner than fifteen (15) days nor later than thirty (30) days after the receipt of the request for a hearing from the parent or guardian, provided however that for good cause shown, reasonable extensions of these times shall be granted at the request of the parent.

25. Paragraph 3(v) of the Amended Stipulation provides:

There shall be no change in the child's educational status without prior notice and the opportunity to be heard as set forth herein, except that in extraordinary circumstances the Director of the Bureau of Special Education, upon written request to him by the district or intermediate unit setting for the reasons therefor and upon notice to the parent may approve an interim change in educational assignment prior to the hearing, in which event the hearing will be held as promptly as possible after the interim change. The Director shall act upon any such request promptly and in any event within three (3) days of its receipt.

26. The School District of Philadelphia has consistently failed to comply with the Order of this Court establishing time requirements for the scheduling and holding of due process hearings. Affidavit of Rosette Proodian, Exhibit B 4-16.

27. The School District of Philadelphia has consistently violated the rights of children and has discouraged parents from exercising those rights by imposing lengthy periods of negotiation, often as long as a year, between the time of parental request for a due process hearing and the time such hearing is scheduled and held. Affidavit of Rosette Proodian, Exhibit B 5-15; Affidavit of Gloria Thompson, Exhibit J 6.

28. By its failure to provide a mechanism for the enforcement of a hearing officer's decision in a due process hearing or of negotiated settlements in lieu of a due process hearing, the School District of Philadelphia has failed to provide a mechanism for effectuating a child's right to due process or for achieving implementation of his or her right to education.

29. In violation of this Court's Order, the School District of Philadelphia has suspended and excluded from school several mentally retarded students without obtaining prior permission from the Director of the Bureau of Special Education and without initiating due process notice or other procedures, thereby denying them their rights to education and to due process of law. Affidavit of Margaret McCreery, Exhibit D 4-6; Affidavit of Daisy Green, Exhibit B 6 and 9-10; Affidavit of Helen Destralo, Exhibit F 4-5.

30. As a result of these violations by the School District of Philadelphia of this Court's Order and Decree, mentally retarded children have been denied their rights to due process of law, to a free appropriate

program of public education, and to receive that education in the least restrictive educational setting possible. They have suffered serious and in some cases irreparable harm. In their attempt and the attempt of their parents to enforce their rights under the Consent Agreement in this action and in the institution of this Motion, they have incurred substantial costs, expenses and attorneys' fees.

31. For all of these reasons, plaintiffs ask this Court to grant their Motion for a finding of contempt against the School District of Philadelphia, for enforcement of decrees and for sanctions, and for the following specific relief:

32. For an order requiring the School District of Philadelphia immediately to provide each member of the plaintiff class who is served or entitled to be served by the Philadelphia schools with a multidisciplinary team evaluation and to provide for each member of the plaintiff class a written prescription for his or her education and training of multidisciplinary teams in each of the eight subdistricts of the School District of Philadelphia in sufficient number to perform these evaluations and to provide these prescriptions.

33. For an order requiring the School District of Philadelphia to maintain and to implement an individualized educational program for each mentally retarded child supposed to be served by the School District of Philadelphia, based upon the prescription of the multidisciplinary team which evaluated that child.

34. Pursuant to this Court's powers under Rule 70 of the Federal Rule of Civil Procedure and to its inherent powers to enforce its decree by appropriate action, for an order appointing some person or persons other than officers or employees of the School District of Philadelphia to design and to provide the training of the multidisciplinary teams, and to establish a timetable for the hiring and training of the teams;

35. Pursuant to this Court's powers under Rule 70 of the Federal Rules of Civil Procedure and to its inherent powers to enforce its decrees by appropriate action, for an order appointing some person or persons other than officers or employees of the School District of Philadelphia, to create a plan for the provision of appropriate vocational education opportunities to every mentally retarded child supposed to be served by the School District of Philadelphia, to establish a timetable for the provision of such services and for the hiring of sufficient personnel to provide them, and to provide training for such personnel;

36. Pursuant to this Court's powers under Rule 70 of the Federal Rules of Civil Procedure and to its inherent powers to enforce its decrees by appropriate action, for an order appointing some person or persons other than officers or employees of the School District of Philadelphia to survey the need for supportive and medical services within the School District, to design a plan for providing such services and for hiring and training

sufficient supervisors, educational diagnosticians, speech therapists, physical therapists, occupational therapists and medical personnel to ensure the availability of appropriate educational opportunities to every mentally retarded child supposed to be served by the School District of Philadelphia, to establish a timetable for such hiring and training and to provide such training;

37. For an order requiring the School District of Philadelphia to retain the personnel required in the plan devised under Paragraph 5 above, to provide for the training of such personnel, and to provide the services called for by the plan, within the time frame specified by the plan;

38. Pursuant to this Court's powers under Rule 70 of the Federal Rules of Civil Procedure and to its inherent powers to enforce its decrees by appropriate action, for an order appointing some person or persons other than officers or employees of the School District of Philadelphia to design a plan and a timetable for making appropriate transportation service available to mentally retarded children supposed to receive such services from the School District of Philadelphia, and for an order requiring the School District of Philadelphia to provide the transportation services called for by the plan, within the time frame specified by the plan;

39. For an order requiring the School District of Philadelphia immediately to provide to any member of the plaintiff class who is served or entitled to be served by the School District of Philadelphia and who

has been excluded from or denied access to an appropriate educational program by the School District of Philadelphia since September 1, 1972, compensatory educational time in an appropriate program of education or training equal to twice the amount of time lost or spent in inappropriate programs through the School District of Philadelphia's failure to comply with the Order of this Court;

40. For an order requiring the School District of Philadelphia immediately to establish a procedure for ensuring compliance with hearing officers' decisions in due process hearings, to confer with the Philadelphia Association for Retarded Citizens in creating such a procedure, and to provide for parental input into such a procedure;

41. For an order requiring the School District of Philadelphia immediately to comply with the due process procedures provided in Paragraphs 3(j) through (v) of the Amended Stipulation in this action;

42. For an order assessing costs of this motion and attorneys' fees against the School District of Philadelphia; and

43. For such other relief as this Court may find necessary and proper.

Respectfully submitted,



CARYL ANDREA OBERMAN, ESQUIRE
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Suite 1211
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Philadelphia, PA 19107
215-567-3750

EXHIBIT A

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA
CITY OF PHILADELPHIA

1, Patricia Armstrong, being duly sworn, depose and say:

1. I and John Armstrong are the parents and next friends of John Garrett (Gary) Armstrong, a five and one half year old mentally retarded child currently enrolled in a class for low-functioning trainable children at the Torresdale School in District 8.
2. Gary lives with us at 556 Unruh Street in Philadelphia, Pennsylvania.
3. Gary is a hyperactive child, suffering also from mucchohydrocephalus, enlarged liver and spleen, hearing loss, chronic ear infection, stiffening of the joints and mucopolysaccharidosis.
4. In May of 1976, Gary was evaluated by a School District psychologist. Despite Gary's medical problems, there was no medical component to this evaluation, on which his school placement was based.
5. The psychologist did not speak to me until after he had composed his evaluation and recommendation. His examination was all of the "multidisciplinary team evaluation" Gary received.
6. The psychologist presented me with a due process letter recommending placement in a class for trainable retarded children. I refused to sign the

letter because of the lack of specificity in the proposed program. No more specific information was offered to me.

7. On September 3, 1976, I was informed that Gary was assigned to the Sullivan School in District 7.

8. On September 9, 1976, one day before Gary started school and several days after the official start of the school year, I was informed that Gary had been assigned to a specific classroom for low-functioning trainable retarded children at Sullivan. I had no opportunity to see the class before the 15-day due process waiver of objection period lapsed.

9. On September 22, 1976, Gary was home from school with a note from one of the teachers in his classroom which stated that he had not been permitted to eat a portion of his lunch as part of a "behavior modification" program. I had no prior notice of, and did not consent to, such a program, which could have been medically harmful to Gary.

10. On September 23, 1976, Gary drank a bottle of nail polish remover which was left open and unattended on his teacher's desk.

11. Because there was no nurse in the building at the time of the incident, Gary had to be rushed to a hospital for emergency treatment.

12. Gary was excluded from school by unsafe conditions in his classroom, including inadequate supervision, poor physical plant, electric burners and sharp objects lying about, until October 26, 1976, when he was assigned to a different low-functioning trainable mentally retarded class at Sullivan with different

program elements. I was not given a due process letter before this change.

13. Gary has never received and still does not receive any physical or occupational therapy.

14. At the present time, Gary is undergoing a multidisciplinary team evaluation, one of the few ever performed in Philadelphia. Since no such team existed, a special team had to be convened to perform this evaluation. The team recommended placement in a small class for young low-functioning trainable children for Gary, with an aide just for him and speech therapy, among other things. Since we had just moved to District 8, this class was to be in the Torresdale School.

15. The class originally offered at Torresdale had children who were nine years older than Gary in it. After strong protest on my part, the class was split and Gary was assigned to the younger half.

16. On February 1, 1977, Gary started at Torresdale School. He must travel more than an hour on the bus each way and arrives at school sick and exhausted. Our family doctor says that the long ride is dangerous to Gary's health.

17. Gary receives no speech therapy at Torresdale, despite the School District's own recommendation that he get it. The speech therapist is too busy to meet my son's needs.


Signature

Sworn to and subscribed
before me on Feb 18, 1977

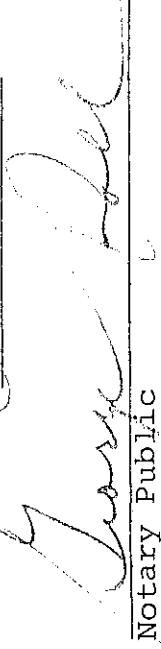

Notary Public

EXHIBIT B

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA
CITY OF PHILADELPHIA

I, Rosette Proodian, being duly sworn, depose and say:

1. That I am the mother and next friend of Gregory Proodian, a seven year old mentally retarded child residing in District 8. He is currently excluded from program in the public school. He lives at 12539 Biscayne Street, Philadelphia, Pa., with myself and his father and next friend, Kevork Proodian.

2. Gregory is a mentally retarded child functioning in the high trainable to low educable range of mental retardation. He has a significant amount of emotional disturbance and some speech problems. He is also hyperactive.

3. The School District has never provided Gregory with a multidisciplinary team evaluation.

4. On the basis of a psychological evaluation done by a School District psychologist on September 22, 1975, placement for Gregory in a "class for young trainables" was recommended. Because this recommendation was not specific enough, my husband and I put off signing the due process notice and asked for more information on the proposed class. On July 29, 1976, not having gotten any more specific information about the program to be offered our son, we requested a due process hearing.

5. On September 14, 1976, the School District of Philadelphia asked for our definition of an appropriate program for Gregory. On September 17, 1976, we sent our definition of such a program to the School District.

6. The School District then offered Gregory an unspecified class for young trainable children at the Torresdale School in District 8, with supportive services only "if available", despite Gregory's needs. The Torresdale School is a center for young trainable children in District 8. We refused to accept this vague program offered in a setting which would segregate our son and exclude him from all contact with non-handicapped children.

7. On September 30, 1976, two full months after our request for a due process hearing, the School District sent a request for a hearing officer to Harrisburg. Even this much delayed action was taken only after our constant pressure and urging.

8. The hearing was finally scheduled for October 28, 1976, three months after it was requested.

9. On October 25, 1976, our attorney went to a settlement conference called by the School District to negotiate a placement for Gregory. An agreement was negotiated. On the strength of this agreement, we, on October 27, 1976, withdrew our request for a hearing.

10. On November 2, 1976, a letter containing the consent agreement was sent to the School District by our counsel. On November 7, 1976, our counsel was

informed by the School District that the agreement was a fair embodiment of the agreement reached at the conference and that Gregory could start school on November 9 or 10, 1976. On November 9, 1976, our counsel was informed that Gregory could not start school because of problems.

11. Gregory was at that time receiving medication at noon on the order of his neurologist. There was no one in the School District authorized to give this medication, which is taken by mouth, to Gregory. Because of the lack of sufficient medical personnel in the schools, Gregory's medication schedule had to be changed.

12. Despite this change in medication schedule, the School District sent a letter to our counsel saying that the consent agreement reached in Gregory's case was unacceptable and would have to be renegotiated.

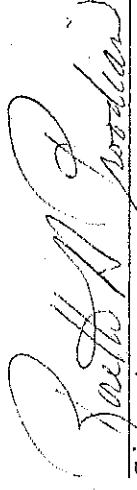
13. After nearly a month of frustrating negotiation, the School District requested a revision of the original agreement for educational program, which our counsel sent them on December 9, 1976. On December 14, 1976, the School District rejected the revision and again offered the same program which we had rejected in March of 1976.

14. Also on December 14, 1976, we requested the reinstatement of our due process hearing, which was scheduled to be held on December 22, 1976, almost five full months after the original request for the hearing.

15. The due process hearing was again cancelled over our objection and at the sole request of the School District of Philadelphia. It was rescheduled

for January 6, 1977. The hearing was finally held then and concluded on January 18, 1977, almost 6 months after it was requested and a year and a half after the School District had the responsibility for providing appropriate education for our son. We received a favorable hearing officer's decision, which we hope we will be able to enforce.

16. Our son has been denied his right to free, public, appropriate education for almost two years. His right to due process has been delayed by the School District until it was almost meaningless. My husband, my son and I have gone through a long, hellish ordeal to get my son his rights.


Signature

Sworn to and subscribed
before me on Feb 16, 1977


Notary Public

Notary Public
My Commission Expires on 1/1/80

EXHIBIT C

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA
CITY OF PHILADELPHIA

I, Diane Horvat, being duly sworn, depose and say:

1. I am the mother and next friend of Mark Horvat, a seven year old mentally retarded child currently enrolled in the Taggart School in District 3. Mark lives with me at 424 South Street in Philadelphia.
2. Mark is a brain damaged child who is prone to epileptic seizures. His motor development has been slow, and his power of speech is extremely limited. Mark is only partially ambulatory and underwent orthopedic knee surgery in August, 1974.
3. Mark was evaluated by the School District of Philadelphia in October, 1974, but was not placed in the Taggart School until April, 1975. He was reevaluated in May, 1976. He was seen only by a psychologist.
4. The School District has never provided Mark with a multidisciplinary evaluation, even though he has substantial medical problems.
5. Prior to September, 1976, at Taggart School Mark was not provided with appropriate self-help training and received no speech therapy.
6. Since September, 1976, and despite his obvious needs, Mark has received only minimal physical therapy, no speech therapy and no occupational therapy from Taggart School. He has received only limited training in feeding, toileting, cognitive development, sensory stimulation, or improvement of language reception.

7. Mark's doctor recommended that he be given phenobarbital three times daily, one dosage to occur during the middle of the school day. Mark's teacher, however, refused to give the medication. Due to the school's failure to provide someone to give Mark's medication, the dosage had to be changed.

8. Because of the lack of supportive services, Mark's educational program is not meeting his needs. He is not making the progress he could make in a program designed to deal with him as an individual.

Diane E. Horvat
Signature

Sworn to and subscribed
before me on Feb 16, 1977

[Signature]
Notary Public

Sworn to and subscribed before me
this 16 day of Feb, 1977

EDDIE FOLL
Notary Public, State of Ohio, Shreve Co.,
My Commission Expires July 3, 1978

EXHIBIT D

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA
CITY OF PHILADELPHIA

I, Margaret McCreery, being duly sworn, do depose and say:

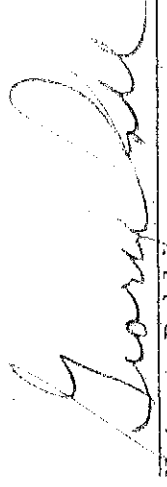
1. I and my husband, John, are the parents and next friends of Jeanne McCreery, a fifteen year old mentally retarded child currently enrolled at Woodhaven Center. She resides with us in District 8, at 11867 Sewell Road, Philadelphia, Pennsylvania.
2. Jeanne functions in the trainable range of mental retardation. She is hyperactive, epileptic, and has problems with speech and coordination.
3. From September of 1973 until March of 1975, Jeanne attended school in the residential program at Ebensburg State School and Hospital. We brought her home for frequent vacations and during those vacations she received some educational services at the Torresdale School. In March of 1975, we brought her home on an extended leave of absence from Ebensburg. She attended Spruance School as an auditor. In September of 1975, she began attending Spruance as a regular student.
4. On March 11, 1976, we received a letter from the principal of Spruance School requesting us to keep Jeanne home from school until a more suitable plan could be developed for her education. Jeanne was excluded from school for an initial period of 30 days. That period was extended to 60 days. During this time, no due process notice was sent to us and no due process hearing was scheduled or held regarding Jeanne's exclusion from school.

5. On March 8, 1976, immediately before the exclusion, Jeanne was evaluated for the first time by a psychiatrist for the School District. The psychiatrist said there was no place for Jeanne in public school. No psychological evaluation was done when Jeanne was excluded from school. Despite its mandate to do so, the School District has never provided Jeanne with a multidisciplinary team evaluation.

6. During her exclusion from school for two months, Jeanne was offered no alternative program by the School District. At the end of her two month exclusion, Jeanne was placed at Woodhaven Center.

7. Jeanne needs a very structured program. The School District excluded her and gave her no program at all. She has made progress in her new placement. She could have been making it during the two months of her life that were wasted by the School District.

Sworn to and subscribed
before me on Feb. 17, 1977


Notary Public

GD PYLE
Notary Public, Franklin County, North Carolina
My Comm. Expires July 3, 1978

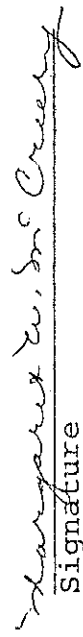

Signature

EXHIBIT E

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA
CITY OF PHILADELPHIA

I, Daisy Green, being duly sworn, do depose and say:

1. I am the mother and next friend of James Leroy, a sixteen year old retarded child who goes to West Philadelphia High School in District 1. He lives with me at 5522 Irving Street.
2. James is hyperactive, and emotionally disturbed, and he functions in the educable range of retardation.
3. All through school, James has been in classes for the educable mentally retarded. He has never gotten a multidisciplinary team evaluation from the School District.
4. All of his psychological evaluations said James was educable mentally retarded until January of 1976. A School District psychological done then said he was emotionally disturbed.
5. After the 1976 evaluation, James was taken out of West Philadelphia High School where he had been since 1974 (except for a short time when he was at the Child Guidance Center at Children's Hospital) and placed at Columbia School, a private school for the emotionally disturbed. After he had been at Columbia for 6 weeks (February, 1976 through March, 1976) he was rejected by that school, which felt its program was not right for him.

6. Both Columbia School and I notified West Philadelphia High School that James was without any educational program and was out of school. West Philadelphia High School refused to take him back into school until September of 1976. James was kept out of an educational program by the School District for 4 months of the 1975-1976 school year.

7. James is now in an educable mentally retarded class at West Philadelphia High School with no programming or services to treat his emotional disturbance. He receives no psychological counseling.

8. In June of 1976, I asked for a conference on James's placement in a certified letter to the Superintendent of the School District of Philadelphia. This letter was never answered.

9. Since he entered junior high school in 1971, James has frequently been suspended from school. He has been suspended for about 6 weeks out of every school year.

10. No due process notices were sent or hearings scheduled on these suspensions. Nobody ever told me that permission for the suspensions was ever gotten from the Secretary of Education in Harrisburg.

11. The School District psychological said that James needs vocational education. James does not get and has never gotten vocational education.

12. The School District psychological said that James needs placement in a class for retarded educable and emotionally disturbed children. He has not been put in a class like that.

Mr. King
Signature

Sworn to and subscribed
before me on 2/27, 1977

James D.
Notary Public

My Comm. expires July 3, 1978

EXHIBIT F

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA
CITY OF PHILADELPHIA

I, Helen Destralo, being duly sworn, do depose and say:

1. I am the mother and next friend of Lawrence (Larry) Destralo, an eighteen year old mentally retarded child who is currently receiving homebound instruction. He lives with me at 1716 South 10th Street in Philadelphia, Pennsylvania, in School District 3.
2. Larry was originally classified as educable. He is now classified as trainable. He is verbal, can walk and can take care of his personal needs. He has some problems with speaking clearly and needs speech therapy.
3. In 1968, Lawrence entered Washington School, where he remained for two weeks. He did not reenter the public school system until 1973, when he was assigned to the Washington School. In 1974 he was transferred to a class for non-verbal trainable children at the Bartlett School.
4. While at Bartlett, Larry was suspended several times for short periods of time. No due process notice was sent to me and no hearing was ever scheduled to determine whether Larry's placement at Bartlett was appropriate for him.
5. After several weeks of this, I refused to send Larry back to the inappropriate program at Bartlett School. No alternative school placement was offered until 1976.

6. In March of 1976, Larry began a program of homebound instruction, including 5 hours of instruction and 2 hours of speech therapy per week.
7. At all times, Larry has been physically able to attend a program in the public schools.
8. Larry never received a 3 month evaluation of his placement in homebound instruction. I was never informed of any such evaluation, and was never told of Larry's right to a due process hearing.
9. In June of 1976, I requested a reevaluation of Larry, who had not been evaluated since 1974. No action was taken by the School District.
10. On November 6, 1976, I again requested a multidisciplinary reevaluation of Larry, including psychological, psychiatric, neurological and speech evaluations.
11. In November of 1976, Larry was reevaluated by a School District psychologist. She recommended residential placement at Woodhaven Center, a State School and Hospital, or Devereaux School, an expensive private institution.
12. Very minimal attempts have been made by the School District to secure a placement for Larry in any school, public or private. He remains inappropriately on homebound instruction, cut off from contact with other children his own age.
13. Larry has never received a multidisciplinary team evaluation from the School District.

Allen K. ...
Signature

Sworn to and subscribed
before me on Sept 1, 1977

George ...
Notary Public

Notary Public
My Commission Expires July 3, 1978

EXHIBIT G

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA
CITY OF PHILADELPHIA

I, Dora Schaeffler, being duly sworn, depose and say:

1. I am the mother and next friend of Dorothy Schaeffler, an eighteen year old mentally retarded person currently enrolled in a class for educable mentally retarded children at the Jacobs School in District 8. She lives with me and my husband, Paul Schaeffler, at 8644 Ferndale Street, Philadelphia, Pennsylvania.

2. Dorothy has Down's Syndrome and is classified as educable mentally retarded. She needs speech therapy.

3. Dorothy was evaluated by the School District in the spring of 1966 and placed in a class for the trainable mentally retarded in Torresdale School. In 1969, she was reevaluated and placed in a class for the educable mentally retarded. At the time of her reclassification, the School District stopped providing even the inadequate speech therapy it had provided to her before.

4. In September of 1971, Dorothy entered the Jacobs School in a class for the educable mentally retarded. In 1972, she was reevaluated, but the School District did not acknowledge this evaluation until I closely questioned them. She was next evaluated in June, 1976. Although I requested it, I was refused the opportunity to talk with the psychologist before the evaluation.

5. The Jacobs School is a special education center. My daughter is segregated there and has no

opportunity to have contact with young people who are not handicapped.

6. The School District never provided Dorothy with a multidisciplinary evaluation.

7. From 1970 until November, 1976, the School District did not provide Dorothy with speech therapy.

8. After his June, 1976 evaluation of Dorothy, the School District psychologist recommended a pre-vocational/vocational program for her. She has never been trained to travel independently. The School District has not provided her with the program recommended for her by their own psychologist, or made any attempt to do so.

9. My husband and I have contacted various school district personnel regarding the lack of appropriate vocational training for our daughter.

10. In the fall of 1976, a mobile School District van tested Dorothy at Jacobs for attitude, aptitude and tolerance. She excelled in the clerical training aptitude tests.

11. There does not exist anywhere in the city nor has any effort been made to provide, a program of clerical training for mentally retarded students like Dorothy, condemning her at best to a program of training that fails to make use of her aptitude and potential, and at worst to no program at all.

Anna M. Schuller
Signature *Mrs. P.*

Sworn to and subscribed
before me on 12 Feb, 1977

George Foll
Notary Public

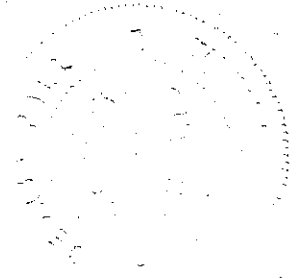


EXHIBIT H
AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA
CITY OF PHILADELPHIA

I, Dorothy Schaeffler, being duly sworn, depose and say:

1. I am the daughter of Dora and Paul Schaeffler, and live with them at 8644 Ferndale Street in Philadelphia.
2. My mother read me the affidavit she signed.
3. All the statements made by her in that affidavit are true and I agree with them.

Sworn to and subscribed
before me on July, 1977

George Foll
Notary Public

Dorothy Schaeffler
Signature

GEORGE FOLL
Notary Public
My Comm. Expires 12/31/78

EXHIBIT I
AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA
CITY OF PHILADELPHIA

I, Mary Helduser, being duly sworn, do depose and say:

1. I and my husband, William Helduser, are the parents and next friends of Michael Helduser, a twelve year old child who was thought to be mentally retarded and who resides in District 7. He currently attends the Child Guidance Clinic of Children's Hospital. He lives with us at 5329 Cottage Street in Philadelphia.

2. Michael is a severely emotionally disturbed child, functioning within the retarded range. He has been diagnosed as psychotic, retarded, brain damaged, hyperactive, and autistic, among other diseases.

3. Michael attended Delta School, a private school, until the second week of November, 1974. In January of 1975, we contacted the School District to tell the people in authority that Michael was out of school and in need of placement. We were referred to our Mental Health/Mental Retardation Unit to find a private placement for Michael.

4. In September, 1975, Michael was evaluated by a psychiatrist for the School District. The psychiatrist sent Michael back to his Base Service Unit, and said that it was their responsibility to find a placement for him.

5. We never received notice that Michael was certified to the Department of Public Welfare, and as far

as we know such certification never took place.

6. Although his need for placement was known to the School District since November of 1974, Michael was out of school from November of 1974 until November of 1976. The School District offered him no services at all during that period.

7. The School District of Philadelphia did not provide Michael with a multidisciplinary team evaluation until January of 1977, when one was performed by the Child Guidance Clinic of Children's Hospital, a contractor with the School District.

8. This evaluation recommended private residential placement for Michael, where he can get a lot of structure and individual attention.

9. On February 18, 1977, Michael will be dropped from the Child Guidance Clinic program. We did not receive official notice of this from the School District until today, February 17, 1977.

10. The School District is offering Michael five hours a week of homebound instruction as a program until the long process of getting him into residential school is completed.

11. Michael goes out to school now, and is perfectly able to do so. He does not need homebound instruction, which is the farthest thing from the constant structure he does need and which will cut him off again from contact with children his own age.

12. We intend to challenge Michael's assignment to homebound instruction in a due process hearing. However, this will take time, and until the decision of the hearing officer is made, Michael will be excluded from school because of the School District's failure to find an appropriate program for him before allowing him to be dumped from his present program.

Mrs. Keldauer

Signature

Mrs. Mary J. Keldauer

Sworn to and subscribed
before me on *Feb 17*, 1977

[Handwritten Signature]

Notary Public

Notary Public for the State of North Carolina
My Commission Expires on 3.1.1978

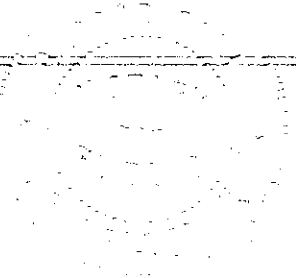


EXHIBIT J

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA
CITY OF PHILADELPHIA

I, Gloria Thompson, being duly sworn, do depose and say:

1. I and my husband, Hebrew Thompson, are the parents and next friends of Donnetta Thompson, a ten year old mentally retarded child currently attending the Blaine School in District 4. She lives with us at 1933 West Willard Street, Philadelphia, Pennsylvania.
2. Donnetta is a microcephalic child with cerebral palsy affecting all of her limbs and some spasticity in her legs. She has dysfunction of her legs, hips and thighs. She is functioning in the low trainable range of mental retardation. She can take care of her personal needs, except for dressing herself, and is verbal, but has trouble articulating clearly.
3. Donnetta began public school in the fall of 1973. She gets no occupational or speech therapy through the School District.
4. Despite her clear medical problems, the School District has never provided Donnetta with a multi-disciplinary team evaluation. We have never been given the opportunity to have input into any of her psychological evaluations.
5. In the fall of 1972, we requested a hearing to challenge the proposed educational placement for Donnetta. No such hearing was ever held and Donnetta was not placed in school until one year later.

6. We were worn down by the School District's refusal to schedule a hearing, and finally accepted a placement for retarded trainable persons because nothing else was offered and our attempts to get due process for our daughter were thwarted.

7. Despite the recommendation of the School District's own psychologist, Donnetta has never received speech or language therapy. Also, she is receiving insufficient physical therapy.

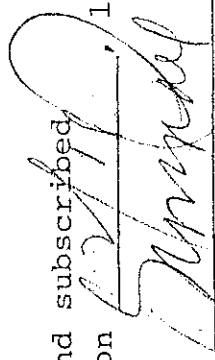
8. Donnetta's family physician has found in his most recent examination of her that her joints are deteriorating through lack of use and lack of sufficient physical therapy. The School District has been informed of this, but refuses to provide the appropriate therapies for our daughter.

9. On February 4, 1977, I informed the School District that Donnetta would have to begin using a wheelchair. On February 11, I took Donnetta to school with the wheelchair and examined the facilities. A ramp was provided, and I was informed that a bus would pick our daughter up beginning on Monday, February 14. The bus did not come on Monday and has not come since.

10. I was told that no bus could be provided since there are no available lift busses and loading and unloading the wheelchair on the regular bus was not in anyone's job description. As a result of the failure of the School District to provide appropriate transportation, Donnetta has been excluded from school since February 14.

Notary Public
My Commission Expires July 4, 1978


Signature

Sworn to and subscribed
before me on  1977

Notary Public

EXHIBIT K

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA
CITY OF PHILADELPHIA

I, Carrie Gore, being duly sworn, do depose and say:

1. I am the mother and next friend of Wesley Gore, a six year old mentally retarded child who lives with me at 2524 North Thirtieth Street in Philadelphia. Our home is situated in the area served by Sundistrict Four.
2. Wesley is a multiply handicapped child functioning in the profound range of retardation. He cannot speak or walk, but he can understand when you talk to him, and he responds to lights, noise and colors. Wesley must be tube-fed.
3. Wesley is now attending a full-day, five day a week program at Hahnemann Day Care Center. He travels to the center by bus and receives programming and patterning there. But Wesley is over the age limit for services at the Center, and needs a placement in the public schools.
4. The School District did a psychological examination on Wesley in August of 1975. I never received a copy of that evaluation, and I never had the chance to discuss it with the psychologist. Despite his medical problems and his need for physical and occupational therapy, Wesley has never had a multidisciplinary team evaluation from the School District.
5. Wesley responds to the presence of other children. He enjoys being with children his own age, and needs the stimulation and companionship that comes from associating with others.
6. In spite of the fact that Wesley goes out to the Center every day now, and that his doctor feels that this is fine for him, the School District claims that he cannot be placed in a school program and has offered him homebound placement.

7. Even this offer of homebound instruction came only after I had requested the forms from the School District for applying for a due process hearing to find out why they were offering my son nothing. I asked for the due process forms on December 10, 1976. I heard nothing until February 18, 1977, when I received a letter from the School District offering my son homebound instruction for five hours a week. I am in the process of again requesting a due process hearing from the School District.

8. Wesley takes medication during the course of the school day. This is given to him at the Center by his teacher or by the nurse. He also needs to be tube fed once during the course of the school day, which his teacher or the nurse also does. There needs to be somebody at the public school who can do this for Wesley. If a day care center can do it, there is no reason why the School District cannot.

9. My son is handicapped, but he is still a human being. It is not dangerous for him to go to public school if he can get the services he needs there. The School District must give him the medical services he needs, so that he can have the chance to be with children his own age and to learn in school like everybody else.

Carrie L. Lane
Signature

Sworn to and subscribed
before me on 2/27/77, 1977

My Seal
Notary Public

GEORGE FOLL

Notary Public for the State of Illinois
My Comm. Expires 12/31/78

EXHIBIT L

COMPILE

Commonwealth Plan for
Identification, Location and
Evaluation of
Mentally
Retarded Children

Pennsylvania Departments of Education and Public Welfare
1972

Commonwealth of Pennsylvania

Milton J. Shapp, Governor

Department of Education

John C. Pittenger, Secretary

Office of Basic Education

Donald M. Carroll Jr., Commissioner

Harry K. Gerlach, Deputy Commissioner

Bureau of Special Education

William F. Ohrtman, Director

Office of Right to Education

Joseph N. Lantzer, Director

Department of Public Welfare

Helene Wohlgemuth, Secretary

William B. Beach Jr., M.D.

Deputy Secretary for Mental Health
and Mental Retardation

Office of Mental Retardation

Edward R. Goldman, Director

PREFACE

"This is a noble and humanitarian end in which the Commonwealth of Pennsylvania has chosen to join. Today, with the following Order, this group of citizens will have new hope in their quest for a life of dignity and self-sufficiency."

These are the last two sentences of the final opinion of the United States District Court for eastern Pennsylvania in the PARC Case. They were written on May 5, 1972. The following document, Commonwealth Plan to Identify, Locate and Evaluate (COMPILE) mentally retarded children, outlines the first phase of the Commonwealth's effort to help bring about this humanitarian end.

The second phase will be outlined in a document which will be forthcoming. This document will be called Commonwealth Plan to Educate and Train (COMPET) mentally retarded children.

COMMONWEALTH PLAN FOR IDENTIFICATION,
LOCATION AND EVALUATION OF MENTALLY RETARDED CHILDREN

The Commonwealth of Pennsylvania through the coordinated effort of the Pennsylvania Department of Education and the Pennsylvania Department of Public Welfare submits the following Commonwealth Plan in accord with Paragraph 48 of the Order, Injunction and Consent Agreement of October 7, 1971, Civil Action No. 71-42, PARC vs. the Commonwealth of Pennsylvania.

48. Within thirty days of the date of this Order, Commonwealth defendants shall formulate and shall submit to the Masters for their approval a satisfactory plan to identify, locate, evaluate and give notice to all the persons described in the foregoing paragraph, and to identify all persons described in Paragraph 45, which plan shall include, but not be limited to, a search of the records of the local school districts, of the intermediate units, of County MH/MR units, of the State Schools and Hospitals, including the waiting lists for admission thereto, and of interim care facilities, and, to the extent necessary, publication in newspapers and the use of radio and television in a manner calculated to reach the persons described in the foregoing paragraph. A copy of the proposed plan shall be delivered to counsel for plaintiffs who shall be accorded a right to be heard thereon.

The Plan is designed in keeping with the findings of the Order: "that all mentally retarded persons are capable of benefiting from a program of education and training --" and that "It is the Commonwealth's obligation to place each mentally retarded child in a free public program of education and training appropriate to the child's capacity within the context of the general educational policy that, among the alternative programs of education and training required by statute to be available, placement in a regular public school class is preferable to placement in a special public school class and placement in a special public school class is preferable to placement in any other type of program of education and training." (Paragraphs 4 and 7, Consent Agreement)

In accord with the foregoing, the Plan also considers the required identification, location and evaluation of all school age children who are mentally retarded or thought to be mentally retarded and who are currently not in school to be for the purpose of developing and implementing free public programs adequate and appropriate to meet the prescribed education and training needs of these children no later than September 1, 1972, as stipulated in Paragraph 50 of the Order.

50. By April 1, 1972, Commonwealth defendants shall formulate and submit to the Masters for their approval a plan, to be effectuated by September 1, 1972, to commence or recommence a free public program of education and training for all mentally retarded persons described

in Paragraph 48 above, and aged between four and twenty-one years as of the date of this Order, and for all mentally retarded persons of such ages hereafter. The plan shall specify the range of programs of education and training, their kind and number, necessary to provide an appropriate program of education and training to all mentally retarded children, where they shall be conducted, arrangements for their financing, and, if additional teachers are found to be necessary, the plan shall specify recruitment, hiring, and training arrangements. The plan shall specify such additional standards and procedures, including but not limited to those specified in Paragraph 39 above, as may be consistent with this Order and necessary to its effectuation. A copy of the proposed plan will be delivered to counsel for plaintiffs who shall be accorded a right to be heard thereon.

Further, since the Plan uses the evaluation process to determine program, it has also been designed to re-formulate existing methods and procedures for evaluating children in Pennsylvania. From now on it is anticipated that the educational evaluation of subnormally functioning Commonwealth children will be a continuing multidisciplinary process of individualized assessment leading to prescriptive program decisions and ready access to appropriate developmental education and training programs for each child.

Finally, the Plan addresses itself to the structuring of administrative task forces capable of coordinating the necessary multiagency and multidisciplinary human resources of the Commonwealth into a consolidated thrust to solve problems of identification, location, evaluation and program development for mentally retarded children. The Departments of Education and Public Welfare have been assigned joint responsibility to comply with stipulations that require multi-agency and broad private sector involvement. Neither the Department of Education nor the Department of Public Welfare has departmental resources adequate to the proper accomplishment of the responsibilities imposed by this Order.

Accordingly the Plan provides for the establishment of: (1) a State Task Force consisting of the Director of the Bureau of Special Education, the Commissioner of Mental Retardation; a duly appointed representative of the Governor's Office, a duly appointed representative of Consumer/Citizens; and (2) Local Task Forces consisting of the appropriate Intermediate Unit Director, representative School District Superintendents, the appropriate County Mental Health and Mental Retardation Administrator (s), representative Consumer/Citizens, and any other person or persons necessary to accomplish the purposes of the Local Task Force as listed in the Plan. It is anticipated that these Task Forces, State and local, will be capable to marshal all relevant private and public resources into effective support of the Plan and also, as necessary, define procedures for integrating the separate and various agency lines of responsibility and authority into optimum service to the purpose of the Plan. (Appendix 1)

THE PLAN

A mentally retarded child shall include, without limitation, any child who is mentally retarded within the definition of 'mental retardation' as set out in

- e. An intensive two-month Statewide Public Education campaign will be conducted to provide maximum support to identification and location of mentally retarded children. Main thrust of the campaign will be a Citizen Alert and Appeal to Help Find a Child. In addition to implementation aimed at the mass news media of Pennsylvania, the Public Education campaign will utilize the power of the Governor's office to reach every citizen with the appeal through several unique means. The detailed Public Education Campaign plan is attached here as Appendix 4. It will be carried out jointly by the Office of Public Information and Publications of the Department of Education and the Bureau of Public Education of the Department of Public Welfare.
- f. A 24-hour toll free telephone service for purposes of reporting children not in school will be established, publicized and maintained for the duration of the identification and location process.
- g. The local task force, i.e., the appropriate Intermediate Unit Director, representative School District Superintendents, the appropriate County Mental Health and Mental Retardation Administrator (s), representative Consumer/Citizens, and any other person or persons necessary to accomplish the purposes of the Local Task Force as listed in the Plan, will be convened by the appropriate Intermediate Unit Executive Director no later than January 10, 1972 to serve the respective School Districts of the I. U. The Executive Director shall forward bi-weekly reports to the State Task Force. By March 7, 1972, the local Task Force shall submit the completed data of the initial survey of location, identification and evaluation as stipulated in paragraph 48, of the Consent Agreement. See Appendix 5 for recommended procedures for establishing local task force.

- h. The Masters designated by the court shall act to determine whether the court order has been fulfilled in the identification and evaluation.

3. Evaluation Process:

- a. No child shall be placed in a special program or in a class other than a regular class unless a current and sufficient evaluation has first been carried out in accordance with this Plan whereby individual examinations by a person certified by the Department of Education as a public school psychologist and also by any other expert which the type of handicap and the child's condition may necessitate shall be made. (Section 1371 (2) of the Code). This evaluation will be followed by a joint conference of the examiners and a determination made whether or not the child is mentally retarded.

b. The evaluation process shall consist of two steps:

(1) a process of screening.

(a) The screening shall consist of a review of all records and information available regarding the child and shall be for the purpose of determining which children are mentally retarded; which are not mentally retarded; and those whose status is questionable and who require further evaluation. The information gathered from a personal conference with parent (s) and/or guardian (s) is essential to the screening process.

(2) a process of assessment or in-depth evaluation.

(a) The assessment or in-depth evaluation shall consist of the following psycho-educational and other core components as provided for in Section 1371 (2) of the School Code.

((1)) An assessment of the child's current educational status. Assessment shall include, but not be limited to, school readiness or current achievement, teacher's report of observed behavior and abilities, and the child's specific functioning levels within such broader aspects of educational development as self-help, motor development, communication, social adjustment and academic achievement or occupational skills. Within these dimensions of educational development consideration shall be given to the relationship of such factors as coordination, activity level and expressive and receptive language capacities (Appendix 6).

((2)) As indicated, an assessment by a physician to determine the child's need for correction or amelioration of systemic defects or of chronic physical conditions that might be associated with impairment of one or more of the following:
(1) maturation, (2) learning and (3) social adjustment.

((3)) An in-depth evaluation by a certified school psychologist which is broad enough to include, but not limited to, the following assessment criteria:

Areas of evaluation

- motor development

- perceptual-motor development

- conceptual development
- communication skills development
- cognitive development
- intellectual development and functioning
- self-care
- self-help
- social interaction
- independence

The most valid and reliable instruments generally recognized by the profession in making determinations about levels of function in all levels of development shall be used (Appendix 7). During the implementation of this Plan and the development and implementation of the Plan as stipulated in Paragraph 50 of the Order, a systematic effort will be made to search out, test and make available to the Public School Psychologist all new and innovative instruments and procedures which might enhance the effectiveness of this evaluation process. These new innovative instruments and procedures shall be made available to the Public School Psychologists through specially designed inservice programs either at the regional or state levels. The evaluation shall cover the child's potentials for functioning in a regular classroom and the probable advantages and disadvantages of alternative recommendations.

((4))

An assessment of pertinent family history and home situation factors: with prior parental consent, a home visit by a home and school visitor, school health nurse, a public health nurse, a guidance or adjustment counselor or a social worker will be made. This assessment shall include estimates of adaptive behavior at home, in the neighborhood and in local peer groups.

((5))

To the evaluation as detailed above shall be added such studies in further professional or technical speciality areas or in such further depth or detail as the examiners may judge necessary in regard to learning problems associated with language, speech and hearing, vision, psychiatric, neurologic or other possible significant disorders. Findings of such additional studies shall be incorporated into the conference report.

(6) Where multi-handicapping conditions present themselves in the evaluation, mental retardation shall be viewed as the primary handicapping condition. Placement and educational programming for such children must take into account all handicapping conditions.

(7) The evaluation process shall, in addition to the initial identification, screening and in-depth assessment by the certified school psychologist of the Intermediate Unit or district involved, shall utilize further in-depth evaluation by any other expert available in accord with the findings of the evaluation team (3-h).

(8) Based on the data obtained from the evaluation process a continuing diagnostic prescriptive and psycho-educational plan shall be implemented to meet the needs of the students.

c. The minimal content of each professional assessment and of the joint conference shall be as specified and reported on forms jointly developed by the Pennsylvania Department of Education, Bureau of Special Education, Department of Public Welfare, Office of Mental Retardation and the Department of Health, Division of Maternal and Child Health. Completion of such forms shall be for the purpose of insuring collection of adequate individual data and of comparative data for administrative research purposes and said information shall be centrally stored as part of the Commonwealth's Management Information System. In no case shall the content or categorical entries on forms replace professional conclusions of examiners and the education and training program recommendations of the joint conference.

d. In no case shall the conference certify a child to the Department of Public Welfare for education and training without material and substantial evidence that every effort has been exhausted and no appropriate alternative public school program is possible.

e. Members of the evaluation team shall meet in conference with the appropriate County MH and MR Administrator or his designate to jointly plan alternative education and training programs for children whose recommended placement may be other than a public or approved private school.

f. As soon as possible there shall be a meeting between the child's parents and/or guardians and a designated representative of the evaluation team for the purpose of explaining the findings and to enlist parental cooperation. When placement other than a public or approved private school is recommended for the child, an

appropriate representative of the County MH and MR Program Office shall also be present. Alternative education and training plans shall be shared with the parents, explained to them and an appropriate educational plan elected. A written summary of the evaluation and conference recommendations shall be available to the parents upon request.

- g. Parents and/or guardians shall be notified of the services available to them through the County MH and MR Program Office and informed of their right to have this office:
 1. incorporate the education and training plan into a total plan of life management services for the child;
 2. help them secure for the child additional services not included in his education and training program;
 3. arrange for assistance and consultative services to the home, to the school, and to the child's teacher as necessary for the child's progress toward the highest possible educational placement; and
 4. serve as coordinator of all services for the child.
- h. Each School District or Intermediate Unit shall have primary responsibility for the initial evaluation process and shall assemble a local evaluation team and be required to demonstrate that it has the capacity to carry out the evaluation responsibilities described above. If the School District or Intermediate Unit does not have sufficient staff to meet the requirements of the evaluation process of this Plan, it shall be given ready access to the resources of the County MH and MR Program, the County Board of Assistance Office, the County Child Welfare Office, the Department of Health, Public Health Nursing Staff, the Division of Maternal and Child Health Services, Bureau of Vocational Rehabilitation personnel and any other appropriate State government human service resource. Private agencies may also be used to supply some or all evaluation requirements.
- i. The evaluation report shall constitute the effective basis for the arrangement of an educational plan for the child. The report forwarded to the appropriate Intermediate Unit Executive Director will be reviewed for any further recommendations and program planning. The educational plan as adopted by the public school or the County MH and MR Program shall be forwarded by the Intermediate Unit Executive Director to the Department of Education, Bureau of Special Education for State Task Force information, review and program planning purposes as stipulated in Paragraph 50 of the amended Order, Injunction and Consent Agreement of February 14, 1972. All evaluation reports for each child, including examination date, conference findings and final recommendations shall be forwarded to the appropriate School District Superintendent, Intermediate Unit Executive Director, and County MH and MR Administrator.

APPENDIX 7

EVALUATION

Pages 10 to 18 of the Commonwealth's Plan presents an overview of the evaluation process and briefly outlines a broadbased approach to assessment involving information secured from a variety of sources. This appendix provides a rough guideline for the evaluation procedure. This guideline should not be viewed as being all inclusive or comprehensive nor should it be construed to limit in any way the range of instruments, techniques or information sources utilized as part of the evaluation. Professional judgment and the individual competence of those persons participating in the evaluation process remain the prime determiners of the content of the evaluation.

General Considerations

1. The evaluation process should include all sources of information which contribute to a thorough understanding of the child. Overdependence upon a limited number of assessment techniques or informational sources should be avoided.
2. Input from parents constitutes a singularly important phase of the evaluation process.
3. An evaluation of the child's formal learning environment is essential as is the paralleling information relative to the child's informal living environment, i.e. the home and community.
4. Primary emphasis in the evaluation should be given to accurate descriptions of behavior rather than to explanations of causality.

APPENDIX 7

5. Careful consideration should be given to the attenuating conditions arising from cultural and educational disadvantage, bilingual home conditions and other social, economic and cultural factors effecting the child. These conditions should be taken into account both in the choice of the assessment techniques to be used and in the implications ascribed to the findings.*
6. Masking and depressing conditions often associated with multiple handicaps or with such conditions as aphasia, autism or emotional disturbance must be considered in terms of the relative influence they exert in relation to the primary handicap of mental retardation.
7. Evaluation techniques and the subsequent report and recommendations should be based on a diagnostic-remedial model. Emphasis should be placed on the implications for educational programming and on the inclusion of a prescriptive task-analysis approach.
8. Results of the appraisal should be credible, understandable and translatable into realistic remedial practices.
9. Findings and recommendations derived from the instruments employed should take into account the limitations of those instruments and should be based upon those areas of measurement which the instrument was designed to assess.

* APA - Guidelines for Testing Minority Group Students

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE PENNSYLVANIA ASSOCIATION FOR
RETARDED CHILDREN, NANCY BETH BOWMAN,
et al., on behalf of themselves and
all others similarly situated

Plaintiffs

v.

COMMONWEALTH OF PENNSYLVANIA, ROBERT
HENDERSHOT, Acting Secretary of Education
of the Commonwealth of Pennsylvania,
PHILADELPHIA SCHOOL DISTRICT, Philadelphia,
Pennsylvania, et al.

Defendants

Civil Action
No. 71-42

THE PHILADELPHIA ASSOCIATION FOR
RETARDED CITIZENS;
JOHN GARRETT ARMSTRONG,
by his mother, Patricia Armstrong;
GREGORY PROODIAN,
by his mother, Rosette Proodian;
MARK HORVAT,
by his mother, Diane Horvat;
JEANNE MC CREERY,
by her mother, Margaret McCreery;
JAMES LEROY GREEN,
by his mother, Daisy Green;
LAWRENCE DESTRALO,
by his mother, Helen Destralo;
DOROTHY SCHAEFFLER,
individually and by her mother,
Dora Schaeffler;
MICHAEL HELDUSER,
by his mother, Mary Helduser;
DONNETTA THOMPSON,
by her mother, Gloria Thompson;
WESLEY GORE,
by his mother, Carrie Gore;
on behalf of themselves and all others
similarly situated,

Petitioners for
Contempt and
Enforcement

MEMORANDUM IN SUPPORT OF MOTION

History of the Case

On January 7, 1971, suit was filed in this Court under 42 U.S.C. §1981 and §1983, alleging that certain laws of the Commonwealth of Pennsylvania were unconstitutional in that they violated the rights of school-aged mentally retarded children in Pennsylvania under the Due Process and Equal Protection clauses of the Fourteenth Amendment by denying to these children access to a free appropriate program of public education and training. A three judge court was appointed, and arguments were heard on May 26, 1971. On June 18, 1971, an order was issued requiring notice and a due process hearing before the educational assignment of any mentally retarded child could be changed. Also on that date, the Department of Education and the Department of Public Welfare entered into a stipulation with plaintiffs regarding appropriate due process procedures. On October 7, 1971, a Consent Agreement was entered into by the parties, and an Order was entered by this Court, stating that the sections of the Pennsylvania School Code being challenged could no longer be used to deny mentally retarded children access to free, appropriate public education. In December of 1971, thirteen individual school districts and the Pennsylvania Association of Private Schools for Exceptional Children filed objections to the Court's Order of October 7, 1971. Twelve of these school districts later dropped their objections. On February 14, 1972, the parties entered into an Amended Stipulation and Amended Consent Agreement, which was approved and adopted by this Court in its Order and Injunction of May 5, 1972.

Actions Required Under This Court's Order

The Amended Stipulation approved and ordered into effect by this Court requires that no child of school age who is or is thought to be mentally retarded can be subjected to a change in educational assignment without first being accorded notice and the opportunity to have a due process hearing. Amended Stipulation, Paragraph 2. The notice must describe the proposed action in detail, and state clearly and fully the reasons for the proposal, Amended Stipulation, Paragraph 3(c), and inform the parent or guardian of the child of the child's right to a hearing.

The hearing must be scheduled "not sooner than fifteen (15) nor later than thirty (30) days after the receipt of the request for a hearing from the parent or guardian, provided however that upon good cause shown, reasonable extensions of these times shall be granted at the request of the parent or guardian." Amended Stipulation, Paragraph 3(j). There is only one exception to the requirement of prior notice and opportunity to be heard before an educational change.

(In) extraordinary circumstances the Director of the Bureau of Special Education, upon written request to him by the district or intermediate unit setting forth the reason therefore and upon notice to the parent may approve an interim change in educational assignment prior to the hearing, in which event the hearing will be held as promptly as possible after the interim change.
Amended Stipulation, Paragraph 3(v).

The Amended Consent Agreement approved and ordered into effect by this Court provided that this action was maintained as a class action on behalf of all mentally retarded persons who were residents of Pennsylvania and who "have

been, are being, or may be denied access to a free public program of education and training while they are, or were, less than twenty-one years of age." Amended Consent Agreement, Paragraph 1. The immediate relief provided was to be provided to all members of the class who were less than twenty-one years of age on May 5, 1972. Paragraph 7 of the Amended Consent Agreement provides:

It is the Commonwealth's obligation to place each mentally retarded child in a free, public program of education and training appropriate to the child's capacity, within the context of the general educational policy that, among the alternative programs of education and training required by statute to be available, placement in a regular public school class is preferable to placement in a special public school class and placement in a special public school class is preferable to placement in any other type of program of education and training.

(Emphasis added)

Every retarded person between the ages of six and twenty-one years as of the date of this Order and thereafter shall be provided access to a free public program of education and training appropriate to his capacities as soon as possible but in no event later than September 1, 1972.

Amended Consent Agreement, Paragraph 43.

The Amended Consent Agreement also ordered the adoption of certain policies and the preparation of certain plans by the defendants. Specifically, homebound instruction was to be made available to mentally retarded children where appropriate, provided that it was clearly recognized

that homebound instruction is the least preferable of the programs of education and training administered by the Department of Education and a mentally retarded child shall not be assigned to it unless it is the program most appropriate to the child's capacities;

that homebound instruction shall involve education and training for at least five hours a week or for such other reasonable

period as the State Board of Education may by regulation provide;

that an assignment to homebound instruction shall be reevaluated not less than every three months, and notice of the evaluation and an opportunity for a hearing thereon shall be accorded to the parent or guardian, as set out in the Order of this Court dated June 18, 1971, as amended.

Amended Consent Agreement, Paragraph 33

The Agreement also required the Commonwealth defendants to submit to the Masters within thirty days of the date of the Court's Order a plan for the identification, location and evaluation of mentally retarded children who were members of the plaintiff class, and within ninety days of the date of the Order, to put the plan into effect by using it to identify, locate and evaluate those children. Amended Consent Agreement, Paragraphs 48 and 49. In compliance with this requirement, defendants promulgated the Commonwealth Plan for Identification, Location and Evaluation of Mentally Retarded Children, hereinafter referred to as COMPILER. The drafting of and compliance with the plan are explicitly required by the Amended Consent Agreement, and therefore compliance with COMPILER is required by the Court's Order adopting that Agreement.

COMPILER, pertinent portions of which are attached to the annexed Motion as Exhibit L, requires that a multidisciplinary team evaluation be provided to each member of the plaintiff class, providing an individualized assessment leading to prescriptive programming to meet the individual needs of each child. COMPILER, page 2. All relevant disciplines must evaluate each child and then meet in joint conference to recommend an appropriate program of education and training. COMPILER, pp. 6-9, Paragraphs 3a-c.

These requirements have been binding on all defendants, including the School District of Philadelphia, for more than four years. Moreover, the requirements of this Court's Order have been reinforced by subsequent federal legislation. The Education Amendments of 1974, Public Law 93-380, require any state receiving funding under the Act to establish a goal of providing full educational opportunities for all handicapped children, and to submit a detailed plan and timetable for achieving that goal by August of 1974. It also requires the adoption of procedural safeguards in identifying, evaluating and placing handicapped children, and mandates that such children be integrated into regular classes whenever possible.

Section 504 of the Rehabilitation Act of 1973, Public Law 93-112, as amended by the Rehabilitation Act Amendments of 1974, Public Law 93-516, prohibits discrimination against handicapped individuals under any program or activity which receives federal financial assistance. The proposed regulations under that section, published in the July 16, 1976, Federal Register, provide, in relation to education, that any educational agency receiving federal monies must provide a free suitable education, including related services, to each handicapped person of school age, regardless of the nature or severity of the person's handicap. Section 84.34, page 29564. Moreover, this education must be provided in the most normal setting feasible, Section 84.35, page 29565, and only after a full, individual evaluation of the person's special educational needs. Section 84.36, page 29565.

The Education for All Handicapped Children Act of 1975, Public Law 94-142, requires that each handicapped child be provided with "specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child." Section 4(a)(16). A free, appropriate education must include related services, which are "such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services...) as may be required to assist a handicapped child to benefit from special education..." Section 4(a)(17) and (18). The Act also provides for due process procedures, Section 615, the creation for an individualized education plan for each handicapped individual, Section 612(4) and Section 614(a)(5), and the education of children in the most normal and least restrictive setting possible, Section 612(5)(B).

These federal laws do no more than emphasize the requirements for appropriate education set down by this Court's 1972 Order. The Order is neither unusual nor overly burdensome. It is in the mainstream of a trend in both law and education, which has as its goal the provision of free, appropriate educational services to handicapped children in such a manner as to safeguard their rights both to due process and to education.

Violations of this Court's Order by the

School District of Philadelphia

The School District of Philadelphia is in contempt of this Court's Order. The School District is an original named defendant in this action. It has had ample notice of this Court's Order and of its provisions. The School District's failure to comply with the provisions of that Order has been repeatedly brought to the attention of School District administrators and officers by the Local Task Force on Right to Education, advocacy groups and parents. Little effort has been made to achieve compliance. The Court's Order is clear.

The Third Circuit in the case of In Re Rubin, 478 Federal Reporter 2d 104 (1967), at 108, stated:

In order to cite a person for contempt of a court order, two principles, each a corollary of the other, must, among other requirements, be established. The first of these is that it must be proved that the alleged contemnor had knowledge of the order which he is said to have violated...(Citations omitted). The corollary of this proposition is that the order which is said to have been violated must be specific and definite.

The School District of Philadelphia meets these requirements.

The School District of Philadelphia had knowledge of the Order in this action. The Order required the School District in clear language to provide due process hearings within the time frame specified in Paragraph 3(j) of the Amended Stipulation. This is not now being and has never been done. Exhibits B and J. The Order requires the School District to provide multidisciplinary evaluations according to COMPILER. This is not now being done on any scale, and has never been done for the vast majority of children served by the School District. Exhibits A-K. The Order requires

the School District to provide a free, appropriate program of education to every mentally retarded child within its jurisdiction by September 1, 1972. There are children who are still excluded from school, and others who have been excluded for periods of time since September 1, 1972, in violation of the Court's clear mandate. Exhibits D, E, F and I. The School District refuses to provide appropriate education to retarded children by refusing to hire the personnel to provide them with individual educational prescriptions, appropriate therapies, or even the transportation to get them physically into school. Exhibits A-K.

Despite the clear language of Paragraph 33 of the Amended Consent Agreement relating to homebound instruction, the School District has used it as a means to segregate children it does not wish to educate in the public schools, even though they are perfectly capable of attending class. Moreover, it has failed to provide for the children relegated to such placement the mandated evaluations and due process rights. Exhibits F, I and L. Additionally, the School District has consistently violated the due process rights guaranteed by Paragraph 3(V) of the Amended Stipulation by excluding children from school for periods of time without offering them alternative placements, informing them of their due process rights, or receiving prior permission to change their placements from the Director of the Bureau of Special Education. Exhibits D, E and F.

The fact that these violations arise under a consent agreement has no effect on the Court's power to punish them

under its contempt power. U. S. v. Schine, 260 Federal Reporter 2d 552, (2nd Circuit, 1958), Franklin Mint Corporation v. Franklin Mint Ltd., 360 Federal Supplement 478, (ED Pa., 1973). The Court has the inherent power to enforce its own decrees through the use of that power. Shillitani v. U. S., 384 U. S. 364, (1966).

Standing of Petitioners for Contempt and Enforcement

The Philadelphia Association for Retarded Citizens is one of the member chapters of the Pennsylvania Association for Retarded Citizens. This Court, in its Order of May 5, 1972, stated:

The Pennsylvania Association for Retarded Children (PARC) and its fifty-three member chapters constitutes an organization which for some twenty years has undertaken the part of the burden of educating and training retarded children in the Commonwealth. In addition, PARC has sought to advance the general interests of retarded citizens in Pennsylvania. Footnote 1.

The Philadelphia Association for Retarded Citizens for many years provided education and training for mentally retarded children in Philadelphia. Since the Court's Order in this case, the Philadelphia Association has been a strong advocate for the rights of children in Philadelphia to free, appropriate education and to due process.

The Philadelphia Association for Retarded Citizens is a permanent member of the Local Task Force for Right to Education. Since 1972, the Philadelphia Association has received hundreds of complaints and requests for advocacy from parents whose children are unable to obtain the services guaranteed them under the Order of this Court.

Because of its long-standing position as an advocate and an authority in the area of educational rights, the Philadelphia Association is uniquely situated to assert the rights of the class of mentally retarded school-aged children in Philadelphia.

Individual named petitioners are all mentally retarded, school-aged Philadelphia residents, and as such, are members of the original PARC class, asserting their rights under the PARC Order.

The Power of the Court to Enforce its Orders and to Grant the Relief Requested

This Court has the power to enforce its orders by the use of its contempt powers. As the United States Supreme Court said in McCombe v. Jacksonville Paper Company, 336 U. S. 187, at 193:

We are dealing here with the power of a court to grant the relief that is necessary to effect compliance with its decree. The measure of the court's power in civil contempt is determined by the requirements of full remedial relief. This may entail the doing of a variety of acts.

Petitioners in this motion are asking the Court to use its contempt powers to provide them with full remedial relief by reordering the School District of Philadelphia immediately to provide each named petitioner and each member of the class they represent with a multidisciplinary team evaluation and a written individual educational prescription, to comply with due process time requirements and with hearing officers' decisions, to hire sufficient personnel to meet the educational needs of retarded children in Philadelphia, and to provide compensatory education for the time lost by members of the petitioners' class because of exclusion from or inappropriate placement in school by the School District of Philadelphia since September 1, 1972.

Moreover, this Court has the power under Rule 70 of the Federal Rules of Civil Procedure to appoint some person or persons

other than the officers and employees of the School District of Philadelphia to devise the plans for providing adequate services and hiring sufficient personnel to meet the educational needs of mentally retarded children in Philadelphia, and to train those personnel. Rule 70 provides in pertinent part:

If a judgment directs a party to execute a conveyance of land...or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party...The court may also in proper cases adjudge a party in contempt.

The School District of Philadelphia has had more than four years in which to comply with the Order of this Court to provide appropriate education to mentally retarded children. The School District has failed to do so and has failed to devise an appropriate plan for doing so. In such a situation, application of Rule 70 is necessary to assure that the Court's Order is carried out, albeit nearly five years late.

There is ample authority for the Court's power to award reasonable costs and attorneys' fees in a contempt action. Lichtenstein v. Lichtenstein, 425 Federal Reporter 2d 1111, (3rd Cir., 1970), modified on other grounds, 454 Federal Reporter 2d 69; Benner v. Philadelphia Musical Society, 233 Federal Supplement 108, (E. D. Pa., 1974); Universal Athletic Sales Corp. v. Salkeld, 376 Federal Supplement 514, (W. D. Pa., 1974), vacated on other grounds, 511 Federal Reporter 2d 904.

An alternative basis for the Court's power to grant the relief requested rests in its inherent power to enforce its own orders by appropriate action. In Morgan v. Kerrigan, 401 Federal Supplement 216, (E. D. Mass., 1975), the District Court enforced its order of June, 1974, requiring desegregation of the Boston public school system, by appointing experts and special masters to help the court devise an adequate desegregation plan. Once

a finding of discrimination had been made by the court, the court was "obliged, as it is empowered, to remedy this wrong." Morgan, supra, at 229-30. The Morgan court took matters back into its hands for further orders because of the delay and "default" of the Boston school committee originally charged with devising and implementing an appropriate desegregation plan. Ibid., at 230. The court gave to the experts it appointed the power to resolve the issues of facilities utilization, program allocation and enrollment units. On appeal, the First Circuit affirmed the court's order, and the unusual grant of power to the experts and the special masters, holding that these were justified by "the School Committee's actual violations of the court's substantive and procedural orders, and its unwarranted delay in the face of the urgent necessity of finalizing these decisions" before the beginning of the next school year. Morgan v. Kerrigan, 530 Federal Reporter 2d 401, (1st Cir., 1976), at 430.


In the action now before this Court, a similar situation presents itself. For four years, the School District of Philadelphia has been left to its own authority to correct a pattern of past discrimination in the provision of educational opportunity by providing appropriate education and due process rights to mentally retarded children in Philadelphia. During that time, the School District has violated this Court's substantive and procedural orders, and has delayed and defaulted on its responsibility to provide and to devise adequate plans for providing appropriate educational services and due process procedures to mentally retarded children. This Court is empowered and obliged to remedy this wrong.

This Court has broad powers to require action in education cases where discrimination is involved. Hart v. Community School Board of Brooklyn, N. Y. School Dist. #21, 383 Federal Supplement 699, (E. D. N. Y., 1974), at 748-9, affirmed 512 Federal

Reporter 2d 37. "A district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." 383 Federal Supplement 699, at 755. The Hart court cites Swann v. Board of Education, 402 U.S. 1, 15, (1971): "Having found a violation, the court has broad equitable powers to order changes designed to eliminate future misconduct and to reduce the effect of prior violations." 383 Federal Supplement 699, at 755.

In order for rights to be effectuated, courts must be willing to enforce old remedies and to create new remedies in the service of their mandates. The Court has the power to do so, and petitioners urge the Court to use that power in the service of their rights.

Respectfully submitted,


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157 #4

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PENNSYLVANIA ASSOCIATION FOR : CIVIL ACTION
RETARDED CHILDREN, et al., :

Plaintiffs :

v. :

COMMONWEALTH OF PENNSYLVANIA :
SCHOOL DISTRICT OF PHILADELPHIA, : NO. 71-42
et al., :

Defendants :

WALTER FIALKOWSKI :
and DAVID FIALKOWSKI, :
by their parents, MARION :
and LEONA FIALKOWSKI, :

Petitioners : CLASS ACTION

PETITION OF WALTER AND DAVID FIALKOWSKI
FOR ENFORCEMENT OF ORDERS AND FOR SANCTIONS
INCLUDING COMPENSATORY FINE
AND FOR DETERMINATION OF PLAINTIFFS'
RIGHTS UNDER PARAGRAPH 45
OF THE AMENDED CONSENT AGREEMENT

Walter and David Fialkowski, members of the plaintiff class in this
action, by their parents and next friends Marion and Leona Fialkowski, hereby
move this Honorable Court, nunc pro tunc, as of August 30, 1974:

A. for an order requiring defendants Commonwealth of Pennsylvania,
the State Board of Education, the Secretary of Education, the School

District of Philadelphia, their responsible officers and ranking employees, immediately to provide to David Fialkowski a free public program of education and training appropriate to his learning capacities and, pursuant to Rule 70, Fed. R. Civ. P., to appoint some person other than defendants' officers or employees to design a program of education and training appropriate to David Fialkowski, to oversee its provision and to revise the program as necessary to assure its appropriateness to his learning.

B. for an order requiring defendants Commonwealth of Pennsylvania, the State Board of Education, the Secretary of Education, the School District of Philadelphia, their responsible officers and ranking employees, to provide to Walter and David Fialkowski a free public program of education and learning appropriate to each's learning capacities and in the least restrictive setting for such period as is necessary to compensate each for the denial to each of them of such an appropriate program since the Orders of this Court dated May 5, 1972, and, pursuant to Rule 70, to appoint some person to design, oversee, determine, and revise such an appropriate program, as prayed above; or, in the alternative, for an order requiring defendants Commonwealth of Pennsylvania, the State Board of Education, the Secretary of Education, the School District of Philadelphia, their responsible officers and ranking employees, since May 5, 1972, to pay to Walter and David Fialkowski, their parents and next friends, a compensatory fine in such amount as to allow them to purchase an appropriate program of education and training for such period as is necessary to compensate for the denial to them of such an appropriate program since the Orders of this Court dated May 5, 1972; and

C. to hear the question reserved by Paragraph 45 of the Amended Consent Agreement approved and adopted by this Court on May 5, 1972, namely the obligation of defendants to accord compensatory educational opportunity to

members of the plaintiff class, and in particular to Walter and David Fialkowski, of whatever age who were theretofore denied access to a free public program of education and training without notice and without a due process hearing while they were aged six to twenty-one years, and, upon hearing, to order in accordance with this Court's remedial powers and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, further education for Walter and David Fialkowski;

D. for an order requiring defendants and respondents to pay a compensatory fine to Walter and David Fialkowski, their parents and next friends, for such other losses and damages suffered by them by reason of defendants' and respondents' disobedience of this Court's Orders, and to award costs and attorney's fees to them and their counsel.

In support of their motion the plaintiffs Fialkowski aver as follows:

A. Introduction and Summary

1. On May 5, 1972 this Court enjoined defendants, their officers, employees, agents and successors, inter alia, to provide to every mentally retarded person between the ages of six and twenty-one years "access to a free public program of education and training appropriate to his learning capacities." By Order of October 16, 1972 the Court retained jurisdiction of the matter.

2. The Order that an educational program individually appropriate to each retarded child be provided was based, inter alia, on record testimony before this Court that "an inappropriate educational assignment is tantamount to exclusion"(N. T. 359). See also N. T. 89, 129-30 (Ohrman) and testimony of Goldberg, Gallagher, Stedman and Blatt, *passim*.

3. The necessary condition of appropriate education of each severely and profoundly retarded student is a fine-grained, rigorous, precise, integrated and individualized formulation of short and long-term educational objectives, the similar selection of teaching methods and techniques, and the similar sequencing of their delivery. In turn, the necessary conditions of this are a multi-disciplinary assessment of each child's developmental levels, his skills and deficits, and his learning styles; and the formulation, and periodic reformulation, of a written prescriptive program based thereon to guide, articulate, and measure the delivery of the individually appropriate program to each child.

4. Such individualized use of this teaching method, commonly called the diagnostic-prescriptive method, is now and has been at all times relevant hereto commonly recognized in the profession as necessary to the appropriate education of each severely and profoundly retarded student. The use of this method constituted the predicate of the testimony of each of the expert witnesses at trial of this case that 'without exception all mentally retarded persons are capable of benefitting from a program of education and training.' N.T. at 17-21, 22, 24-26, 29, 31, 36, 41-43 (Goldberg); N.T. at 56-57, 58, 64, 69, 72-73, 82-83 (Gallagher); N.T. at 105, 106-7, 116-117, 123, 125 (Stedman); N.T. at 138-141 (Blatt). Commonwealth and School District defendants, their officers and ranking employees, recognized the use of this method as necessary to the appropriate education of plaintiff children. Depositions of School District Associate Superintendent Horowitz and Assistant Superintendent Young (September, 1977)

5. In accordance with Paragraph 48 of the Consent Agreement approved and adopted by this Court, Commonwealth defendants formulated and the Masters approved a plan to identify, locate and evaluate (COMPILE) each member of plaintiff class. As a pre-condition of providing an appropriate program to each child, that plan, which was binding upon Commonwealth and School District defendants, required the multi-disciplinary assessment of each child and the formulation for each child of a written prescriptive program for his education.

6. Among the provisions of the Consent Agreement adopted and ordered into effect by this Court on May 5, 1972, paragraph 50, characterized by this Court as perhaps the most important provision of the agreement, 343 F. Supp. at 288, required Commonwealth defendants to formulate and submit to the Masters for their approval:

"a plan (COMPET) to commence or recommence a free public program of education and training for all mentally retarded persons described(...) and for all mentally retarded persons of such ages hereafter. The plan shall specify the range of programs of education and training, their kind and number, necessary to provide an appropriate program of education and training to all mentally retarded children, where they shall be conducted, arrangements for their financing, and, if additional teachers are found to be necessary, the plan shall specify recruitment, hiring, and training arrangements. The plan shall specify such additional standards and procedures, including but not limited to those specified in paragraph 39 above, as may be consistent with this Order and necessary to its effectuation."

Paragraph 39 specified standards for hours of instruction, pupil-teacher ratios, curriculum, facilities, and teacher qualifications.

7. Because of defendants' failure to abide by and to enforce the multi-disciplinary assessment and written prescription requirements of COMPILE,

and because of defendants' failure even to formulate let alone to promulgate COMPET and their consequent failure to provide the training, the supervisory assistance, and the standards for organizing and setting objectives for education of plaintiff class and otherwise by reason of defendants' derelictions, Walter and David Fialkowski have, contrary to this Court's order, not been provided "access to a free public program of education and training appropriate to" their respective "learning capacities."

8. With a "program of education and training appropriate to his learning capacities" David and Walter Fialkowski each could have and can attain vocational proficiencies and skills. By virtue of defendants' derelictions, and by defendants' express and categorical disavowal, inappropriately, of vocational objectives for the teaching of severely and profoundly retarded children, David and Walter Fialkowski have not been provided such appropriate education. The affidavit of MARC GOLD is attached hereto and incorporated herein as if fully set forth here. Appendix A

B. The Plaintiffs Fialkowski

9. Marion and Leona Fialkowski are the parents of ten children, ranging in age from Barbara, age 29, a poet, who in June of 1976 received her Ph.D. in English from the University of Ohio and was appointed to the faculty of Bowling Green University, to Kate, age 12, who upon her graduation from Sullivan Elementary School in June was awarded seven academic prizes.
10. In the years since 1959, when the Fialkowskis first sought appropriate schooling for Walter, Marion Fialkowski has worked as a candymaker and, since 1961, as a Supervisor at the Wm. H. Rorers pharmaceutical company. On August 31, 1976, Marion Fialkowski, at age 64, retired.
11. Two of the Fialkowski's children, David, age 14, and Walter, age 24, are the petitioners here.
12. Walter Fialkowski was born February 10, 1953. Four weeks after birth he underwent surgery for an intestinal disorder, and insufficient oxygen at and after surgery caused him to be profoundly retarded and cerebral palsied.
13. David Fialkowski was born March 19, 1962. Because of a birth defect, David is severely to profoundly retarded and has cerebral palsy.

C. The Non-Education of The Plaintiffs Fialkowski

1959 - 1968

14. Walter Fialkowski was of school age with the school year beginning September, 1959. He was, however, excluded from school until June, 1968.
15. David Fialkowski was of school age with the school year beginning September, 1967. He was excluded from school until June, 1968.
16. On or before June 23, 1959, the Fialkowskis requested that Walter be admitted to school. On June 23, 1959, the school district decided to "omit examination this year" and not to admit Walter to school.
17. On July 15, 1960, Walter Fialkowski was examined by the school district, was not recommended for school placement, but for re-examination in July, 1962, "at which time exclusion will probably be made".
18. On July 17, 1962, Mr. Cloak, a school district psychologist gave a psychological examination to Walter Fialkowski, concluded that "This child is obviously uneducable and almost completely untrainable. He is not now and will not be a candidate for any public school facility for retarded children", and recommended "permanent exclusion".
19. On January 4, 1963, the school district assigned an IQ of "Below 21" to Walter Fialkowski, found him to be "uneducable and untrainable" and, after approval by the Philadelphia Board of Education, and by the State Superintendent of Education (as the Secretary was then called), excluded him from school, by placing him on roll at Longfellow School and then dropping him.

20. Between 1962 and 1968 and thereafter, school district employees on several occasions suggested to the Fialkowskis that Walter be placed in a state institution for the mentally retarded; and on each occasion the Fialkowskis expressed their wish that Walter continue to live at home and that he be educated in the community.

21. On July 17, 1967, David Fialkowski was examined by a school district psychologist and was found to be "a severely retarded child who may eventually need institutional placement". David was not admitted to school in September of 1967; rather his admission was postponed indefinitely.

1968-1972

22. In June, 1968, Walter and David Fialkowski were enrolled in the multiple-handicapped class established through the efforts of his mother at Longfellow School and attended until May, 1971.

23. From May, 1971 until January, 1972 they attended a class organized by his mother and run cooperatively by parents at the Northeast Boys Club. From January, 1972 until December 1972, excepting the summer, they attended the class at Longfellow.

24. Leona Fialkowski was "a pioneer in the effort to have the School District of Philadelphia provide in-school education for Multiple-Handicapped Children and worked untiringly to make certain the Multiple-Handicapped children receive all of the educational benefits which are due them." (quotation from December 3, 1973 letter of Thomas K. Minter, District Seven Superintendent, to Mrs. Fialkowski).

25. Mrs. Fialkowski "played the primary role in having (the first) class (in the Pennsylvania public school system for severely and profoundly retarded children) established." (quotation from March 30, 1970 letter of John G. Mooney, Assistant to the Superintendent of the Philadelphia School District, to Mrs. Fialkowski).

26. In May of 1968, Mrs. Fialkowski approached school district officials and then ultimately, the then Director of Special Education, Dr. Jerry Miller, to establish a school program for severely and profoundly retarded children. After her presentation to the School Board, a six-week summer program was authorized by the Board.

27. On August 12, 1968, the School Board approved Mrs. Fialkowski's request to continue the program at Longfellow School for the severely and profoundly retarded children through the school year.

28. Mrs. Fialkowski recruited volunteers to assist in the class, raised money and secured donations of equipment for the class, persuaded the School District first to pay transportation expenses to get the children to school and then to provide school bus transportation for the children

informed the School District of federal monies available to fund the class, and persuaded the District to install an inclinator on the steps of Longfellow School.

29. In 1970, Mr. and Mrs. Fialkowski met in the office of the Secretary of the Commonwealth's Department of Education (or Commonwealth Superintendent of Public Instruction as he was then called) with then Secretary Kurtzman and the Director of the Bureau of Special Education William Ohrtman to inform them of the Longfellow program for severely and profoundly retarded children, to seek (successfully) state funding of the costs of the program and to seek (unsuccessfully) state direction to improve the quality of the program.

30. No multi-disciplinary assessments of David or Walter were made or caused to be made by defendants during the period 1968-1972 nor were written prescriptions for their education and training formulated.

31. November, 1971, evaluations of the Longfellow class and of the parents co-operative class at the Northeast Boys Club by Bernice B. Baumgartner, then Director of Education for the Pennsylvania Department of Public Welfare, an experienced teacher of the severely and profoundly retarded and an author of several books thereon; William David Wood, Educational Co-ordinator for the Philadelphia Association for Retarded

Children; and Paul C. Richardson, Director of Special Education Programs at the Elwyn Institute are attached as Appendix B and incorporated herein as if set forth here in their entirety.

32. The teacher of the Longfellow class at the time of the evaluation, taught the Longfellow class since September of 1968; the findings of the 1971 evaluation of the Longfellow program obtained throughout the period 1968 - 1972 and any competent evaluation of the class would have disclosed them.

33. On the one hand the program offered at Longfellow sought to teach such things as distinguishing the concepts of left and right and how to begin to read - skills not appropriate to the education of severely and profoundly retarded children.

34. On the other hand, the program offered at Longfellow constituted "play school", not the structured program necessary to the appropriate education of retarded children.

35. Both defects arise from the failure to use the diagnostic prescriptive method, including multidisciplinary evaluation and written prescriptive programming.

The Fialkowskis' Request for Hearing on Appropriate Program

36. By letter of May 23, 1972, shortly after the PARC orders were entered on May 5, 1972, the Fialkowskis requested a hearing on the education of Walter and David.

37. In response, Mr. and Mrs. Fialkowski met with Dr. Young, Dr. Minter and Mr. D'Amico on June 13, 1972, but no hearing was scheduled.

A school district memorandum of that meeting recites "It is apparent that the actual placement of David and Walter is not the prime question. The principal problem revolves around their dissatisfaction with the manner in which the MH class is being operated."

38. By letter of July 7, 1972, the Fialkowskis were advised that their request for a hearing for their children had been turned over to the Legal Division of the School District, and that they should hear further within two weeks. They did not so hear, nor was the hearing scheduled.

39. On March 22, 1973, the Fialkowskis received two due process notices from the school district. Although the PARC Decree, Amended Stipulation, paragraph 3 (c) requires that such notices include a statement "in detail" of the educational program recommended for a child, the Fialkowski notices (at page 2) did not specify the program design or content but said only:

"Walter's severe mental and physical handicaps warrant his placement in a class specifically designed to aid him to develop to the best of his ability."

"David's severe mental and physical handicaps warrant his placement in a class specifically designed to aid him to develop to the best of his ability."

A supplementary letter from the school district, dated March 29, 1973, recommended "continuation in the class for multiply-handicapped children", but contained no specification of program.

40. On March 26, 1973, the Fialkowskis signed the due process form thereby again requesting a hearing on the educational programs for Walter and David.

41. On May 9, 1973, the hearing was scheduled for May 23, 1973 and a notice of hearing was sent to the Fialkowskis.

The hearing was held on May 23, 1973 and a decision was rendered on or about July 10, 1973. The hearing officer's decision was transmitted to the Fialkowskis and to the school district on or about July 10, 1973. The Fialkowskis were not informed by the hearing officer or by any official or employee of the Department of Education or of the School District of their right to appeal the hearing officer's decision to the Secretary of Education under a newly formulated procedure for appeals which purported to be effective about June 4, 1973, and the Fialkowskis did not know of their purported right to appeal to the Secretary. Nor were the Fialkowskis informed of their right to review in the Commonwealth Court, and they did not know of any such right.

42. Those matters, arising from the use of the diagnostic-prescriptive method, which are crucial to the provision of appropriate education to severely and profoundly retarded students were not articulated, inquired into or in any way even aired at the Fialkowski hearing and as a consequence that hearing and the decision emanating therefrom did not in any way address, let alone redress, the appropriate education of the plaintiffs' Fialkowski.

43. Defendants' delay in scheduling hearings and their failure to articulate and describe programs in sufficient detail in the due process notice to support the testing of such programs' appropriateness in the hearings themselves was and is endemic and system-wide, and at all times relevant hereto has been known to defendants, their officers and their ranking employees, for example:

a. Joseph Lantzer, Director of the Right to Education Office of the State Department of Education informed School District Superintendent Costanza by letter of October 31, that the School District of Philadelphia was not in compliance with the provisions of the PARC Decree and specified, inter alia, "The period of time between the requests for a hearing signed by the parents, the assignment of hearing officers and the actual hearing are almost always well beyond the stipulations included in the Amended Consent Agreement. In addition there have been cases of recommendations presented at hearings being different than those on the 'Notice of Proposed Change in Educational Assignments'... as well as cases where parents have felt a need to go to a hearing in order to find an avenue of communication with school personnel in such areas as transportation, specific class placement and program content."

b. Nancy Heyman, Regional Field Co-Ordinator in the Right to Education Office, reiterated these violations in a letter of January 29, 1974 to Winifred Tillery, Deputy to School District Assistant Superintendent for Special Education Young, specifying, inter alia, that "the program which is being proposed is not fully expressed in the notices," and by letters to Edward M. Cloak, Assistant to Young between December 21, 1973 and February 14, 1974, Ms. Heyman returned a series of Notices to the school district for insufficient specificity of assessment and program in the Notices.

44. For the reasons stated in paragraph 43, and for other reasons, the Fialkowski due process hearing did not, and most hearings do not, function to test and assure educational program appropriate to each child. The affidavit of Bruce Dworkin, Research Director and presently Acting Director of the three-year National Institute of Education funded Project to assess the impact and implementation of the PARC decree is attached hereto as Appendix C and incorporated here.

45. For example, the hearing officers had not, by May of 1973, nor have they at any time since, been given any training by the State Department of Education in the diagnostic-prescriptive method nor in questioning and other fact-finding techniques. Such training was suggested by the Pennsylvania Association for Retarded Citizens as early as October 4, 1973 and the suggestion reiterated to Secretary Pittenger by PARC's letter to him of May 8, 1974.

46. As a defendant in the PARC case, the Philadelphia School District was apprised of the timing and detailed statement requirements not only by the PARC Courts' Final Orders of May 5, 1972, but by the Preliminary Orders of October 7, 1971 and, even earlier, by the original Stipulation on due process executed in June of 1971.

1972-74

47. The 1972-73 Longfellow class for David and Walter Fialkowski did not commence until October 9, 1972.

48. On November 20, 1972 Mrs. Roberta P. Rifkind became the teacher of the Longfellow class and continued to teach the class after it was moved to Sullivan School in September, 1973.

49. No multidisciplinary assessments of Walter or David were made or caused to be made by defendants during the period 1972-1974 nor were written prescriptions for their education and training formulated.

50. When Mrs. Rifkind arrived in the class there were no written prescriptions for the education and training of the children. She had available to her only the district's psychological reports on the children, and no records of their previous education except "some anecdotal records and year-end summaries that were very general".

51. Neither a Referral Placement Master nor the accompanying fourteen-page Commonwealth Right to Education Evaluation Form, both required under COMPLE, had been completed for Walter or David.

52. In December of 1972 Mrs. Rifkind herself filled out Right to Education Forms for Walter and David by herself, despite the instruction on the evaluation form that "all disciplines necessary for evaluation of the person should be contacted and/or requested to perform an examination." She did so because "at that time children at Longfellow were not being considered 'Right to Education Children.'" In the "Program Prescription" portion of the evaluation form where the form instructed "describe a program for the person based on the preceding findings", Mrs. Rifkind wrote, for both Walter and David, "gross motor, fine motor, visual

motor, auditory, tactile/kinesesthetic, self-concept and self-help, communication, conceptual, social interaction." The same entries were made in the Program Prescription portion of the evaluation forms filled out by Mrs. Rifkind for two other very differently functioning children in the class, W.L., except gross and fine motor was left out, and C.H., except self-concept was left out.

53. At no time during 1972-73 or 1973-74 did Mrs. Rifkind formulate or have available to her a written prescription for the education of David and Walter Fialkowski. There were no written multi-disciplinary assessments and no written statements of long-term or short-term objectives, nor of task breakdowns and sequencing of learning tasks (other than the anecdotal), and no recording of progress on tasks and toward objectives (other than the anecdotal).

54. As a consequence the program offered in that class was not appropriate to the education of the plaintiffs Fialkowski. For example, the cognitive and language development materials and exercises were derived from nursery or kindergarten materials and from relaxation materials for speech therapy and were inappropriate to the education of severely and profoundly retarded students, and in particular to the plaintiffs Fialkowski. There was no vocational programming in the class.

55. The eight children enrolled in Mrs. Rifkind's class from January, 1973 through the school year 1973-74 ranged in age from 9 years (1), through 11 years (4), 12 (1), 17 (1) to 20 years (1).

56. Their developmental levels were very heterogenous ranging from one, C.H., a physically handicapped child refused admission to Widener School, who functions at a high moderate level of retardation with language and conceptual skills in the high "trainable" range and who has

been assigned an I.Q. in the 50's; to another, I.L., a "trainable" child, "not low functioning", from a Spanish-speaking family, who has an artificial limb and who in the spring of 1974 was assigned to a "trainable" class; to another, W.L., a higher functioning emotionally disturbed child diagnosed as having childhood schizophrenia. Five of the children were ambulatory; three were not. Of the five apparently severely or profoundly retarded children in the class, three had expressive speech of varying levels and two had no speech at all. Receptive language varied from a developmental level of six months to eighteen months. Toileting and self-feeding skills varied with each of the children.

57. As a consequence of the absence of multi-disciplinary assessments, or written prescriptive programs for each child, of recorded measures of teaching progress, together with the heterogeneous learning needs of the children in the class, the fine grained development and integration of individualized instruction could not and did not take place and the plaintiffs Fialkowski were not offered education appropriate to their learning capacities.

58. On or about December 3, 1973 the Fialkowskis sought to enroll David and Walter in the Spruance School class for multiply-handicapped children, one of seven multiple-handicapped classes funded by federal Title III funds through the state Department of Education, whose teachers received more inservice training than any others, which were required by federal regulation to be evaluated annually and which had vocational training facilities available. At this time there were 69 Multiply Handicapped classes altogether in the Philadelphia School District. The Fialkowski children were denied access to the Spruance School class.

1974-1976

59. Walter Fialkowski became 21 on February 10, 1974. Despite the provisions of Section 1926 of the School Code, 24 Purd. Stat. Sec. 19-1926 that "Any board of school directors may admit persons less than six years of age, or more than twenty-one years of age, to suitable special or vocation schools or departments," and the Rehabilitation Act of 1973, Section 504, 29 U. S. C. § 794, defendants have not offered or provided schooling to Walter since he became 21.
60. David Fialkowski was assigned to Dennis Flanagan's classroom at Sullivan School and attended there from October 21, 1974 through the end of the 1974-75 school year and from the beginning of the 1975-76 school year through September 24, 1975 and from December 4, 1975 through March 12, 1976.
61. No multidisciplinary assessments of David were made or caused to be made by defendants during the period 1974-1976 nor was a written prescription for his education and training formulated.
62. The only assessments done by the school district and seen by David's teacher were three, each by a school psychologist, dated December 19, 1972, May 13, 1971, and April 25, 1967 and two by a physical therapist, dated October 21, 1974 and June 19, 1975.
63. David's teacher was given no records of David's previous classroom performance.
64. The file School District of the School Districts' Psychological Services Division contained:
- a. a physical therapy and rehabilitation evaluation dated October 14, 1974 by Richard G. Ruoti, a contract physical therapist for the base service unit;

b. a Psychological Evaluation administered July 7, 1974

by two private clinical psychologists;

c. a Vineland Social Maturity Scale, undated;

d. a Vineland Social Maturity Scale, administered December 19, 1972;

d. a Vineland Social Maturity Scale, administered December 19, 1972;

e. a face sheet Referral/Placement Master (RPM) dated March 13, 1973 containing, inter alia, recommendations of program design/content;

f. a physical therapy evaluation by D. Noga L. P. T. (undated)

g. a physical therapy evaluation by D. Noga L. P. T. December 1975.

h. physical therapy progress notes by D. Noga for the period January 1975 to June 1975 and September 1975 to March 1976; but none of these assessments were shown to David's teacher.

65. Mr. Flanagan did not know the recommended program design/content code used on the face sheet of the Referral/Placement Master, and he had never seen an R.P.M. prior to his deposition in August, 1976.

66. None of the school district files including the Psychological Services file which otherwise contains all records of formal assessments administered by the district to David, contains the COMPILER required the fourteen page Right to Education Evaluation Form

which is intended to accompany the Referral/Placement Master. The same is true of the RPM for Walter Fialkowski.

67. The School District never secured the extensive records of St. Christopher's Hospital for Children on David, and, per force, never shared them with David's teachers, which records include neurological, orthopedic, vision and social work evaluations as well as psychological and general physical evaluations.

68. At no time were all of the authors of the several assessments of David convened together with his teachers to design and plan a program for his or to write a prescription for his education and training.

69. The PARC Decree at paragraph (j) of the Order and Injunction enjoined the Philadelphia School District "to re-evaluate the educational assignment of every mentally retarded child not less than every two years... and upon such re-evaluation to provide notice and the opportunity for a hearing." Notice having been given the Fialkowskis on or about March 22, 1973, re-evaluation and notice including a statement "in detail" of the program thought to be appropriate for the education and training of David was due no later than March 22, 1975. Such re-evaluation and notice has not been given.

70. The only writings of any kind during this period prescriptive of David's program are 12 cards prepared by Mr. Flanagan, and used during the 1975-76 school year. These cards, in the opinion of Charles R. Glean, appointed School District Supervisor of Classes for the Severely and Profoundly Retarded in November of 1974, represented the farthest development and use of prescriptive techniques he observed in eight visits to the multiply handicapped classes at Sullivan School.

71. In consequence of the failure to provide a multidisciplinary assessment and the failures otherwise to train, to supervise, and to support teachers in the use of the diagnostic-prescriptive method, as pleaded below, the limited 12-card prescriptions selected teaching objectives for David "arbitrarily", set some teaching objectives which were contra-indicated by David's physical condition, set others which sought to teach skills which he already had, and could and did not provide an appropriate program of education and training from which he could benefit.

72. The hearing officers decision of July 10, 1973 had directed that:

- a. " regular conference be scheduled at least monthly with the parents to explain the program for David... as well as to provide suggestions for parents' follow-up of techniques and approaches at home" and that
 - b. "the supervisor of special classes consult regularly with the teacher of the multiply-handicapped class to review the individual programs goals for each student."
- During the period 1974-1976 neither of these things occurred. There was only one such conference, in the Spring of 1975, and while the district supervisor met periodically with Mr. Flanagan, and others, they never "sat down specifically to discuss David's program"

73. In the class taught by Mr. Flanagan and one aide there were 6 to 8 children ranging in age from five to 18 (a distribution of 5, 9, 12, 13, 15, 18 at the close of the 1975-76 school year) with a wide range of developmental levels in the various skills areas. No vocational skills were taught.

1976-1977

74. In early September, 1976 the Fialkowski's received a form letter dated August 21, 1976 from the District Seven Special Education Supervisor assigning David to a "special education class" at the Marshall School.

75. The August 31 letter states that "As a result of end-of-the school year or summer evaluations and because we wish to do our best to meet the needs of your child we have re-organized several of our special education classes in District Seven." David, however, received no end-of-the school year or summer evaluation, nor (see paragraph 69 above) did he receive the periodic re-evaluation required every two years by the PARC decree and due David no later than March 22, 1975.

76. Children previously assigned to classes at Sullivan School were reassigned to classes in Marshall or other schools for this school year for one or more of three reasons (1) "to make age grouping a reality where before it wasn't," (2) to allow safe and easy access for children who cannot walk to the classrooms (Sullivan has 20 steps and no ramp or inclinator), and (3) because of changes in their educational program. David Fialkowski walked the stairs at Sullivan School.

77. Despite the program-altering reasons for change, David Fialkowski was not accorded due process notice of the change in assignment with a statement "in detail" of the proposed program, nor has he been accorded the opportunity to be heard on the appropriateness of the proposed program, as required by the PARC Decree.

78. Mr. and Mrs. Fialkowski visited the Marshall School before the school year began and spoke with the proposed new teacher who told them that she had never taught severely or profoundly retarded children before, that she was fearful of lifting the children or otherwise engaging them physically lest she injure them, that she would not be teaching them toileting skills, that she had not received any diagnostic or educational records of the children assigned to her class and would in any event prefer to "design" her own program with the help of the physical therapist assigned to the class.

79. Neither the Longfellow, the Sullivan nor the Marshall classes are or were funded under Title III.

80. Mr. and Mrs. Fialkowski thereupon withdrew David from the public schools and enrolled him in a day program, largely for over-school-age persons, at Woodhaven Center, the Southeastern State School and Hospital for the Mentally Retarded, which is operated for the Department of Public Welfare by Temple University. David's parents want for him an appropriate program of education and training in a school in the community.

81. On November 14, 1975, Walter Fialkowski was admitted to Woodhaven Center and thereafter he has lived at the institution. Under prevailing policy Walter Fialkowski, like any other resident of Woodhaven, may reside and receive education and training there for no more than two years from the date of his admission and thereafter must reside and receive training in a community setting.

D. The Actions and Inactions of Defendants, Their Officers
And Ranking Employees Which Have Caused the Non-
Education of David and Walter Fialkowski

82. The cause of defendants' derelictions and the consequent non-education of the plaintiffs Fialkowski is not money.

83. In the four and a half years since the PARC Decree the Philadelphia School District has enrolled an additional 1700 mentally retarded students, 635 of whom are severely and profoundly retarded. Eighty-nine classes have been established for the severely and profoundly retarded students, but the other retarded students have largely been accommodated in previously existing classes. In 1970-71, the last pre-PARC school year, the Philadelphia School District had 588 classes for the mildly and moderately retarded; in 1975-76 the District had 527 such classes.

84. In 1970-71, the Philadelphia School District received \$16 million in state appropriations for special education; in 1975-76, the District received \$34.4 million for special education. The 1972-73 allocation was \$18 million (in that school year there were two strikes lasting three months); in 1973-74, \$23.1 million; in 1974-75, \$29.4 million.

85. Statewide appropriations for special education increased even more: in 1970-71, \$62 million; in 1972-73, \$139.6 million; in 1973-74, \$137.6 million; in 1974-75, \$152.8 million; in 1975-76, \$243 million.

86. The non-education of the plaintiffs Fialkowski is the consequence of Commonwealth and School District defendants' contemptuous failure to implement the requirements of COMPILE and their contemptuous failure to formulate, to promulgate or to implement the requirements of Paragraph 50 of the Decree, characterized by this Court as perhaps the most important of the Decree's requirements, 343 F. Supp. at 288, namely:

"a plan (COMPET) to commence or recommence a free public program of education and training for all mentally retarded persons described (...) and for all mentally retarded persons of such ages hereafter. The plan shall specify the range of programs of education and training, their kind and number, necessary to provide an appropriate program of education and training to all mentally retarded children, where they shall be conducted, arrangements for their financing, and, if additional teachers are found to be necessary, the plan shall specify recruitment, hiring, and training arrangements. The plan shall specify such additional standards and procedures, including but not limited to those specified in paragraph 39 above, as may be consistent with this Order and necessary to its effectuation."

Paragraph 39 specified standards for hours of instruction, pupil-teacher ratios, curriculum, facilities, and teacher qualifications.

87. Defendants, by and large, did provide to the plaintiff class physical access to the schools. It was access to appropriate schooling, delivery to the plaintiff class of appropriate educational program, that was wanting. The risk and the reality of inappropriate programming for severely and profoundly retarded students was called to defendants' attention in the several reports by the Masters appointed by this Court and was attributed by the Masters to defendants' failures

- a. to implement Paragraph 50 of the Decree;
- b. to qualify staff for teaching severely and profoundly retarded students, whether by pre-service or continuing in-service training;
- c. to supervise and in-service the staff;
- d. to provide the necessary ancillary services, including multi-disciplinary assessment services;
- e. to specify and to superintend, and support, the necessary and appropriate methods of instruction and courses of study for severely and profoundly retarded students;
- f. to evaluate program for them;

g. to specify and to superintend the constitution and size of classes, including grouping by age and developmental level, teacher-student ratio and side-teacher ratio.

The relevant parts of the second and third Master's Reports and the entire fourth and final Report of the Masters including its Exhibit A is attached hereto as Appendix D and incorporated herein.

88. From the beginning defendants recognized the necessity to provide systematic and intensive staff development if severely and profoundly retarded children were to receive appropriate programs of education and training. For example,

a. In Commonwealth and Philadelphia School District Plan

For Implementation of the Right to Education Decree By January 1973,

submitted to this Court on November 6, 1972 in response to the Court's Order of October 5, 1972, the defendants jointly wrote:

"Implementation of the Right to Education decree requires initial and continuous staff development of special education teachers, para-professionals, and supporting professional staff. In addition, in order to provide the climate essential to acceptance of the new population, a program of broad staff development to include total faculties is needed. Great emphasis upon in-service training is highly essential because of the general lack of first hand experience in working with severely retarded children. Although special education certified teachers and supportive staff are qualified by training to understand the problems they are facing, they, for the most part, have not had the intimate day-by-day experience to meet the demanding needs of the severely retarded."

b. In The Pennsylvania State Board of Education, Special

Education Personnel Preparation Priorities As Recommended By the 1202

Commission (June 18, 1975), submitted by defendants Secretary and the

State Board of Education in satisfaction of requirements of federal law for federal funding:

"In order to satisfy some recent changes in special education activities, it is necessary to begin emphasizing the development of teacher behavior designed to deliver programs and services for the lower functioning pupil (particularly the severely and profoundly retarded). Most educational programs in the past have been primarily concerned with the educable mentally retarded child.... A change is needed if we are to prepare our teachers, both in-service and pre-service, to deliver programs and services to other exceptional children and adults whose individual needs are distinctly different."

c. State defendants stated at part II A3, (page 3) of

"Defendant Commonwealth of Pennsylvania's Proposed Findings and Conclusions (sic) of Fact Concerning the Final Report of the /PARC/ Masters,
and submitted to the Masters in December, 1973 or January, 1974 for consideration by the Masters in the formulation of their final report, "nearly all school psychologists are not skilled and have never been trained in prescriptive programming".

d. The School District's Report of Problems in Implementation of the Right to Education Decree (July 27, 1973) pages 8 and 9, identified the problems in "The Instruction Program" as:

1. The problem of provision of regular classroom supervision to give on-site assistance to teachers with development of specific educational prescriptions to meet individual pupil needs;
2. The problem of assistance to teachers in the development of workable, realistic plans for accurate record keeping and periodic careful reassessment;
3. The problem of sufficient time (without responsibility for pupil supervision) for teachers to study records, as (sic) prescriptive programming, create materials, confer with parents, use supportive resources;"

and the problems in "Staff Recruitment and Development" as:

1. The problems of pre-service training which does not equip teachers for work with the severely retarded and multiple handicapped pupils;
2. The problem of the difficulty in providing the necessary amount of detailed classroom supervision in order to insure the effective application of course content in the classroom;

3. The problem in making immediate direct response to total staff development needs at the local school level because of problems of funding, provision of time, union regulations and identification of available qualified staff."

and concluded that the three priority "recommendations for future implementation" were:

- "1. Need for staff development.
2. Emphasis upon importance of processes of instruction and training.
3. Development of more exact criteria for classification and placement of children."

e. On October 15, 1974, the Commissioner of Basic Education of the State Department of Education, Donald M. Carroll, Jr., in the State Department's application for \$99,646 in federal funds for a project entitled Pennsylvania Training Model for Preparation of Teachers of the Severely and Profoundly Mentally Retarded and Multi-Handicapped acknowledged:

"In September, 1972 Pennsylvania had over two hundred (200) new classes added to its total of classes for the mentally retarded. The students in these classes were severely and profoundly mentally retarded and multi-handicapped children all with very special and unique needs.

"The teachers and teacher assistants in these classes were past teachers of the educable or mildly mentally retarded, past teachers of the trainable or moderately mentally retarded, past teachers of the learning disabled child, new teachers with no previous teaching experience... and, thus, the problem. There were children with unique needs and teachers who were not trained to meet those needs.

"To the present there does not exist anywhere in Pennsylvania an appropriate training program designed to teach special techniques for the instruction of the severely mentally retarded and profoundly mentally retarded and multi-handicapped.

"Not only were teachers unprepared in techniques of teaching, they also lacked in the knowledge of appropriate curricula, appropriate materials and equipment, and many areas concerned with management of the child and educational program.

"To add to the magnitude of the problems, it was found that there was a general lack of knowledge of the special needs of these types of children by administrators, supervisors, school psychologists and itinerant personnel such as speech, hearing, vision and physical therapists. Therefore, these persons were, for most cases, unable to give, other than moral support, adequate supportive services.

"That problem existed in September, 1972 and that problem exists currently in September, 1974. The only difference is that, at this time, Pennsylvania has over four hundred (400) classes for severely and profoundly mentally retarded and multi-handicapped children residing in the State.

"There have been attempts to give supportive services to teachers in the area of curriculum. These attempts have come in the form of workshops and IU consortiums. Some of the colleges have added a course on curriculum for the severely and profoundly mentally retarded child; but, all of these attempts are isolated. They offer only a small portion of the knowledge that is needed to provide an appropriate education."

f. On November 14, 1975, the later Commissioner of Basic

Education in a supplemental application for \$2,400 for the Pennsylvania

Training Model asserted: "Pennsylvania views this project as a first

major attempt to train, statewide, a group of professionals who are impacting a new student population. "

89. Neither School District nor Commonwealth defendants however provided these necessities. The "isolated" in-service training provided to Philadelphia teachers, aides, school psychologists and other personnel, singly and in sum inadequate to equip staff to deliver appropriate programs to severely and profoundly retarded children, included only the following:

a. Dr. Lou Brown, Professor at the University of Wisconsin was brought to Philadelphia for three days, November 8, 1972 through November 10, 1972, to consult with the Division of Special Education, to spend 6 hours visiting the seven Title III multiply handicapped classes, and to meet for 2-1/2 hours with Supervisors of Special Education.

- b. Dr. Willbeth Stephens, then Professor at Temple University, conducted a course from July 5, 1972 to August 11, 1972, limited to the seven Title III class teachers and an additional three teachers of multiply handicapped classes. Teachers of the other 53 classes established by the end of 1972-73 did not attend. None of the Fialkowski's teachers attended, except Mr. Armstrong who was transferred to a Retarded Trainable class a month after classes began in the fall.
- c. Three follow-up workshops of two and a half-hours each were given in the fall of 1972 and four, in the spring of 1973. Mrs. Rifkind attended each of these workshops.
- d. Bernice B. Baumgartner conducted workshops for administrators and supervisors September 20-22, 1972 in Philadelphia and May 16-18, 1973 which some Philadelphians attended in Lancaster and she visited sixteen classrooms during the school year for a few hours each to provide an introduction to the COMPET curriculum materials.
- e. Numerous "acquaintance" sessions for briefings and updates on the requirements of the Right to Education decrees were held over the years, most of them of an hour or two duration, a few for a full day.
- f. District supervisors and the city-wide supervisor were encouraged to attend various workshops conducted by other instrumentalities, like the West Chester Department of Public Welfare workshops and visits to Woodhaven Center.

- g. There has been no in-service specifically designed for aides in classes for the severely and profoundly retarded. Some severe and profound class aides along with head-start and early childhood education aides, bus aides, and other special education aides attended a ten-session course conducted twice in 1975-76 and entitled "Course #1--Child Growth and Development." Only one of the ten sessions concerned "The Special Child."
- h. There has been no in-service training specifically designed for physical therapists, occupational therapists or speech therapists working with severely or profoundly retarded children.
- i. From June 28, 1976 through July 9, 1976 an intensive course was offered for homebound teachers of the severely-profoundly impaired student.
- j. In the two years since In-Service Councils were created in all Intermediate Units and required to present an annual in-service plan to the State Department, Philadelphia's plan has provided, and Philadelphia has offered, only courses in the education of the mildly retarded and of the gifted.
- k. Bernice B. Baumgartner was assigned full time to the Department of Education for the year 1972-73 as its only in-service consultant on the severely and profoundly retarded. She retired at the end of the 1972-73 school year and thereafter no one in the Department worked full time, or even half-time, on in-service training.

I. "Guidelines for Approved In-Service Credit", and "In-Service Education: A Rationale and A Plan" describe the Commonwealth's creation in 1973-74 of In-Service Councils across the state. These Councils were not instructed nor even exhorted to develop training for personnel concerned with the education of severely and profoundly retarded children, and, as in Philadelphia, the In-Service Councils across the state gave it no attention.

m. The Pennsylvania Training Model has yet to deliver any inservice training in Philadelphia.

90. Although teachers of the seven Title III funded classes in Philadelphia (and the plaintiffs Fialkowski were not allowed access to any of those classes) have had more in-service opportunities than the other teachers of the severely and profoundly retarded,

a. The April 1973 evaluation of the first year of the Title III project identified as a "special problem and weakness", the "need for a development of a unified, systematic procedure of continuous evaluation of students" and recommended: "conduct in-service program to establish a unified, systematic procedure for evaluation of students;"

b. The April 1974 evaluation of the second year of the Title III project recommended: "an on-going in-service program for teachers, aides, and parents should be conducted continuously;"

c. In the September, 1974 revised abstract-narrative for the Project's third year, Dr. Lafayette Powell, Associate Director of Special Education, wrote the following comment on the April 1974 recommendation and acknowledged: "Since the inception of the program, opportunities for staff

development have been minimal. However, a consistent staff development program will be developed in Year Three which will be oriented both toward teacher needs and the concept of reinforcing learning through drill;"

d. The only result of the September 1, 1974 representation was the 1974-75 program of workshops for teachers of the severe and profoundly found in the home, not in classrooms. The May 1975 evaluation reported further, "A city-wide system is in process of being established whereby teachers and aides are clustered in small groups which will meet once a month to work on improving teaching strategies and skills. One of the multiple handicapped classes is currently involved in a cluster. Within the next year, it is expected that all classes will participate in the staff development program." During the year 1974-75, the School District Supervisor of Classes for the Severely and Profoundly Impaired visited only five of the seven Title III and those only once each.

91. Despite defendants' recognition of the necessity of supervisory resources, the school district's single city-wide Supervisor of Classes for the Severely and Profoundly Handicapped is only employed on a ten month, not a full year's, basis; and until November of 1974 the school district had no Supervisor of Classes for the Severely and Profoundly Handicapped at all.

92. The statement of objectives formulated in January, 1975, for the performance of this Supervisor included for just two objectives: one visit each month to each teacher of the 89 classes for the severely and profoundly retarded and ten monthly meetings with clusters of 5 to 10 teachers and aides in the 89 classes.

93. None of the visitation, evaluation and follow-up planning tasks set to achieve these objectives have been accomplished, nor can they be. Even the recording tasks set for the Supervisor to achieve those objectives -- "Maintenance of a written log of visits to document observed teacher behavior relating to program standards" and "On-going reporting to principals and to the Assistant Director of Special Education in charge of instruction as to staff development progress; reporting will be written and will summarize content of sessions and recommendations to be implemented" -- have not yet been begun.
94. The Supervisor visited the Sullivan School classes on five occasions during the 1974-75 school year, and on only three occasions during the 1975-76 school year, and on two of the latter Mr. Flanagan, David's teacher, was not present.
95. Each of the Philadelphia School District's eight internal administrative districts has only one Supervisor of Special Education responsible not only for supervision and support of classes for the severely and profoundly retarded, but for all the rest of special education as well, including classes for the educable mentally retarded, trainable mentally retarded, the socially and emotionally disturbed, the learning disabled and the physically handicapped.
96. The evaluation of the Philadelphia School District's special education program by a team of administrators and educators from the Pittsburgh Intermediate Unit as a part of the State Department's Peer Evaluation Program, in March, 1974, identified as a significant weakness in Philadelphia,
- "The duties and coverage expected of the supervisors seem quite broad and makes program supervision and classroom observation difficult to provide." (page 6);

"There is a wide breadth of control and expertise expected of the supervisors responsible for supervision of all classes within a district." (page 10);

"There are not enough supervisory services available directly to teachers. Expertise in specific program areas varies and the supervisor does not always have adequate knowledge in all program areas. Recommendations: (a) Consider hiring additional supervisors especially those responsible for specific program areas. (b) Investigate the possibility of employing instructional advisors to provide hands-on supervision and support of teachers." (page 15).

The only change made since that date is the hiring of the single, ten month city-wide Supervisor of Classes for the Severely and Profoundly Handicapped, mentioned above.

97. Despite the additional over 1700 retarded children in school and the additional time as well as care and skill necessary to assess and prescribe for the new 635 who are severely or profoundly retarded, the School District has increased its staff of school psychologists only from 33 in the summer of 1972 to 41 at the close of the 1975-76 school year. These psychologists must also serve the programs for the socially and emotionally disturbed and the gifted and the learning disabled of which the latter two have significantly expanded since 1972.

98. Despite these widely known derelictions and despite the knowledge that these derelictions would prejudice, and render impossible, the provision to severely and profoundly retarded students of 'programs appropriate to their learning capacities', state defendants have still not formulated or promulgated or enforced the plan required by paragraph 50 of the PARC Decree. Nor did state defendants formulate or promulgate the part of that plan which would constitute "Standards for Program and Services for the Education of Severely and Profoundly Retarded Persons", until December 8, 1976, even though revised Standards for the "educable" and "trainable"

mentally retarded were promulgated by them on October 2, 1972 and despite constant entreaties since 1972 that they do so. Furthermore, even these lately promulgated 1977 Standards do not respond adequately to state defendants' own articulated recognition of the necessities of inservice training and supervision with measurable, enforceable standards.

99. Beginning with the intermediate unit special education plan submission of June 1, 1974, special education plan submissions took on a new format at the Pennsylvania Special Education Planning System Workbook -

Phase II. This format required, inter alia, the setting by each Intermediate Unit of definitions, goals, objectives and procedures for each of fourteen specific programs including "mental retardation, severe and profound".

100. In its June 1, 1974 plan submission, Philadelphia omitted the statement of definitions, goals, objectives and procedures for programs for "mental retardation, severe and profound." When the State's Regional Adviser informed Philadelphia the plan could not be approved without it, Philadelphia officials told the Regional Advisor it was omitted and severely and profoundly retarded children subsumed under "mental retardation, trainable" because there were no state standards for the severe and profound.

101. The first Philadelphia plan - Phase II submission to articulate a definition, goals, objectives and procedures for the severely and profoundly retarded is the 1976-77 plan, submitted on or about May 1, 1976. In that submission the definition of severely and profoundly retarded pupils distinctly understates their capacity to learn, given proper program. The bibliography set out for programs for the severely and profoundly retarded, is exactly the same bibliography set out for programs for the trainable retarded, despite the fact that their education must be distinctly different. The submission excels vocational education for the severely and profoundly retarded. And the primary "recommendation for change" is "to insure that each severely and profoundly retarded child has an individual prescription

in all important areas", an objective not achieved since 1972.

102. Throughout the relevant time period Commonwealth defendants have been aware of the failures of the Philadelphia School District and of their own, (for example:

a. Philadelphia's failure to provide multi-disciplinary assessments and particularized program prescriptions for the severely and profoundly retarded was observed and reported to state defendants by Nancy Heyman, then the State Department Regional Field Coordinator for Philadelphia.

b. By letter of October 31, 1973 defendants informed defendants Costanzo, Young and Horowitz that Philadelphia was not in compliance with the PARC Decree, specifying that because of inadequate and untailored statements of program in due process notices "parents have felt the need to go to a hearing in order to find an avenue of communication with school personnel in such areas as... specific class placement and program content."

c. By letter of January 29, 1974, Miss Heyman informed Philadelphia defendants that Philadelphia due process letters were chronically "incomplete" - "the reasons for change or continuance of placement... and the program which is being proposed is not expressed fully" - and that Philadelphia's Referral/Placement Masters and Evaluation Forms were chronically incomplete" - "using a random selection, it was found that many evaluation forms are incomplete or are completed in a rather haphazard manner".) but, throughout, Commonwealth defendants have failed to execute their own duties under the Decree of this Court, whether by exercising their enforcement powers under the Pennsylvania School Code, 24 Purd. Stat. §13-1372 (5), 13-1357, 13-1355 and 11-1123 or otherwise by acting formally or informally to 'provide to every retarded person a free public program of education and training appropriate to his learning capacities."

WHEREFORE, plaintiffs Walter and David Fialkowski pray this Court find defendants in contempt of this Court's Orders of May 5, 1972 and enforce those Orders as prayed above, including Ordering defendants to provide such further appropriate education, or the financial means thereto, as is necessary to compensate the plaintiffs Fialkowski for their deprivations heretoforce.

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February 19, 1977

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PENNSYLVANIA ASSOCIATION : CIVIL ACTION
FOR RETARDED CHILDREN, et al., :

Plaintiffs :

v. :

COMMONWEALTH OF PENNSYLVANIA :
SCHOOL DISTRICT OF PHILADELPHIA, : NO. 71-42
et al., :

Defendants :

WALTER FIALKOWSKI
and DAVID FIALKOWSKI,
by their parents, MARION
and LEONA FIALKOWSKI, :

Petitioners : CLASS ACTION

MEMORANDUM IN SUPPORT OF
PETITION OF WALTER AND DAVID FIALKOWSKI
FOR ENFORCEMENT OF ORDERS AND FOR SANCTIONS
INCLUDING COMPENSATORY FINE
AND FOR DETERMINATION OF PLAINTIFFS'
RIGHTS UNDER PARAGRAPH 45
OF THE AMENDED CONSENT AGREEMENT

In the years since this Court's Decree in PARC, et al. v.

Commonwealth of Pennsylvania, et al., the Congress has enacted three

statutes adopting the orders of this Court and their equal protection rationale

as the law of the land. The legislative history of each enactment is express

that the Congress was adopting PARC: for the Matthias-Stafford Education

of the Handicapped Amendments of 1974, 80 Stat. 530, see Congressional

Record, pages S8437-8443 (May 20, 1974); for the Education of the Handicapped

Act of 1975, 89 Stat. 773, see HR Rep. No. 332, 94th Cong., 1st Sess., 3-4,

10 (1975) and S Rep. No. 168, 94th Cong., 1st Sess., 6-7 (1975); for Section 504

of the Rehabilitation Act of 1973, which tracks verbatim the provisions of Title

VI of the Civil Rights Act of 1964 and applies them to the handicapped, see 117 Cong. Rec. 45945 (1971); 120 Cong. Rec. H4212, (1974).

In the Education of the Handicapped Act of 1975, Section 601(b) (9), the Congress, in a rare invocation of its powers under Section 5 of the Fourteenth Amendment, declared that it was acting "in order to assure equal protection of the law."

Thus there is a special coincidence of the standards set for defendants by the several Congressional Acts and the standards set by this Court's Decree, and the Congressional standards may well be looked to by this Court for guidance in the enforcement of its Orders. In all formal respects, however, the plaintiffs Fialkowski are before the Court to enforce the PARC Decree and rely upon that Decree as the basis for the contempt and enforcement relief sought here.

With respect to the claim for education past twenty-one--the issues reserved by Paragraph 45 of the PARC Decree--plaintiffs rely upon the Constitution and this Court's equitable powers, e.g., Knight v. Board of Education of the City of New York, 48 F. R. D. 108 (E. D. N. Y. 1969); United States v. Jefferson County Bd. of Education, 372 F. 2d 836, 891-92, 900 (5th Cir. 1966) aff'd en banc, 380 F. 2d 385 (1967); Hobson v. Hansen, 269 F. Supp. 401, 515 (D. C. 1967) aff'd sub nom.; Smuck v. Hansen, 408 F. 2d 175 (D. C. Cir. 1967), and upon Section 504 of the Rehabilitation Act of 1973, 29 U. S. C. § 794. And see Final Proposed Rules, 41 Fed. Reg. 29564, § 84.32 (July 16, 1976), to be codified at 45 C. F. R. Part 84, § 84.32. Cf. Lloyd v. Regional Transportation Authority, Appeal No. 76-1524, 7th Cir. (decided January 18, 1977); Hairston v. Drosich, C. A. No. 75-0691 (S. D. W. Va. decided January 14, 1976);

Sites v. McKenzie, C. A. No. 76-24 (N. D. W. Va. decided November 17, 1976).

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