

D/F
c/mUNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NATIONAL LAW CENTER ON HOMELESSNESS AND
POVERTY, R.I., individually, and as parent and natural
guardian of A.B., a minor child, M.W., individually, and as
parent and natural guardian of Da.W., Di.W., Dq.W., T.H. and
S.J., minor children, M.K., individually, and as parent and
natural guardian of S.P., a minor child, T.K. and N.K.,
individually, and as parents and natural guardians of K.K.,
D.M., individually and as parent and natural guardian of M.M.,
C.T., individually and as grand parent and guardian of M.W.,
and R.C., individually, and as parent and natural guardian of
J.C., on behalf of themselves and all those similarly situated,
Plaintiffs,

Civil Action No. 04 0705
(ADS/ARL)SETTLEMENT
AGREEMENT AND
CONSENT ORDER

v.

STATE OF NEW YORK, NEW YORK STATE
EDUCATION DEPARTMENT, RICHARD P. MILLS (as
Commissioner of Education of the State of New York);
SHEILA EVANS-TRANUM (as Associate Commissioner of
Education of the State of New York); PATRICIA MCGUIRK
(as Program Manager for the Homeless of the New York State
Education Department); NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE, ROBERT
DOAR (as Acting Commissioner of the New York State Office
of Temporary and Disability Assistance), SUFFOLK
COUNTY DEPARTMENT OF SOCIAL SERVICES, JANET
DEMARZO (As Commissioner Of The Suffolk County
Department Of Social Services), DAN HICKEY (As Associate
Commissioner Of The Suffolk County Department Of Social
Services), LONGWOOD CENTRAL SCHOOL DISTRICT,
HAMPTON BAYS SCHOOL DISTRICT, MIDDLE
COUNTRY SCHOOL DISTRICT, COPIAGUE UNION
FREE SCHOOL DISTRICT, SOUTH HUNTINGTON
SCHOOL DISTRICT, PATCHOGUE-MEDFORD SCHOOL
DISTRICT, WILLIAM FLOYD SCHOOL DISTRICT,
CENTRAL ISLIP SCHOOL DISTRICT, BAY SHORE
UNION FREE SCHOOL DISTRICT, SOUTH COUNTRY
SCHOOL DISTRICT, BRENTWOOD SCHOOL DISTRICT,
NORTH BABYLON SCHOOL DISTRICT, AMITYVILLE
SCHOOL DISTRICT, RIVERHEAD SCHOOL DISTRICT
and JOHN DOE SCHOOL DISTRICTS 1-10,

Defendants.

FILED

IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

OCT 07 2004

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Mr. Simes
NOTARY'S COUNSEL IS DIRECTED TO SERVE
COPY OF THIS ORDER ON ALL PARTIES UPON
RECEIPT.

BACKGROUND

This Settlement Agreement and Consent Order is entered into between the Plaintiffs and Defendants Longwood Central School District, Hampton Bays School District, Middle Country School District, Copiague Union Free School District, South Huntington School District, Patchogue-Medford School District, Bay Shore Union Free School District, South Country School District, Brentwood School District, North Babylon School District, Amityville School District, Riverhead School District and Central Islip School District (collectively, the “School District Defendants”).

This action was brought by the National Law Center on Homelessness and Poverty and a proposed class of homeless children and parents of homeless children to enforce, inter alia, the provisions of the McKinney-Vento Act (42 U.S.C. § 11431 et seq.) and New York Education Law § 3209.

In their Complaint, the Plaintiffs allege that homeless children in Suffolk County face substantial obstacles to a free public education in violation of the McKinney-Vento Act and New York Education Law § 3209. The Plaintiffs allege that there are significant gaps in transportation arrangements, that homeless children are sometimes denied the right to continue to attend their school of origin, that enrollment barriers and paperwork requirements have delayed or denied homeless children access to school, that inadequate or incomplete information is provided to homeless children, and that the various agencies responsible for educating homeless children do not coordinate their activities as required by the statutes.

The School District Defendants deny these allegations and assert that they are complying with the relevant legal requirements concerning the education of homeless children, including the McKinney-Vento Act and New York Education Law § 3209. Nevertheless, the Plaintiffs and

the School District Defendants (collectively, the "Parties"), agreeing on the importance of educating homeless children and desiring that this action be settled by appropriate Order and without the burden of continued protracted litigation, agree to the jurisdiction of this Court over the Parties and the subject matter of this action, and hereby waive, for purposes of this Order, hearings and findings of fact and conclusions of law on all issues. The Parties further agree to the entry of this Order as final and binding among themselves as to the issues raised in the Complaint or which could have been raised in the Complaint.

This Order, being entered with the consent of the Parties, shall in no way constitute an adjudication or finding of any wrongdoing or violation of any applicable federal or state law or regulation, or be construed as an admission of liability or culpability of any Defendant.

In resolution of this action, the parties hereby AGREE, and the Court expressly APPROVES, ENTERS and ORDERS the following:

I. DURATION OF CONSENT ORDER AND GENERAL TERMS

1. This Consent Order is effective upon its entry by the Court and shall remain in effect for three (3) years from the date of entry.

2. This Court shall retain jurisdiction of this action during the term of this Order for the purpose of enforcing the Order as may be necessary. Upon substantial compliance with this Consent Order for three (3) years after entry of the Order by this Court, this matter shall be dismissed unless the Plaintiffs move, for good cause shown upon notice to the School District Defendants, for its continuation to carry out the purposes or provisions of this Order.

3. The Parties to this Order shall endeavor in good faith to resolve informally any disputes or issues that may arise under or concerning this Order prior to seeking Court involvement.

4. The time limits set forth throughout this Order may be expanded upon the mutual, written agreement of counsel for the Plaintiffs and the School District Defendant or Defendants seeking such expansion of time.

5. The parties acknowledge that this Order does not prohibit future legislative or regulatory action by the School District Defendants consistent with the provisions of this Order.

6. The individuals executing this Order represent that they are authorized to sign for and bind the Party or Parties for whom they execute the Order.

7. This Consent Order may be executed in counterparts, and each counterpart, when executed, shall have the full efficacy of a signed original. Photographic copies of such signed counterparts may be used in lieu of the originals for any purpose.

8. The Plaintiffs hereby waive any claim as to attorneys' fees or costs up to and including the date of entry of this Order. Plaintiffs reserve the right to seek attorneys' fees for services performed after the date of the entry of this Order should further litigation be required to enforce the provisions of this Order, and the School District Defendants reserve the right to oppose any such request.

9. As used, herein, the following definitions shall apply:

- a. Defendants State of New York, The New York State Education Department, Richard P. Mills (as Commissioner of Education of The New York State Education Department), Sheila Evans-Tranum (as Associate Commissioner of Education of The New York State Education Department) and Patricia McGuirk (as Program Manager for the Homeless of the New York State Education Department) will be referred to collectively herein as the "State Defendants."
- b. Defendants Suffolk County Department of Social Services and Janet DeMarzo will be referred to collectively herein as the "County Social Services Defendants."
- c. Defendants Longwood Central School District, Hampton Bays School District, Middle Country School District, Copiague Union Free School District, South Huntington School District, Patchogue-Medford School District, Bay Shore Union Free School District, South Country School District, Brentwood School District, North Babylon School District, Amityville School District and Riverhead

School District will be referred to collectively herein as the “School District Defendants.”

- d. “Plaintiffs” shall mean Plaintiff National Law Center on Homelessness and Poverty and named class representatives R.I., A.B., M.W., Da.W, Di.W, Dq.W, T.H. and S.I., M.K., S.P., K.K., T.K., D.M., M.M., C.T., M.W., R.C. and J.C. In addition, should the Court grant Plaintiffs’ motion for class certification pursuant to Fed. R. Civ. P. 23 (b)(2), Plaintiffs shall include all others similarly situated, as defined in the Complaint.
- e. “Homeless” shall have the same definition as set forth in 42 U.S.C. § 11434a(2).
- f. “Parent” or “guardian” shall mean any person “in parental relation” to, or a “custodian” of, any homeless child, as set forth in New York State Education Law § 3212.
- g. “State Plan” shall mean the New York State Plan for the Education of Homeless Children and Youth, and any amendments, modifications or successive plans.
- h. “School-aged” shall mean of sufficient age to be eligible for any free pre-school or public school education made generally and publicly available to children of such an age.
- i. “Children” shall mean both children and youths, as the terms are used in the McKinney-Vento Act and New York Education Law § 3209.
- j. “Unaccompanied Youth” shall mean youth not in the physical custody of a parent or guardian, who otherwise meet the definition of “Homeless.”

II. PROVIDING INFORMATION TO HOMELESS CHILDREN AND FAMILIES

10. The Parties agree that providing complete and timely information to homeless families and Unaccompanied Youth is essential to ensuring that homeless children receive the educational services to which they are entitled under federal and state law. Accordingly, the School District Defendants agree that they will take all reasonable measures to timely identify homeless children entitled to receive services under the McKinney-Vento Act and/or New York Education Law § 3209, and to provide accurate and complete information to those children and their families about their rights and options to enable them to obtain the services they need and/or desire. Such reasonable measures will include, but are not limited to, the following:

Homeless Rights Poster and Brochure

11. The School District Defendants agree that they shall prominently display in each school building office and in each administration building where parents transact business with the school district such poster or posters in English and Spanish as the State Defendants or their agents or contractors may have developed or in the future develop advising parents of their children's rights under the McKinney-Vento Act and/or New York Education Law § 3209. Next to such poster, the School District Defendants will prominently display the name and number of the homeless liaison for the district and the telephone number of any hotline for homeless students or parents maintained by New York State Technical and Education Assistance Center for Homeless Students ("NYS-TEACHS") (or any other state or local contractor that provides similar services), the State Defendants or their designees.

12. The homeless liaison of each School District Defendant shall ensure that the poster or posters referenced above are prominently and permanently displayed in each location in each school and administration building where parents enroll or withdraw students, or discuss or document travel arrangements for students.

13. In addition, the School District Defendants shall agree to distribute, as set forth below, any informational brochures or materials prepared by the State Defendants concerning the rights of students or parents under the McKinney-Vento Act and/or New York Education Law § 3209. The School District Defendants will request from the State Defendants and maintain a supply of any such brochures (in English and Spanish and such other languages as the State Defendants or NYS-TEACHS or a similar state or local contractor provides) at each public school operated by the School District Defendants sufficient to supply each homeless family. No later than September 15, 2004, and once each school year thereafter, the School District

Defendants will distribute a copy of any such brochure to each identified homeless family and Unaccompanied Youth, and, if available from the State or its contractors, every family with children enrolled in the district.

14. The Homeless Liaison of each School District Defendant will maintain a list of all homeless children enrolled within the district and will coordinate efforts to ensure that the family of each such child receives the Brochure at the point at which they are first identified as homeless, and in the native language of the family, where available, or in English if not. To the extent feasible, the Homeless Liaison will maintain a record of each family of a homeless child to receive the Brochure and the date on which the Brochure was provided to such family.

III. IDENTIFICATION OF HOMELESS CHILDREN

15. The Parties agree and acknowledge that early identification of children who are homeless is essential to avoiding disruptions to the education of such children. Therefore, the School District Defendants agree that they will take all reasonable measures to identify, as soon as possible, all homeless children attending public schools operated by the School District Defendants, and inform them and their families of their rights under the McKinney-Vento Act and New York Education Law § 3209. These reasonable measures will include, without limitation, the following:

- a. Inquiring of each student/guardian who formally withdraws from a school or who ceases attending a school or who enrolls in a school during the school year whether the change of school is related to homelessness or a loss of permanent housing. (For purposes of clarity, this requirement does not impose investigative duties upon the School District Defendants beyond the duty to make a reasonable inquiry at the time of enrollment or withdrawal whether homelessness or a loss of permanent housing was the cause of the student's change in status.)
- b. Informing all school personnel of their obligation to promptly identify any homeless students to the Homeless Liaison of the school district and relevant school personnel or administration.
- c. Keeping a written record of every homeless student who is identified as homeless

by the name of the student or his or her parent or guardian.

- d. Utilizing and instructing relevant personnel on the use of written school enrollment and withdrawal forms that indicate, where applicable, that an enrollment or withdrawal of a student was the result of homelessness.
- e. Engaging in reasonable outreach to homeless families and Unaccompanied Youth, including without limitation by the mechanisms set forth above.
- f. Identifying personnel at each public school to serve as a contact person and resource for homeless children and parents.
- g. Providing appropriate training to school staff to enable them to identify and serve homeless children, including Unaccompanied Youth.

16. The School District Defendants will cooperate with any efforts by the State Defendants to monitor the School Districts' compliance with the McKinney-Vento Act, New York Education Law § 3209, and/or any Consent orders or other orders or judgments in this lawsuit.

Responsibility for Identifying and Tracking Homeless Children

17. The Homeless Liaison of each School District Defendant shall visit each school within the district to ensure that the needs of homeless students and parents within the school are being met by relevant school personnel to the extent possible. The homeless liaison will ensure that each person involved in enrolling, transferring or withdrawing students or arranging for transportation for students is kept current on the requirements of the McKinney-Vento Act, New York Education Law § 3209, and/or any Consent orders or other orders or judgments in this lawsuit.

18. The Homeless Liaison, in conjunction with administrative staff at the schools, shall ensure that sufficient resources are present at each school to reasonably ensure compliance with the McKinney-Vento Act, New York Education Law § 3209, and/or any Consent orders or other orders or judgments in this lawsuit.

19. The Homeless Liaison, in conjunction with administrative staff at the schools, will ensure that homeless children and families are offered the counseling and advice necessary to exercise their rights under the McKinney-Vento Act and New York Education Law § 3209.

20. Relevant school personnel will be instructed to report any complaints concerning the provision of educational services to homeless children to the Homeless Liaison. The Homeless Liaison will record all such complaints in a single location, organized chronologically.

Revision of Existing Enrollment and Withdrawal Forms

21. The School District Defendants shall revise their school enrollment or school withdrawal forms to include a place on such forms to inquire (1) whether the enrollment or withdrawal of a student is related to homelessness or a loss of permanent housing, and, if so, the date of last attendance and (2) whether any services (such as transportation) are being requested of the school district. The School District Defendants will provide homeless families assistance in filling out such forms along with a copy of the brochure referenced above.

22. The school personnel shall record responses on the revised school enrollment or school withdrawal forms referenced above and shall forward a copy of any responses that indicate homelessness to the Homeless Liaison of the district. The Homeless Liaison shall review each form and personally sign each such form after review. The Homeless Liaison shall retain all such forms for the school district in a single, central repository organized by student name.

23. The School District Defendants shall use a single, agreed-upon form for the enrollment or withdrawal of students and shall provide a draft of such form or forms to counsel for the Plaintiffs on or by August 15, 2004, for review and comment. This form shall be available in English and Spanish. If the Parties cannot resolve any differences as to the

appropriate format of the form or forms, either Party may ask the Court to determine whether the proposed revised school enrollment and school withdrawal forms comply with the requirements of this Order.

24. Upon filling out the newly revised enrollment/withdrawal forms and soliciting a response indicative of homelessness, school personnel (under the supervision/direction of the Homeless Liaison and/or School Designee) shall consult with the parent, guardian or Unaccompanied Youth concerning choice of school and transportation and shall assist the parent, guardian or Unaccompanied Youth to record his or her choices and requests for services on the enrollment form. The parent, guardian or Unaccompanied Youth shall be given a copy of all completed forms, any brochures or other materials provided by the State Defendants concerning the education of homeless children, and information concerning the right to appeal any decision made by the School District Defendants as to the education of a homeless student. Upon completion of any enrollment, withdrawal or STAC forms, a copy will immediately be provided to the Homeless Liaison of the school district. The Homeless Liaison will ensure that the school personnel responsible for providing relevant services will be promptly notified of the services to be provided or arrangements to be made with respect to the homeless child. While services are being arranged for such a child, the child will immediately be enrolled by the school district. The School District Defendants will provide homeless children with access to appropriate services under Title I, Part A of the Elementary and Secondary Education Act. as required by law.

25. When a homeless child enrolls within a school district, the school district will immediately request school records and other documents needed from the school district the homeless child previously attended. The school district will immediately enroll the child while

awaiting receipt of relevant records and will promptly provide to the parent of the homeless child consent forms for the release of information from the prior district.

Consultation with Parents/Guardians

26. If a completed form indicates that a student's enrollment or withdrawal is a result of homelessness, or if a school otherwise identifies a homeless student, school personnel will promptly inform the Homeless Liaison. As for each such student, school personnel shall immediately inform the student and his/her parent or guardian both orally and in writing (in clear and concise terms capable of being easily comprehended, and if possible, in the language of the parent or guardian) of their rights under the McKinney-Vento Act and New York Education Law § 3209, including without limitation:

- a. Information about choice of schools and how parents or guardians or Unaccompanied Youth can exercise that choice.
- b. The availability of transportation, how to obtain it and from whom to obtain it. If transportation is to be provided by the School District Defendants, school personnel or homeless liaison shall assist in making arrangements for transportation.
- c. Enrollment issues, including how to enroll, and the right of homeless children to be enrolled immediately regardless of the availability of the customarily required paperwork.
- d. The availability of fee waivers and other exemptions, if any, which are applicable to homeless families.
- e. A description of the services available to homeless children, from whom such services are available, and how to obtain access to such services, including preschool services and extra-curricular activities, and information as to whom the student/parent should notify if they wish to participate in these programs
- f. The right to appeal a denial of services or other adverse actions and how and where the right to appeal may be exercised.
- g. Contact information for other resources for homeless families, including without limitation the Homeless Liaison, NYS-TEACHS, local Department of Social Services and low cost or free legal services providers' contacts.

27. The School District Defendant identifying a homeless child shall inform the parent, guardian or Unaccompanied Youth that services may be available from SCDSS and other community agencies and of their right to apply for assistance and how to obtain further information.

28. The School District Defendants shall take reasonable steps to protect the confidentiality and privacy of homeless families and shall take reasonable steps to prevent against disclosing to persons outside the school district that a family or child is homeless.

29. The School District Defendants shall honor homeless students' rights under the McKinney-Vento Act, New York Education Law § 3209 and the regulations of the New York State Commissioner of Education (the "Commissioner"), including the rights (1) to attend their school of origin for the duration of homelessness and until the end of any school year in which they find permanent housing; (2) to enroll in school (including attending classes and participating fully in school activities where the School District had reasonable notice and an opportunity to plan for such participation immediately), even if the homeless student lacks any or all documentation typically required of students; (3) to be assisted in obtaining immunization records; (4) to have the enrolling school make prompt efforts to obtain previous school records; and (5) to be enrolled in school programs available to children who are not homeless.

IV. TRANSPORTATION OF HOMELESS CHILDREN

30. The Parties acknowledge and agree that transportation poses a particular difficulty for homeless families and Unaccompanied Youth and is essential to ensuring that homeless children receive the educational services to which they are entitled. As a result, the School District Defendants agree that they will make all reasonable efforts to ensure that homeless children who are entitled to receive transportation services from the School District to and from

school (and/or any preschool, summer school or after or before school activities to which non-homeless children are provided transportation) each day.

31. The Parties agree that the goal is to provide transportation each day, without gaps or pauses, such that there is as little disruption as practicable to the homeless child's education. Policies and procedures that affect the transportation of homeless children or make it likely that a homeless child might miss school shall be reviewed and revised as necessary. Where it is not possible for a school district to provide transportation for a homeless child each and every day, the goal will be to minimize any loss of school to the extent possible and provide transportation as soon as possible.

32. For those homeless children whom the School District Defendants have the obligation to transport to school, the School District Defendants will make every reasonable effort to provide continuous bus transportation without delay upon receipt of information identifying the location for which transportation is to be provided once a child is identified as homeless. Notwithstanding the foregoing, the School District Defendants shall provide transportation within the timeframe as follows for each new homeless child enrolling within the School District:

- a. For students located within the boundaries of the school district and attending the district's schools, no longer than two (2) consecutive school days, exclusive of the date the child is identified as homeless;
- b. For students located within the boundaries of the school district and attending an out-of-district school, no longer than three (3) consecutive school days, exclusive of the date the child is identified as homeless;
- c. For students who live outside the boundaries of the school district and are attending the district's schools and/or an out-of-district school, no longer than three (3) consecutive school days, exclusive of the date the child is identified as homeless.

33. The failure of a School District Defendant to provide transportation to a homeless child within the timeframe set forth above will not be deemed a violation of this Order to the extent that the School District Defendant has taken appropriate, reasonable and good faith steps to establish transportation within the timeframe set forth above and that the School District Defendant has made a good faith and reasonable effort, in cooperation with the parent/guardian of the homeless child to the extent possible, to resolve the transportation delay. The Parties agree that if a School District Defendant is repeatedly unable to establish timely transportation for a homeless child, counsel for the parties will confer in an attempt to address the problem, and may submit the matter to the Court if good faith, informal discussions are unable to achieve a resolution.

34. In providing transportation for homeless children, the School District Defendants shall ensure that such transportation arrangements accommodate homeless children's entitlement to participate in any preschool, free meal or similar programs, and after or before school activities and extra-curricular events of which the School District had reasonable notice and an opportunity to plan for participation, where the School District Defendants provide transportation to such events or programs to children who are not homeless.

35. The School District Defendants shall take all necessary and reasonable measures to avoid any disruption in the transportation of homeless children for which the School District is responsible. The School District Defendants shall take reasonable safeguards to avoid disruption of service, including all reasonable efforts to ensure that homeless school children receive transportation on delayed-opening and/or early dismissal school days. (The parties recognize that there may be circumstances in which it is not practical to transport a homeless child to school on a delayed-opening school day, particularly where a child's trip is lengthy and the

school day is particularly shortened. The School District Defendants will take reasonable steps to ensure that homeless children receive access to transportation services.) The School District Defendants shall also communicate with the homeless child and the homeless child's parent or guardian (and, if appropriate, the family's case worker, shelter personnel or SCDSS personnel) concerning any anticipated transportation problems or difficulties.

36. Any disruptions in the transportation of a child identified as homeless by a school district shall be reported promptly to the Homeless Liaison. If a homeless child is absent from school for more than three consecutive school days, because of transportation issues caused by the school district, the school personnel will report the absence to the Homeless Liaison, who will inquire into the housing arrangements of the student and confirm the child's temporary address and telephone number where possible. The Homeless Liaison will document such absences and inquiries.

37. If a dispute arises over school selection, school enrollment, records requirements or transportation of a homeless child, or whether a child is homeless, the School District Defendant shall provide the parent or guardian of the child with a written explanation of the school district's decision in the home language of the parent or guardian where possible, including the rights of the parent, guardian or Unaccompanied Youth to appeal the decision. Copies of any such written explanations shall be retained by the Homeless Liaison. The explanation should be written in clear and concise terms capable of being easily comprehended. The Homeless Liaison will review each denial of, or substantial change in, transportation for a homeless child to ensure compliance with this Order, and governing law and regulations. The Homeless Liaison will maintain files concerning inquiries, complaints, denials of or changes to transportation in a single location organized by student name.

38. If a homeless child is absent from or late to school as a result of problems in transportation not the fault of the child or child's family, the School District Defendant shall not treat the absence or lateness as unexcused and the absence shall not under any circumstances be counted towards a denial of credit for the child, but the School District may require the student to make up the missed work to achieve the credit provided that the School District provide reasonable opportunities for the student to do so.

39. If a homeless child is absent from school as a result of a lack of transportation caused by the school district which exceeds three school days, the School District Defendants shall make the necessary arrangements to have school assignments, homework and other necessary material provided to the homeless student. The School District Defendants shall, where it has failed or neglected to provide transportation to a homeless child for more than three consecutive school days, also provide appropriate compensatory educational services. For elementary students who miss school, one hour of one-on-one instruction shall be provided to the student for each day missed beginning on the fourth day out of school. For secondary school students, two hours per day of one-on-one instruction shall be provided to the student for each day of school missed beginning on the fourth day out of school. The school district shall take into account that for many homeless students, instruction may not be appropriate at the location where the child is living and that alternate locations should be arranged and that transportation may not be available from the child's parents. The School District will arrange for any compensatory services in a reasonable time and place given the particular circumstances of the homeless child.

Education of Homeless Students With Disabilities

40. Where a homeless child has been determined to have a disability under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400-1487, the School

District Defendant in which the homeless child is enrolled will promptly implement the student's existing individualized education plan (IEP) or a comparable program during the applicable re-evaluation period.

41. Until the homeless child's IEP is implemented or reevaluated, the homeless child will immediately be enrolled in the school district and will have the right to receive educational services in a setting most similar to the placement indicated on the child's IEP. If the child is receiving educational services in an out-of-district setting within fifty miles of the child's residence, the school district shall continue the child in that placement unless there is an in-school district program to which the School District and the parent or guardian agrees. The School District Defendants agree to provide transportation as set forth above. Except as required by law, or agreement by the parent/guardian and the school district, no homeless child with a disability shall be placed on home instruction upon enrollment unless it is determined by the CSE and indicated in the IEP that home instruction is the appropriate educational setting for the child.

42. If such a student has no IEP, or if a homeless student is suspected of having a disability, the School District will promptly evaluate or reevaluate the student in compliance with the IDEA and all applicable federal and state laws and regulations. The School District Defendants will make reasonable efforts to utilize recent evaluations from previous school settings in developing an initial IEP, where permitted by law and regulation. While any such evaluation is taking place, the homeless child will be educated in accordance with the preceding paragraph.

V. COORDINATION AMONG DEFENDANTS

43. The Parties agree and acknowledge that coordination among the State, County and local authorities responsible for providing educational services to homeless children is essential to ensuring that homeless children enroll in and stay in school. The School District Defendants therefore agree that they will coordinate, communicate and collaborate on a regular basis as to each homeless child within their care to ensure that all such children have access to all of the educational services to which they are entitled under the relevant laws and regulations.

44. The Homeless Liaison from each of the School District Defendants will initiate contact telephonically or in person with the Commissioner of SCDSS or his or her designee at least twice each school year (once per semester) to discuss any problems or issues concerning the education of homeless children if such problems or issues exist, including, for example, transportation, maintaining students in their school of origin, and provision of information to homeless families. The Homeless Liaison will record the time and date of each such conference and any problems or issues identified, and will retain the record of each such conference with the other documents the Homeless Liaison is required to maintain under this Order.

45. The Homeless Liaison from each of the School District Defendants will coordinate with personnel from the State Defendants to the extent necessary and possible to ensure compliance with the McKinney-Vento Act, New York Education Law § 3209 and any Consent orders or other orders or judgments in this lawsuit.

VI. APPEALS AND DISPUTE RESOLUTION

46. The Parties recognize and agree that any and all disputes concerning or relating to the education of homeless children must be resolved as expeditiously as possible. The Parties further recognize and agree that identified homeless children and Unaccompanied Youth are

entitled, until the final resolution of any dispute or appeal concerning the enrollment of homeless children to immediate and continuing admission and enrollment in the school district in which enrollment is sought pursuant to the McKinney-Vento Act and New York Education Law § 3209. The Homeless Liaison of the school district will provide such assistance to the homeless child and his or her parent or guardian as is reasonable. The School District Defendants will comply with their obligations under the McKinney-Vento Act, New York Education Law § 3209 and the IDEA as to homeless children disputing enrollment or transportation issues with the school district. The District shall act in good faith in making such identification of homelessness as set forth in McKinney-Vento, New York Education Law § 3209 and the regulations of the Commissioner. The parties agree that following any order or judgment in this lawsuit that affects the appeals or review process applicable to homeless children in New York State, counsel for the parties will promptly confer to ensure that this Consent Order conforms to such appeals or review process and the parties will promptly seek such modifications to this paragraph as may be become appropriate or necessary in light of the orders or judgments of the Court.

47. If the parent or guardian of a homeless child or Unaccompanied Youth disputes a decision about enrollment, transportation or other matters pertaining to the educational placement of the homeless child (including a school district's decision that a child is not homeless), the School District Defendants will expeditiously and fully inform such parent or guardian or Unaccompanied Youth of their rights under the McKinney-Vento Act, New York Education Law § 3209, the regulations of the Commissioner, New York Education Law § 310 and the regulations of the Commissioner for filing an appeal and this Consent Order in the language of the parent or guardian, if possible.

48. If a school district denies enrollment to a child who is asserted to be homeless, the School District Defendants will provide to the parent, guardian or Unaccompanied Youth a written explanation of the district's decision denying enrollment and shall, with such written explanation, provide an informational packet to the parent, guardian or Unaccompanied Youth setting forth the rights of homeless families to appeal the decision of the school district along with pertinent contact information for assistance. Counsel for the Plaintiffs and School District Defendants will work together in good faith to compile the informational packet to be provided to homeless families upon the denial of enrollment.

49. The School District Defendants will expeditiously follow all procedures for appeal set forth by the New York State Education Department and any procedures set forth in any Consent Orders or orders or judgments of the Court in this lawsuit.

50. In any dispute or issue that arises during the term of and under this Consent Decree, counsel for the parties will promptly confer in good faith in an effort to resolve any differences. The parties agree that they will cooperate, to the fullest extent possible, to ensure that homeless children are receiving the educational benefits to which they are entitled under law.

VII. TRAINING OF SCHOOL PERSONNEL

51. The Parties agree that providing appropriate services to homeless children requires that relevant personnel at the schools (including the Homeless Liaison, administrators and others who deal with homeless children) understand the rights and needs of homeless children and have sufficient knowledge of homeless children's rights and needs to be able to help them. Accordingly, the School District Defendants agree that they, in coordination and conjunction with NYS-TEACHS (or other agency contracted by state defendants to provide

training) and the State Defendants, will provide and/or require appropriate and reasonable training to all relevant personnel who are likely to have contact with homeless children or their families concerning homeless children's education, or who are responsible for providing educational or related services to homeless children or families.

52. The School District Defendants shall educate all relevant personnel at the School District Defendants concerning the following: (i) the causes and effects of homelessness; (ii) the educational and other needs of homeless children; (iii) the rights of homeless children and obligations of the school districts under the McKinney-Vento Act, New York Education Law § 3209 and any regulations thereunder; (iv) proper use of the various forms for identifying and providing services to homeless children; (v) the nature and scope of services available for homeless children, both within the school district and without; (vi) the identification of homeless children; (vii) the importance of a mechanism for coordinating with SCDSS concerning the needs of homeless children; (viii) the particular educational, social and emotional difficulties and challenges faced by homeless children; (ix) the definition of homelessness; and (x) the particular needs of Unaccompanied Youth. Plaintiffs will make available materials suitable for such training to the School District Defendants which the School District Defendants will distribute to relevant personnel.

53. The School District Defendants will assess what training or in-service education is appropriate for relevant personnel as to the topics listed above and will encourage all relevant personnel, including personnel who are likely to have contact with homeless children or their families concerning homeless children's education, or who are responsible for providing educational or related services to homeless children or families, to receiving appropriate training and in-service education. The School District Defendants will make available such in-district

training and training resources as they deem necessary to keep relevant personnel informed and current about the above-listed topics.

54. For any in-district training sessions conducted by a School District Defendant, each person attending training shall sign an attendance sheet, which sheets will be forwarded to and maintained by the Homeless Liaison. The Homeless Liaison for each School District Defendant shall maintain a complete and accurate record of the names of the persons who receive such training, the dates of the training, and copies of any materials used or distributed at the training.

VIII. EVALUATION AND ASSESSMENT

55. The School District Defendants will cooperate with the State Defendants in any program evaluation, assessments or evaluations of the effectiveness of the programs run by the School District Defendants to provide educational services for homeless children.

56. Once each year, the Homeless Liaison of each School District Defendant will review the effectiveness of the programs run by the relevant School District Defendant to provide educational services for homeless children. Such review will include an assessment of the number of homeless children in the district, the time it takes to arrange for transportation provided by the School District for homeless children in the district and any issues concerning absences or special education placement of homeless children. The Homeless Liaison will report the results of such review, and identify any problems, gaps or issues in writing to the Superintendent of the school district.

57. The Parties agree to work together cooperatively to provide Plaintiffs' counsel during the term of this Consent Order with such information as may be reasonably necessary to assess and evaluate the School District Defendants' performance of the various obligations under

this Order. Plaintiffs' counsel may, on five days' notice, review, inspect and/or copy any documents maintained or created (or required to be maintained or created) by any of the School District Defendants pursuant to this Order, to the extent permitted under relevant laws and regulations. The Parties will work together in good faith with respect to other documents that may be required by the Plaintiffs' counsel, and the School District Defendants will make a good faith effort to provide reasonably requested information, to the extent permitted under relevant laws and regulations.

58. Information made available to the Plaintiffs' counsel under this Order will also be made available to counsel for any of the Parties upon request.

IX. MONITORING COMPLIANCE

59. At least twice each year during the term of this Consent Order, each of the School District Defendants will produce to Plaintiffs' counsel a "Compliance Report," which shall contain at least the following information: (i) statistics on the number of identified homeless children serviced by the Defendant; (ii) statistics on the number of complaints and appeals concerning homeless children; (iii) statistics on the number of homeless children remaining in their schools of origin; (iv) information concerning any delays in enrollment of homeless children; and (v) information concerning any delays or gaps in transportation of homeless children by the school district to and from school.

X. REVISION OF POLICIES

60. The School District Defendants will review and revise any policies, procedures or guidelines that present barriers to the enrollment and retention of homeless children in school or are or that are inconsistent with the terms of this Consent Order.

Dated: ^{Ag.} June 13, 2004

We hereby consent to the foregoing:

On behalf of the Plaintiffs:



Jeffrey Alan Simes (JS-7080)
Christopher Garvey (CG-3323)
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Of counsel:

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Lewis M. Wasserman (LW-7134)
Wasserman Steen LLP
50 Medford Avenue
Patchogue, New York 11772
Tel: (631) 758-3367
Fax: (631) 758-3369

~~Dated: June __, 2004~~

We hereby consent to the foregoing:

AMITYVILLE SCHOOL DISTRICT

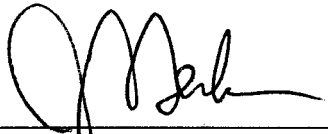
BY: *Nelane M. Kays-Eggen* 8/17/04
President, Board of Education

Dated: June __, 2004

We hereby consent to the foregoing:

BAY SHORE UNION FREE SCHOOL DISTRICT

BY:



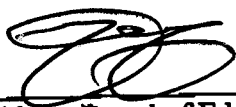
President, Board of Education

Dated: June __, 2004

We hereby consent to the foregoing:

BRENTWOOD SCHOOL DISTRICT

BY:



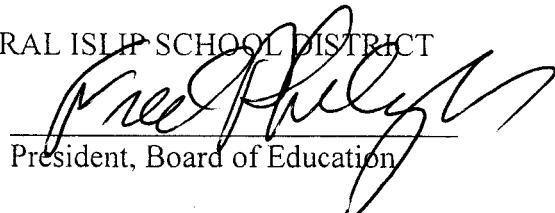
President, Board of Education

Dated: June ___, 2004

We hereby consent to the foregoing:

CENTRAL ISLIP SCHOOL DISTRICT

BY:



President, Board of Education

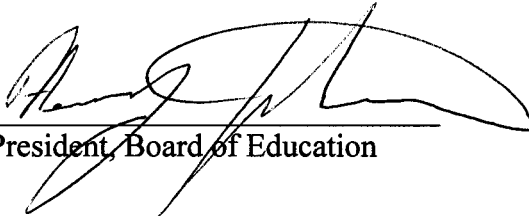
July 12, 2004

Dated: June __, 2004

We hereby consent to the foregoing:

COPIAGUE UNION FREE SCHOOL DISTRICT

BY:



President, Board of Education

Dated: ~~June~~ ^{Aug.} 3, 2004

We hereby consent to the foregoing:

HAMPTON BAYS SCHOOL DISTRICT

BY: 

President, Board of Education

Dated: ~~June~~ ^{JULY} 6, 2004

We hereby consent to the foregoing:

LONGWOOD CENTRAL SCHOOL DISTRICT

BY: 
President, Board of Education

Dated: June __, 2004

We hereby consent to the foregoing:

MIDDLE COUNTRY SCHOOL DISTRICT

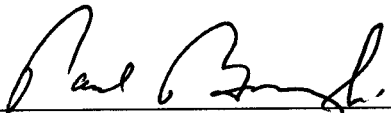
BY: *Harvey Gessler, Pres.* 7/6/04
President, Board of Education

Dated: June __, 2004

We hereby consent to the foregoing:

NORTH BABYLON SCHOOL DISTRICT

BY:



President, Board of Education

Dated: June __, 2004

We hereby consent to the foregoing:

PATCHOGUE-MEDFORD SCHOOL DISTRICT

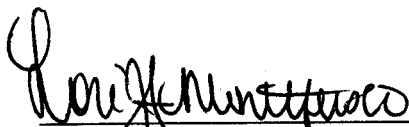
BY: 
President, Board of Education

Dated: June __, 2004

We hereby consent to the foregoing:

RIVERHEAD SCHOOL DISTRICT

BY:



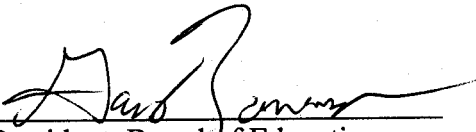
President, Board of Education

Dated: June __, 2004

We hereby consent to the foregoing:

SOUTH COUNTRY SCHOOL DISTRICT

BY:



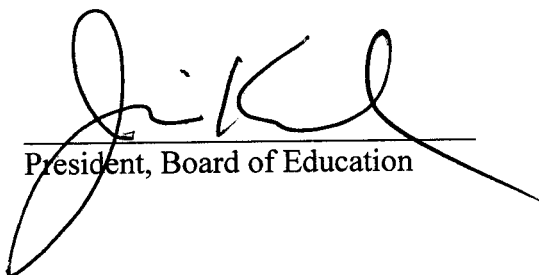
President, Board of Education

Dated: June __, 2004

We hereby consent to the foregoing:

SOUTH HUNTINGTON SCHOOL DISTRICT

BY:



President, Board of Education

So ORDERED this 7th day of OCT., 2004

Hon. Arthur D. Spatt, United States District Judge