

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

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

Plaintiffs

v.

COMMONWEALTH OF PENNSYLVANIA,
ROBERT G. SCANLON, Secretary
of Education of the
Commonwealth of Pennsylvania,
PHILADELPHIA SCHOOL DISTRICT,
et al.,

Defendants

WALTER FIALKOWSKI and DAVID
FIALKOWSKI, et al.

CIVIL ACTION

NO. 71-42

CLASS ACTION

ENTERED: 5 19 82

Petitioners for Enforcement :
and Further Orders

CLERK OF COURT

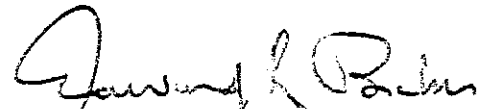
ORDER

AND NOW, this ^{14th} day of May 1982 upon agreement of
counsel, it is hereby ORDERED and DECREED:

1. The Settlement Agreement filed this date, is
hereby approved and is adopted by the Court subject to the hearing
scheduled herein.

2. Hearing on the Settlement Agreement is set for
June 15, 1982, 10:00 a.m. in Court Room **8A**, Federal Courthouse,
6th & Market Streets. Entry of appearances and statements of
objections shall be filed on or before June 8, 1982 at 5:00 p.m.

3. Petitioners shall file motions for attorneys' fees
on or before June 30, 1982.



EDWARD R. BECKER

U.S. Circuit Judge, sitting by

designation.

IN THE UNITED STATES DISTRICT COURT
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THE PENNSYLVANIA ASSOCIATION FOR :
RETARDED CITIZENS, NANCY BETH :
BOWMAN, et al., on behalf of them- :
selves and all others similarly :
situated, :
Plaintiffs :
v. : CIVIL ACTION
COMMONWEALTH OF PENNSYLVANIA, : NO. 71-42
ROBERT G. SCANLON, Secretary of :
Education of the Commonwealth of : CLASS ACTION
Pennsylvania, :
PHILADELPHIA SCHOOL DISTRICT, et al. :
Defendants :
WALTER FIALKOWSKI and DAVID :
FIALKOWSKI, members of plaintiff :
class, by their parents, MARION :
and LEONA FIALKOWSKI, ADVOCATES :
FOR DEVELOPMENTALLY DISABLED :
PEOPLE and POLICE AND FIRE :
ASSOCIATION FOR HANDICAPPED :
CHILDREN, plaintiffs, :
Petitioners for Enforce- :
ment and Further Orders :

NOTICE OF SETTLEMENT AGREEMENT

Notice is hereby given that:

1. a proposed Order approving a settlement agreement in the action brought by Walter and David Fialkowski, Advocates for Developmentally Disabled People and the Philadelphia Police and Fire Association for Handicapped Children for enforcement and further orders under Pennsylvania Association for Retarded Citizens, et al. v. Commonwealth of Pennsylvania, et al., (C.A. No. 71-42) is on file with the Clerk of the United States

APPENDIX "A"

District Court and available for inspection there, and in the Office of Legal Counsel, Philadelphia School District, 21st and the Parkway, Philadelphia, Pa., in the Office of Legal Counsel, Commonwealth Department of Education, 333 Market Street, Harrisburg, Pa., in the Office of the Philadelphia Federation of Teachers, 1816 Chestnut Street, Philadelphia, Pa. and at the Public Interest Law Center of Philadelphia, 1315 Walnut Street, Philadelphia, Pa.

2. The above-mentioned action, on behalf of all children in Philadelphia assigned to classes for the severely and profoundly impaired (sometimes called "SPI classes"), was begun on December 5, 1979, superceding other previously filed complaints and petitions, seeking enforcement of federal and state law against the Commonwealth Department of Education and its officials and the School District of Philadelphia and its officials for their alleged failure to provide an appropriate program of education and training to severely handicapped students in Philadelphia.

3. The proposed Order would approve a Settlement Agreement entered into by the named parties and intervenor, Philadelphia Federation of Teachers on *May 14*, 1982 providing that each student assigned to a class for the severely and profoundly impaired (hereinafter "severely handicapped student") be provided with a program of education and related services which is conducted in age appropriate schools attended also by non-handicapped students, in natural proportions, by specifically trained teachers and aides, teaching functional skills including vocational skills, use of leisure time, community functioning, communication, socialization and interaction skills, in natural environments (i.e. in school, at home, in the community).

4. To accomplish the requirements of the settlement agreement within three years the Philadelphia School District has undertaken to:

(a) provide intensive in-service training for all teachers, aides, occupational, physical and speech therapists and other support personnel engaged in the education of severely handicapped students.

(b) provide training, to secure effective involvement of parents, guardians and surrogate parents in the education of severely handicapped students.

(c) provide all related services including occupational therapy, physical therapy and speech therapy necessary for the appropriate education of each severely handicapped student.

(d) establish demonstration and model programs and transfer the practices and results of those programs to all programs for severely handicapped students.

5. The Commonwealth Department of Education has undertaken to:

(a) provide certain federal funds for fiscal years 1982, 1983 and 1984 in aid of implementation of the agreement.

(b) monitor educational programs for severely handicapped students, and identify any deficiencies and assure their correction.

(c) disseminate the results of the programs, practices and materials developed under the agreement to enable school districts and I.U.s to adopt new and promising educational practices in the education of severely handicapped students.

(d) provide technical assistance to the School District in the delivery of vocational education to severely handicapped students.

6. That the parents, or guardian or surrogate parent of any severely handicapped school age child in Philadelphia who may wish to make an objection to the proposed Order approving the Settlement Agreement may do so by entering an appearance and filing a statement of objections with the Clerk of the United States District Court for the Eastern District of Pennsylvania, U.S. Courthouse, 601 Market Street, Philadelphia, Pa. on or before *June 8*, 1982. Hearing thereon shall be held before the Court at 10:00 a.m., *June 15*, 1982 *in COURTROOM 8A*.

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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

v. :

COMMONWEALTH OF PENNSYLVANIA, :
ROBERT G. SCANLON, Secretary of :
Education of the Commonwealth of :
Pennsylvania, PHILADELPHIA SCHOOL :
DISTRICT, et al., :
Defendants :

CIVIL ACTION

NO. 71-42

CLASS ACTION

WALTER FIALKOWSKI and DAVID :
FIALKOWSKI, members of plaintiff :
class, by their parents, MARION :
AND LEONA FIALKOWSKI, ADVOCATES :
FOR DEVELOPMENTALLY DISABLED :
PEOPLE and POLICE AND FIRE :
ASSOCIATION FOR HANDICAPPED :
CHILDREN, Plaintiffs, :

Petitioners for Enforce- :
ment and Further Orders :

SETTLEMENT AGREEMENT

On August 30, 1974 Walter and David Fialkowski, represented by their parents Marion and Leona Fialkowski, (hereinafter "Petitioners") filed a Complaint in Civil Rights under 42 U.S.C. §§1343, 1983 in the United States District Court for the Eastern District of Pennsylvania, under the caption Fialkowski v. Shapp, No. 74-2262. The complaint named as defendants, inter alia, officials of the Commonwealth of Pennsylvania, the Department of Education (hereinafter "Department") and School District of Philadelphia (hereinafter "School District"). Following the filing of a Motion to Dismiss by Commonwealth defendants, Petitioners filed a first Amended Complaint in Civil Rights and on May 13, 1974 filed

a second Amended Complaint in Civil Rights. The Complaint and Amended Complaints alleged that defendants had denied David and Walter Fialkowski, two multihandicapped children, their right to an appropriate education under the equal protection and the due process clauses of the Fourteenth Amendment to the United States Constitution.

The Court on December 17, 1975 issued an opinion and order denying the Commonwealth's Motion to Dismiss as to Department defendants, which opinion and order are found at Fialkowski v. Shapp, 405 F.Supp. 946 (E.D. Pa. 1975). Trial was then scheduled to commence on October 27, 1976. Following pretrial conference, the parties on October 27, 1976 stipulated and agreed that, upon approval of the Court, the action initiated by the Complaint and Amended Complaints be discontinued without prejudice and be instituted as a Petition for an Adjudication of Contempt and Imposition of Sanctions under the caption PARC v. Commonwealth, C.A. No. 71-42.

On March 17, 1977 Petitioners filed with the Court a Petition for Enforcement of Orders and for Sanctions seeking enforcement against the School District and the Department of this Court's May 2, 1972 Order and Injunction in Pennsylvania Association for Retarded Children v. Commonwealth, 343 F.Supp. 279 (E.D. Pa. 1972). On August 5, 1977 the Philadelphia Federation of Teachers was granted leave by the Court to intervene in this action. A hearing on enforcement and contempt in regard to this petition was held in August 1977 and thereafter adjourned, the parties and the Court joining in periodic mediation and implementation conferences in 1977, 1978, 1979, and 1980. Petitioners thereafter withdrew their request for a finding of contempt against Department and School District Respondents.

After intervention in these proceedings by the Philadelphia Police and Fire Association for Handicapped Children, and the Advocates for Developmentally Disabled Persons (hereinafter "Intervenors") as Parties Plaintiff, Petitioners and Intervenors on July 26, 1979 filed a joint Motion for Partial Summary Judgment on the Petition for Enforcement of Orders and for Sanctions. On July 27, 1979 Department respondents filed a Motion to Strike Motion for Partial Summary Judgment.

On December 5, 1979, the Petitioners and Intervenors filed under 42 U.S.C. §1983 a Petition for Enforcement and Further Orders naming as respondents various School District and Department officials. The petition alleged denial of provision of appropriate education to Petitioners and similarly situated school age severely handicapped children under the Education of the Handicapped Act of 1975, 20 U.S.C. §§1401 et seq.; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, the Pennsylvania School Code and the Orders and Injunctions of this Court. On December 13 and 14, 1979 respectively, the School District and Department filed motions with the Court to dismiss or strike the Petition for Enforcement and Further Orders, which motions were thereafter denied. Following discovery by all parties, Petitioners presented their case at trial in June of 1981. Presentation of the School District's and the Department's case at trial was continued pending this settlement.

Now therefore this 14th day of May 1982, being desirous of effecting, without findings of liability, an amicable settlement of all individual and class claims raised in the aforementioned Complaint, Amended Complaints, Petitions and Amended Petitions (with the exception of claims for costs and fees), the parties by their counsel agree, subject to the approval and order of this Court as follows:

SUBCLASS DEFINITION AND NOTICE

1. This action may and hereby shall be maintained as a class action on behalf of a subclass of the plaintiff class established under the PARC Consent Decree, 334 F. Supp. 1257, 1259 (E.D. Pa. 1971). The subclass shall consist of all mentally retarded school age persons in Philadelphia who are now or may in the future be assigned by the School District or its intermediate unit to classes for the severely and profoundly impaired (SPI) (hereinafter called "severely handicapped") and those persons who, in accordance with procedures established by the Commonwealth under the PARC Consent Decree and Amended Consent Decree and the Education of the Handicapped Act, are determined to be in need of appropriate education in such SPI classes. As of this date there are approximately 530 subclass members.

Pursuant to Rule 23, Fed. R. Civ. P., notice of this Settlement Agreement and the proposed Order approving this Settlement Agreement, shall be given as follows: (a) by the School District, by delivery of a copy of the Settlement Agreement, together with the form of notice set forth in Appendix A to this Settlement Agreement, to each teacher assigned to an SPI class, to each SPI instructional advisor and to each principal of a public school with severely handicapped students; (b) by the Commonwealth Department of Education, by immediate distribution of the Settlement Agreement together with the form of notice set forth in Appendix A to the Superintendent and the Director of Special Education of each school district and intermediate unit in the Commonwealth of Pennsylvania and through each intermediate unit to the local task forces, to each member of the State PARC Task Force and to the State Advisory

Panel for Special Education, (c) by Petitioners, by immediately mailing a copy of this Settlement Agreement to the officers of the Philadelphia Police and Fire Association for Handicapped Children, the Advocates for Developmentally Disabled Persons, the Parents Union of Philadelphia, the Philadelphia Local Task Force, the Philadelphia Association for Retarded Citizens, and the Pennsylvania Association for Retarded Citizens.

A. Demonstration and Model Programs for Severely Handicapped Students

2. The School District in accordance with its obligations under state and federal law has undertaken to provide appropriate education for all severely handicapped children from the ages of four years, seven months through twenty-one years. Commensurate with this undertaking and to accomplish the implementation of appropriate educational programs for all severely handicapped students, the School District shall establish demonstration and model programs utilizing state of the art and all necessary teaching-learning resources and coordination for the free appropriate education of severely handicapped students. These demonstration and model programs shall constitute the principal means for developing, demonstrating and disseminating throughout all classes for the severely handicapped of the School District state of the art practices and for accomplishing a comprehensive program of appropriate education for severely handicapped students which shall meet the following requirements:

- (a) Demonstration and model programs shall be conducted in elementary schools, middle schools, the junior high school(s), and the senior high school(s), each of which shall be a school attended also by nonhandicapped children.
- (b) Students of ages four years, seven months through twenty-one shall participate; the program shall be based in a school otherwise attended by age-peers of the severely handicapped students.

- (c) Curricula of the demonstration and model programs shall be functional and responsive to the students' needs; curriculum domains shall include, but shall not be limited to, vocational skills, domestic skills, use of leisure time, community functioning, communication, socialization and interaction skills.
- (d) The teaching-learning environments shall be designed or chosen to be natural environments (both in school and out of school) for skills being taught.
- (e) Activities shall be designed within these environments to evoke teaching-learning in the domains described above.
- (f) Teaching-learning objectives shall be delineated.
- (g) An instructional program specifying tools, methodology and evaluations to meet those objectives in the environments shall be developed, formulated and recorded, with progress periodically reviewed.
- (h) In addition to teacher-student and aide-student ratios required by State standards, each demonstration and model program shall have a Child Study and Evaluation Team (CSET) and such personnel as are required by the instructional program; all related services, including but not limited to, occupational therapy, physical therapy and speech therapy, shall be provided as integral components of the demonstration and model programs.
- (i) The demonstration and model program shall have an Advisory Team composed of the District Special Education Administrator and Special Education Supervisors, principals of schools with SPI students, representatives of parents of SPI students and such teachers, related service personnel, specialists, parents, and others as are necessary to program implementation. The Advisory Team shall participate in design and implementation of the program with the Project Administrator and staff. Comparable Advisory Teams shall be established in all subdistricts of the School District during the 1981-82 school year with a primary purpose of preparing those subdistricts for implementation of the experiences of the demonstration and model program during the 1982-83 school year.

3. As more fully described in the Philadelphia Urban Model for a Quality Education Service System for Severely Handicapped Children (hereinafter "Proposal" and appended hereto as Appendix B), each demonstration and model program of the School District shall include the following components: (i) Inservice training of all teachers, aides, therapists and other relevant personnel in SPI classes; (ii) Selection and use of appropriate curricula; (iii) Design and implementation of an

efficient and effective classroom data collection system; (iv) High levels of interaction among severely handicapped students and non-handicapped peers; and (v) Parent training and involvement.

(a) The demonstration and model programs shall be established and conducted and the practices and results transferred and integrated into all programs for severely handicapped children of the School District, in accordance with a timetable to be submitted to the Court on or before May 1, 1982, so that by November 30, 1984 all subclassmembers in SPI classes are in programs which meet the requirements of paragraph 2 of this Settlement Agreement; all teacher aides and therapists and other personnel in SPI classes have received the continuing inservice training required by paragraph 8 of this Settlement Agreement, and all parents, guardians and surrogate parents of classmembers have received the training described in paragraph 21.

(b) In the event that the timetable requires modification the Project Administrator provided for in paragraph 33 shall give notice to the Petitioners at least 30 days prior to the proposed effective date of the modification. The modification shall take effect unless within 10 days of the receipt of the notice of proposed modification Petitioners file objections with the court. Upon the filing of objections, the proposed modifications shall not take effect until approved by the Court.

(c) On or before January 1, 1983, the Project Administrator shall file with the Court and provide to counsel a list of subclassmembers who are 15 years of age and above; indicating for each their termination date for school eligibility and noting those subclassmembers so listed who, in the previous year, were enrolled in a program of education which met the requirements of paragraph 2(a)-(i) and those who were not so enrolled.

(d) For each student listed who is not offered and not enrolled in an education program which both meets the requirements of paragraph 2(a)-(i) and is taught by a teacher who received at least 12 hours of clinical in-service training specified in paragraph 9(b) on or before January 1, 1983, the school district shall revise his/her school eligibility termination date to include school eligibility for an additional period equivalent to the time elapsed between January 1, 1983 and the student's enrollment in a program which meets the requirements of paragraph 2 (a)-(i), but in no event to exceed two years. Students enrolled in a program of education during any such additional period of eligibility shall not be included in any calculation of School Code subsidy or cost submitted to the Department.

(e) Within 90 days of the revision of the school termination date of a subclassmember, the school district shall notify the student's parents or surrogate parent of the revised eligibility for education in the public schools and upon the request of the parent or surrogate parent provide for the student's education until the revised eligibility date.

(f) On January 10, 1985, the school district shall file with the Court a report on the status of subclassmembers identified in the listing.

submitted under subparagraph (c), indicating for each the original date of school eligibility termination; date of enrollment in a program meeting the requirements of paragraph 2(a)-(i), and the revised school eligibility date for those listed students, who as of January 1, 1985 have not been enrolled in a program of education which meets the requirements of paragraph 2(a)-(i) and which is taught by a teacher who received at least 12 hours of clinical in-service specified in paragraph 9(b) on or before January 1, 1983. For those students who as of January 1, 1985 have not been enrolled in such program, the school district shall revise their school eligibility termination date to a date two years after their original school eligibility termination date and upon request of the parent or surrogate parent provide for the student's education until the revised date.

4. The School District on or before May 1, 1982:

(a) shall develop with the Project Administrator a plan describing the demonstration and model programs and shall submit it to the Court for review and approval. This plan shall identify the schools in which the demonstration and model programs will be based, the ages and disability configurations of the students who will participate, including the particular students, so far as is possible; the curriculum domains which will be addressed, the environments in which teaching will occur, the activities which will be designed, the teaching-learning objectives which will be pursued, and the instructional programs, including tools and methodologies and evaluations which will be used; the teachers and aides who will participate, their experience and qualifications; other specialists and related services personnel their experience and qualifications; and the persons who will compose the advisory team, and

(b) Shall develop, as part of its demonstration and model program, a plan for the vocational education of all suitably aged severely handicapped students, which plan shall identify, by severity of disability, the number of students suitably aged to receive vocational education. The plan shall specify the methods used to assess each new student's vocational strengths and learning styles, and to inventory teaching-learning environments in the workplace and community, the personnel to participate in the assessments and in the preparation of the career/vocational component of the IEP designed to culminate in remunerative work, and shall provide for the vocational assessments and IEPs. It shall specify the number of additional vocational teachers, occupational, physical and speech therapists, support personnel, and supervisors, if any, and their qualifications, who need to be recruited, hired, and trained before the first day of the 1982-83 school year and shall provide for such. It shall specify the vocational programs, their teaching objectives, the particular opportunities for remunerative work to which they will be directed, the teaching tools and methodologies to be used, their sites, and the identity, experience and qualifications of the teachers and support personnel which will be provided, and

(c) Shall provide for the assignment of staff or consultants with the necessary professional competence to: (i) discharge effectively the duties set forth in subparagraph (b), (ii) implement the vocational education component of the model demonstration and model programs and

(iii) transfer and effectively integrate vocational education practices demonstrated into all classrooms of suitably aged subclass members.

(d) Following review and approval of the two plans or their amendments, students, teachers, and other personnel shall be identified and advisory teams shall be constituted so that the demonstration and model programs will be designed and initial inservice and parent training for the participants will be conducted prior to the implementation of those demonstration and model programs.

5. The School District will develop and submit to the Court for its review and approval a plan specifying mechanisms and occasions whereby the experience of the demonstration and model programs will be shared with teachers, aides, support, administrative and supervisory personnel and parents not participating in the demonstration and model programs, in such a way that they may use the experience in their own teaching, support, administration and supervision and in formulating their expectations for school programs. The plan shall also specify how the experience of the demonstration and model programs will be systematically introduced into all teaching, support, administration, supervision and parental oversight in all school programs operated by the School District for students who are severely handicapped and shall specify timelines for effectuating such systematic improvements of all such programs.

6. The School District shall provide for an independent evaluation of the demonstration and model programs, which evaluation shall be designed in such fashion as to contribute, timely and effectively, in its interim and final product(s) to the sharing and systematic tasks required in Paragraph 5.

7. Any classroom observations or teacher evaluations which are conducted under this Settlement Agreement shall be used solely to advance the implementation of the demonstration and model programs and shall not be used by school principals for rating teachers.

B. Continuing In-Service Training

8. The School District shall, by the establishment of in-service training teams, design and implement an intensive in-service training program for all teachers (including vocational teachers) aides, principals, and other administrators, occupational, physical and speech therapists, psychologists, physicians and other support personnel, including, but not limited to, transportation personnel, and subdistrict superintendents and supervisors who will be engaged in the education of or the provisions of related services to severely handicapped students.

9. The District shall submit to the Court, for review and approval, a plan for School continuing in-service training as more fully described in Appendix B. The plan shall specify:

(a) The workshops, curriculum, teaching methods, schedule and the grouping of School District personnel in the workshops, as well as who shall conduct the workshops and its particular parts, their experience and qualifications;

(b) The provisions, schedules, sites and proposed personnel for clinical in-service training and support for all teachers, aides, therapists and other direct teaching personnel after the workshops and continuing through the school year, such clinical in-service training to be conducted by qualified supervisors or support personnel and to include an average of two hours in-classroom "on-scene" training per week for each teacher of severely handicapped students, so that mastery of principles, strategies and techniques may be experienced, reinforced and extended in the teacher's classroom in the context of actual teaching decisions that must be made on a daily basis;

(c) The provisions, methods, schedules, and sites for sharing the experience of the demonstration and model programs with all other personnel; and

(d) Other provisions for follow-up training in classrooms to meet in-service training objectives;

(e) Such additional formal in-service training, including follow-up training in the classroom, as shall be necessary to evoke a competency or the necessary teaching skills, strategies and techniques, to evoke correct expectations of schooling, and to secure skilled, informed and

diligent performances of all of the roles and tasks concerned with the education of severely handicapped students.

10. As described in the in-service training plan developed in accordance with paragraph 9, this intensive continuing in-service training program shall consist of:

(a) Training objectives set on the basis of the needs survey conducted in accordance with implementation of the Proposal and classroom observations by the training team.

(b) A full ten hour set of workshops in each district for elementary school, middle school, and secondary school personnel providing services to SPI students. The School District shall utilize a needs survey of relevant teacher aide support, administrative and supervisory persons to determine with particularity the in-service needs felt by them.

(c) Systematic clinical in-service training and support for teachers, aides, therapists and other members of the direct teaching teams.

(d) The systematic sharing of the experience of the demonstration and model programs, including curricula, methods and techniques, with all other personnel; and

(e) Such additional in-service training as may be necessary during the school year, its subject matter, methods, schedules, who shall attend, who shall conduct, their experience and qualifications.

11. The continuing in-service training shall draw upon the experience, skills and insights of, and be conducted by, local, as well as national people engaged in the education of severely handicapped students who possess demonstrated state-of-the-art knowledge and skills in training teachers and other personnel in necessary skills and competencies.

12. The School District shall provide a sufficient number of qualified specialists to discharge the clinical in-service training tasks described herein and otherwise effectively to accomplish the School District's training, supervision and support responsibilities. Such specialists shall possess state-of-the-art knowledge and demonstrated skill in teaching severely handicapped students, in assisting teachers and other

personnel to achieve and exercise the competencies and skills to educate such students.

C. Philadelphia School District Monitoring and Enforcement

13. The School District shall designate one individual who shall have direct line of authority over special education personnel, principals and district superintendents, and who shall be responsible for the provision of free, appropriate programs of education and related services and due process procedures to severely handicapped students. This individual shall be responsible for providing that the Philadelphia Local Task Force has the data and personnel necessary to carry out its function under paragraph 18 of this Agreement.

14. The principal of each school shall have responsibility to ascertain and to assure that each severely handicapped student in his or her school is in fact receiving a free appropriate education. In particular, but not to limit the principal's responsibilities, each principal shall ascertain and assure:

- (a) That every such student has a full, proper, and correct IEP;
- (b) That each student's IEP includes all services and programs needed by and appropriate to the student, that all required personnel including parents have participated in its formulation, and that it is in accord with the requirements of the law and of sound educational practice;
- (c) That the IEP is followed and that every service and program specified in the IEP is in fact provided;
- (d) That each teacher, aide and therapist has the support and assistance necessary to deliver an appropriate education program to each student.

15. In the event the principal ascertains that any of the foregoing requirements, or any requirement of this Settlement Agreement, or any requirement of law, regulation or sound educational practice is not being

provided or met, he or she shall promptly, fully and vigorously report the same and a recommendation and demand for correction to the subdistrict superintendent who shall promptly act to correct problems which are verified.

16. Every teacher, therapist, and principal shall assert and claim for his or her students what is so required and each teacher, therapist and principal shall be held harmless and suffer no sanction or retaliation for asserting and claiming what is required for his or her students. Nothing in this Settlement Agreement shall derogate from any additional monitoring and enforcement duties imposed by federal, state or local law or regulation.

17. The School District will staff a Special Education Parent-to-Parent Hotline and utilize follow-up procedures for the resolution of problems identified thereby. The Hotline will be staffed by parents or persons sensitive to the needs of handicapped children and their parents. Complaint and resolution reports concerning severely handicapped students will be filed with the Local Task Force and all counsel. The School District shall take the necessary steps to inform parents and surrogate parents of subclass members of the ways and means available to them, short of formal due process proceedings, to bring to the attention of Commonwealth and School District officials grievances or problems concerning the implementation of educational programs for their children. Such steps shall include providing information to parents about the availability of the Parent to Parent Hot Line, the Local Task Force and the Commonwealth Regional Review Complaint Process.

D. Local Task Force

18. The Local Task Force shall have the opportunity to review and monitor the services and programs provided under this Settlement Agreement, and to be involved in the planning of parent and surrogate parent training provided for in paragraph 21(b) of this Settlement Agreement. The Local Task Force shall have the opportunity to review and comment upon all plans and reports provided for under this Settlement Agreement and shall, as appropriate, make recommendations to the Project Administrator, or the Court as to future implementation.

E. Surrogate Parents

19. Within 60 days the School District shall verify that every severely handicapped student who requires a surrogate parent, as mandated in 34 C.F.R. § _____ of the federal regulations implementing P.L. 94-142, has a surrogate parent and shall provide for the recruitment and assignment of a qualified, surrogate parent to each such student who needs one.

20. The orientation provided such surrogate parents by the School District shall at minimum encompass the evaluation procedures, placement procedures, due process procedures, elements of individualized education plans (IEPs), independent evaluation, advocacy and other community resources available to parents and children.

F. Parent, Guardian and Surrogate Parent Training

21. As described in Appendix B, the demonstration and model programs shall implement a parent involvement and participation component specifically concerned with students and parents from individual classrooms, and including continuing training of parents in the areas of

development of IEPs, management and teaching activities and routines, and development of active parent groups.

(a) In addition, there shall be Parent Training Coalitions at each school, which coalitions shall include in their membership at least one parent of a severely handicapped student in the school. The Parent Training Coalitions shall provide for parent training in the following areas, depending on the parents' expressed needs at each school:

- (i) Expectations for the schooling of their children;
- (ii) The formal and informal occasions for parental participation in the design and conduct of their child's education;
- (iii) The state-of-the-art and sound educational practice in the schooling of children with various disability configurations;
- (iv) Skills in analyzing progress of their children
- (v) The ways and means of securing an appropriate education for their children.

(b) On or before May 30, 1982 the Project Administrator shall submit to the Court a plan on the design and conduct of the training for parents of the severely handicapped. The plan shall include an evaluation of all existing training for parents of the severely handicapped, the particular ways and means the school district shall involve active parent groups, and the members of the local task force in the design and evaluation of such parent training programs. On or before January 1983 the parent training program shall be instituted and operational in all subdistricts and shall be integrated with the activities of the district advisory teams, parent training coalitions and local task force.

G. Occupational Therapists, Physical Therapists and Speech Therapists

22. The School District shall provide to each severely handicapped student all related services including, but not limited to, occupational therapy, physical therapy and speech therapy (including signing) necessary for the appropriate education of each student as determined by multidisciplinary evaluation and consideration of independent evaluations, if any. There shall be no categorical limits upon the amount of therapy provided, which amount shall be determined solely on the basis of the need of each student. Consultation with classroom teachers and other clinical staff shall be scheduled as part of the

therapist's assigned duties. Consultation about positioning, handling, communication or other matters is not to be a substitute for the direct provision of such therapy.

23. Philadelphia School District shall make every reasonable effort to recruit, hire, train or otherwise provide for such additional qualified occupational therapists, physical therapists and speech therapists as will raise the School District's complement of such personnel to the number necessary to provide appropriate education to all severely handicapped students. In particular, the School District shall:

- (a) Report to this Court within 60 days of the approval of the Settlement Agreement how many additional qualified occupational therapists, physical therapists, and speech therapists and other support personnel must be hired, which number shall be sufficient so that every severely handicapped student will receive the therapy time necessary for his appropriate education, including when appropriate the full-time assignment of therapists to particular classrooms or schools, and including therapy in domestic training and vocational education settings so that the therapy time for these students will not derogate from the time required for other exceptional students; and so that state professional standards may be met. The report shall specify how many Therapist Supervisors are necessary, if any.
- (b) Where services require the expertise of a nurse for severely handicapped students during the school day, a school nurse shall be assigned on a full-time basis.
- (c) The School District shall make every reasonable effort to recruit and hire a sufficient number of personnel with bilingual skills and/or signing competency to assure that every severely handicapped student, whose dominant mode of communication is other than English, will receive appropriate programs and supportive services, including but not limited to evaluative and therapeutic services.

H. Commonwealth Department of Education

24. The Department shall establish and shall exercise a monitoring enforcement capacity sufficient to determine whether each severely handicapped student in the School District is being provided with an

appropriate education under state and federal law, to identify any deficiencies, and to assure their correction.

25. Within 60 days of the approval of this Settlement Agreement the Department shall submit to the Court a plan for this monitoring and enforcement, which plan shall:

(a) Specify effective oversight procedures and provide for sufficiently qualified personnel, which procedures and personnel shall be sufficient:

(i) To conduct periodic samples of Philadelphia's IEPs to determine whether assessments, multidisciplinary teaming, and parental participation and IEP content meet state and federal requirements of sound educational practice and whether the school programs specified in the IEPs are being in fact and delivered in the least restrictive environments, these samples to be designed to enable comparison of students who are included in the Demonstration and Model Programs with comparable students who are not, these samples to be conducted once during the school year for the three school years following the approval of this Settlement Agreement; and

(ii) To determine whether the in-service needs that are expressed by School District teachers and other personnel or shown by the Department monitoring procedures or parental complaints filed with the Department are timely and effectively met

(b) Specify the range of sanctions available to the Department to enforce the correction of deficiencies and the circumstances under which each will be invoked.

26. Such plan shall, as to the design of procedures and the recruitment, hiring and training of additional qualified personnel, be implemented on or before the first day of the school year 1982-83, and shall, as to the conduct of monitoring and enforcement, be implemented beginning March 1, 1983.

27. The Department shall report to the Court on or before November 1, 1983, the results of its first systematic sample of IEP's and every other monitoring and enforcement action taken with regard to programs provided

to severely handicapped students in the School District. Nothing in this Agreement shall derogate from any additional monitoring or enforcement duties imposed by federal or state law or regulation.

27. The Department shall provide to the School District every technical assistance in the design, development and delivery of vocational education specified by paragraph 4(b), including the assistance of the Department's Bureau of Vocational Education, as the School District shall request.

29. The Department shall assign a Department representative trained and experienced in the education of severely handicapped students to review both the implementation of this Agreement and the development of the demonstration and model programs. The Department shall disseminate on a state-wide basis the results of these programs and the practices and materials developed through these programs among the intermediate units and school districts of Pennsylvania. At a minimum, the Department statewide dissemination shall provide for:

- (a) procedures to disseminate to all institutions of higher education in Pennsylvania that train teachers for the severely handicapped students, the results of the Philadelphia model demonstration programs, and the educational practices and models developed through them;
- (b) procedures to disseminate the results, educational practices and in-service training models of the School District demonstration and model programs to in-service training programs in school district and intermediate unit classes for the severely handicapped in Pennsylvania; and
- (c) other procedures to enable intermediate units and school districts to adopt new and promising education practices and methods in the special education of the severely handicapped students.

30. The Department for the 1981-82, 1982-83, and 1983-84 fiscal years shall, subject to the conditions stated herein, grant or provide, out of

available federal funds, the following monies to the School District in the following circumstances:

- (a) If funds that are to be made available to the School District by the federal government for the purposes of implementation of the Proposal (Appendix B) in FY 1981-82, 1982-83, and 1983-84, and under the Proposal's approved Revised Budget (Appendix C) are decreased by the federal government below the amount allocated in the Proposal's approved Revised Budget for either FY 1981-82, 1982-83 or 1983-84, then the Department shall provide or grant from available federal funds an amount up to, but not exceeding, the amount decreased by the federal government in any of the aforementioned fiscal years.
- (b) With regard to P.L. 89-313 monies to be used by the School District in FY 1981-82, 1982-83 and 1983-84 to fund the salaries of the following positions mentioned in the Proposal, if the federal government should decrease the P.L. 89-313 monies which the School District receives or is to receive to fund said positions, then the Department for FY 1981-82, 1982-83 and 1983-84 shall provide or grant the School District out of available federal funds, up to the amount of said decrease but not exceeding the following amounts:

Proposal Position

Project Administrator.....	\$ 8,522
Coordinator of I.T. and E.....	\$12,960
Coordinator of P.P., S.I. and C.U.....	\$12,960

- (c) In addition to any amounts provided by it under subparagraphs (a) and (b) and in order to provide assistance to the School District in implementing the provisions of this Settlement Agreement which extend beyond the specific terms of the Proposal, (Appendix B) the Department agrees shall provide to the School District up to the following amounts, which shall be out of available federal funds, in each of these fiscal years:

FY 1981-82	\$ 25,000
FY 1982-83	\$140,000
FY 1983-84	\$160,000

- (d) The Department's liability to provide funding to implement the terms and requirements of this Settlement Agreement and of the Proposal shall be limited to provision of those amounts specified in subparagraphs (a)-(c) above. Department provision of the amounts specified in subparagraphs (a)-(c) shall not be made by Department deduction of said amounts from any other federal or state funds to be provided to the School District by the Department.

31. The conditions stated in this paragraph shall apply to the terms and the provisions of subparagraphs 30 (a)-(d). In order to receive from the Department any amount under this Settlement Agreement, the School District or the School District acting on behalf of its intermediate unit shall submit to the Department in a timely fashion a written proposed budget for Department review and approval. The budget shall state why the requested amount is necessary and how it will be used. The budget shall be in the form specified by the Department. Both School District requests for, School District use of, and Department provision of the amount specified in said budget shall be made in compliance with the provisions of state and federal law. Any amounts received by the School District or its intermediate unit under such budget and interest which remain unexpended shall be returned to the Department. The School District and the School District acting on behalf of its intermediate unit agree to assign to the Department any claim that the School District or its intermediate unit may have against the federal government for receipt or recovery of any federal funds decreased as specified in paragraph 30 and, furthermore, agree to join with the Department in prosecuting any such claim against the federal government. The School District shall apply all funds received from the federal government under Appendix C and interest generated by these funds to the implementation of the Proposal. "Fiscal year" as used herein shall mean the period from July 1 to June 30 of the succeeding year.

I. Professional Advisory Group

32. (a) Within thirty days of the approval of this Settlement Agreement, the School District shall establish a Professional Advisory Group whose responsibilities shall be advising and serving as a resource to the Project Administrator and other school district

personnel with respect to the state-of-the-art programs to be established under this Settlement Agreement, design and conduct of the training and in particular, in the implementation of paragraph 11. Members of the Professional Advisory Group may, at the request of the Project Administrator, participate in the design and conduct of such training.

(b) The Professional Advisory Group shall be appointed by the Superintendent of the School District. The appointments shall be made as follows:

-Four persons nominated by Advocates for Developmentally Disabled People and Police and Fire Association for Handicapped Children.

-Two persons nominated by the School District.

-Two persons nominated by the Commonwealth.

-One person nominated by the Philadelphia Federation of Teachers.

-One person nominated by the Philadelphia Association of School Administrators.

All persons appointed shall be professionals skilled and experienced in the delivery of education and related services to SPI students or in the design and administration of model and demonstration programs. No member of the Professional Advisory Group shall be an employe of the School District or the Commonwealth Department of Education.

(c) Members of the Professional Advisory Group shall be reimbursed by the School District for their reasonable expenses in accordance with School District rules and procedures and in accordance with the budget to be submitted pursuant to paragraph 30.

(d) The school District Executive director of the Division of Special Education shall attend and participate in all meetings of the Professional Advisory Group and provide assistance and support to its members.

J. Project Administrator

33. (a) The Project Administrator of the Proposal shall be experienced and skilled in delivery of Special Education and Related Services to severely handicapped students and the development and administration of demonstration and model programs. Further, the Project Administrator will possess special expertise in an empirically-based approach to education for the severely handicapped, in order to assure knowledge of recent innovative techniques developed for assessment, curriculum design and objective evaluation of student programs.

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(b) The Project Administrator shall report directly to, and be directly responsible to, the Superintendent or the Executive Deputy Superintendent of the School District concerning progress in implementing the program and problem areas. The position of Project Administrator will be placed in the Division of Special Education for administrative purposes and for the purposes of meeting the requirements of the Proposal (Appendix B).

(c) Applications for the positions of Project Administrator, Coordinator of In-service Training and Coordinator of Parent Participation shall be screened in accordance with the qualifications set forth in Appendix D hereto (Job Announcement) and examined by a selection committee composed of professional educators. The selection committee shall select the most outstanding applicants as final candidates. The final candidates shall be interviewed by the Deputy Superintendent and Superintendent, who shall make the appointments.

K. Individual Relief - David Fialkowski

34. (a) The classroom, teacher, aides, therapists and other personnel contributing to David Fialkowski's education shall have the opportunity to participate in the in-service training programs conducted during the first year of this Settlement Agreement and shall have the full benefit of the programs and state-of-the-art practices developed during the following years.

(b) In addition to staff regularly assigned, the School District shall assign a person who has had experience as a teacher and a trainer of teachers for severely handicapped children to be available to David Fialkowski to, periodically provide technical assistance to all people involved in David Fialkowski's education, including his parents. This person shall be selected by the Project Administrator.

(c) David Fialkowski shall be eligible for education in the Philadelphia public schools through the school term ending June 1985 or before that time should his parents decide that alternative programs of vocational training and community living are more suitable for him.

35. (a) A plan submitted for Court review and approval under this Settlement Agreement shall be not be disapproved by the Court unless the plan is inconsistent with the Settlement provisions under which it has been developed.

(b) Any modification to a plan previously approved by the Court shall be approved if the modification is necessary to conform to changed conditions, if it will improve implementation of the plan or if agreed upon by all parties.

36. The Court shall retain jurisdiction over this matter for purposes of enforcement for the period of this Settlement Agreement, which shall be three years from the date the Court's approval of the Settlement Agreement.

Signed:

Frank Lasli

for Petitioners
David and Walter Fialkowski
and Marion and Leona Fialkowski
and
for Intervenor
Philadelphia Police and Fire
Association for Handicapped Children
and
for Intervenor
Advocates for Developmentally
Disabled Persons

Signed:

Robert A. ...

for School District of
Philadelphia Respondents

Michael A. Sami

for Commonwealth Department
of Education Respondents

Allen ...

for the Commonwealth Office
of the Attorney General

John ...

for Intervenor Philadelphia Federation
of Teachers

Approved, subject to hearing :

Date May 17, 1982

Edward P. Baker

J.D. - Circuit Judge

- sitting by designation.