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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

RAYMOND RAMON, a minor by and
through his father and Next Friend,
Raymond Ramon, Sr., and RUBEN
VENTURA, a minor, by and through
his mother and Next Friend,
Margaret Johnson, on behalf of
themselves and all others
similarly situated,

Plaintiffs,

vs.

PETE SOTO, Area Director of
Education, Phoenix Area Office,
Bureau of Indian Affairs, U.S.
Department of the Interior,
individually and in his official
capacity; DR. JOHN DERBY, Principal
Phoenix Indian High School,
individually and in his official
capacity; CHARLES SMITH, Assistant
Principal, Phoenix Indian High
School, individually and in his
official capacity; DELMAR NEJO;
and GRAM THOMAS,

Defendants.

NO. CIV 81-367-PHX-CAM
STIPULATION AND SETTLEMENT
AGREEMENT

I

GENERAL PROVISIONS

1. The parties enter into this Agreement for the
purpose of compromise and settlement and to avoid the cost and
inconvenience of further litigation. This stipulation and

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1 settlement is premised upon the parties' agreement, as hereinafter
2 set forth, and upon all applicable law determining the obligations
3 of the United States in the are of Indian Education, including
4 students' Fifth Amendment Constitutional rights to due process
5 as governed by Goss v. Lopez, 419 U.S. 565, 42 L. Ed.2d. 725, 95
6 S. Ct. 729 (1975); 25 C.F.R. Part 42; the Bureau of Indian
7 Affairs Manual; and the Special Education Provisions of Public
8 Law 94-142, 45 C.F.R. §84.

9 2. To effectuate this Agreement, it is specifically
10 agreed by and between the parties that the Special Master, Mr.
11 Steward Udall, shall continue to serve the Court by acting as a
12 monitor of compliance with the terms and provisions of settlement
13 herein contained, beginning immediately upon execution and
14 approval of this Agreement, and thereafter for a period of one
15 year, or until the end of the school term for 1985-86, whichever
16 occurs first. At the end of such time period, the Special
17 Master shall certify to the United States District Court whether
18 there has been substantial compliance with the terms of this
19 Agreement, and upon certification that such compliance has been
20 met, this litigation shall be dismissed without prejudice. In
21 the event that the Special Master determines that substantial
22 compliance has not been met by the end of such time period, the
23 Special Master shall so inform the Court. The Court shall
24 thereupon determine in what manner the case shall then proceed.
25 Nothing herein shall in any way preclude the Special Master
26 from earlier reporting to the Court, with notice to the parties,
27 any matters arising out of the terms or conditions of this
settlement agreement, as deemed appropriate in the discretion of

1 the Special Master.

2 3. It is stipulated by and between the parties that
3 this Agreement shall be effective as to all juveniles who are
4 at the present time or who in the future will be students at
5 Phoenix Indian High School, and who are now or will be subject
6 to the school's disciplinary practices, including students at
7 the school who are handicapped within the meaning of Public Law
8 94-142, or §504 of the Rehabilitation Act of 1973, and who are
9 or will be subject to the school's disciplinary practices.
10 Because it is agreed by the parties that compliance with the
11 provisions of this Agreement shall be monitored, as herein
12 provided, it is not necessary for the purposes of this settlement
13 agreement to provide for certification or decertification of
14 this matter as a class action. In the event that the Special
15 Master certifies to the Court that there has not been substantial
16 compliance with this Agreement, then and in that event either
17 party may raise such issues as it deems appropriate regarding
18 class action status.

19 4. If any party hereto, or any students hereinabove
20 described has a grievance with any action or lack of action
21 within the purview of this settlement, such aggrieved person may
22 file a written complaint with the Special Master. The Special
23 Master will formulate such procedures as he deems appropriate
24 to implement this paragraph, and notice thereof shall be given
25 to the parties, and to the school. At the beginning of the
26 current school year, the school will notify the students of the
27 grievance provisions of this paragraph, by posting notice of
28 such complaint procedures in the dorms and education buildings,

1 and by oral notice at a general assembly of students.

2 5. This Agreement shall be binding upon the Bureau
3 of Indian Affairs, its agents and employees, to the extent that
4 the provisions hereof prohibit, limit or mandate particular
5 conduct, as hereinafter provided. Accordingly, the parties
6 stipulate and agree that upon execution and approval of this
7 Agreement, the Court shall dismiss, with prejudice, the
8 individually-named defendants and the alleged claims against
9 them.

10 II

11 PROVISIONS REGARDING THE USE OF RESTRAINTS

12 The Bureau of Indian Affairs, its agents and employees,
13 shall implement, or continue to implement, the following policies
14 or practices regarding the use of restraints:

15 6. While restraints may be used for the purpose of
16 controlling a given person or situation, they may never be
17 used as a means of punishment. Corporal punishment is never to
18 be used. There exists a policy that school personnel shall not
19 use physical force to control students; except that it is agreed
20 that physical restraints may be necessary under certain circum-
21 stances, and may be used subject to the limitations hereinafter
22 provided.

23 7. At the beginning of each school year, School
24 personnel shall be fully briefed as to the school's policies and
25 practices concerning the use of restraints and restraining
26 devices. Faculty and dormitory staff shall receive training in
27 crisis management and the proper use of restraints, and shall be
28 instructed that personnel may use only those means of restraint

1 necessary to control the specific situation.

2 8. For purposes of this Agreement the term "restraining
3 devices" includes and is limited to the following: wrist
4 straps, leg straps, and handcuffs. No other devices, apparatus
5 of substance is authorized.

6 9. Metal handcuffs ^{or} rigid restraints may only be
7 used for transporting students who need restraining from one
8 campus location to the Care Center. Once at the Care Center,
9 hard restraints must be replaced by soft restraints. Under no
10 circumstances are hard restraints to be used in the Care Center.

11 10. Under no circumstances are hands and feet of a
12 restrained student to be joined together by any mechanical
13 restraint ("crab style" or "hogtie style"). There shall be a
14 policy that students will not be restrained to fixed objects in
15 hard restraints. Hard restraints may be used by law-enforcement
16 certified security staff, in accordance with current law applic-
17 able to law enforcement officers.

18 11. All possible efforts to remove restraints must be
19 used so that the time period of restraint is kept to an absolute
20 minimum. The reasonableness of the duration of time in which a
21 student is restrained shall be determined upon the facts of each
22 circumstance in which a student is so restrained; provided that
23 if a student is restrained for more than 30 minutes, said student
24 shall thereafter be seen by a medical doctor and/or mental
25 health professional. Restraint of a student for a period of 60
26 minutes or more may be reasonable only if school personnel
27 are awaiting the arrival or intervention of law enforcement or
28 mental health authorities.

1 12. There shall be a policy that chemical sprays
2 will not be used on students, and that use of chemical sprays
3 is a means of physical force within the meaning of the provisions
4 of this Agreement. Chemical sprays may be used by law-enforcement
5 certified security guards in accordance with current law applicable
6 to law-enforcement officers.

7 13. Policies and procedures shall be developed in
8 cooperation with the proper medical and mental health authorities
9 for counselling of students restrained or subdued as a result
10 of activities related to substance abuse.

11 14. Written reports must be submitted by the staff
12 person initially involved in any incident in which restraints
13 were used. Such written reports shall contain a log of the
14 following: a description of the events or conduct resulting
15 in the use of restraints; a description of any attempts at
16 pacification without the use of restraints; the date and time
17 restraints were put on and taken off; the date and time any
18 law-enforcement or medical authorities were called; and the name
19 of the person(s) applying the restraints. All reports shall be
20 delivered for review to the principal the day following the
21 incident. Further, copies thereof shall be delivered within
22 one week to the Special Master.

23 III

24 PROVISIONS REGARDING THE CARE CENTER

25 The Bureau of Indian Affairs, its agents and employees,
26 shall implement, or continue to implement, the following policies
27 or practices regarding the School's Care Center:

28 15. It is understood and agreed by and between the

1 parties that the Phoenix Indian High School has instituted a
2 program called "The Care Center" for the purpose of dealing with
3 students in crisis situations.

4 16. The Care Center staff shall be trained in crisis
5 management and the use of restraints.

6 17. Intake forms and progress reports shall be used
7 to log the date, time and reason a student is present in the
8 Care Center, and to document the behavior, treatment, and
9 release of the student.

10 18. Trained personnel shall review the foregoing logs,
11 and begin to program students who demonstrate, social, emotional,
12 or educational disability. A copy of each such report shall be
13 delivered within one week to the Special Master.

14 19. Conscientious efforts shall be made to coordinate
15 students in need of services with the various service agencies
16 available to address the problems of students on campus. These
17 agencies should include mental health services, alcoholism
18 counselling and police services.

19 IV

20 PROVISIONS REGARDING SPECIAL EDUCATION STUDENTS

21 The Bureau of Indian Affairs, its agents and employees,
22 shall implement, or continue to implement, the following policies
23 or practices regarding special education students:

24 20. The procedures set forth in the proposed special
25 education regulations, 25 C.F.R. Part 31k shall be followed with
26 regard to the discipline or treatment of identified special
27 education students as therein provided. Upon promulgation of
28 final regulations, such new regulations shall be followed in the

1 disciplining and placement of special education students.

2 21. Under the proposed regulations, in order to
3 fulfill the school's obligations to identified special education
4 students, the Special Education department shall be notified of
5 any disciplinary treatment, including emergency suspension, of
6 any student and thereupon shall determine if such student is
7 identified as a special education student.

8 22. Under the proposed regulations, in order to fulfill
9 the school's obligation to find, evaluate and place students
10 with special education needs, the Special Education department
11 shall be advised of the institution of any disciplinary treatment
12 of any student and thereupon shall make appropriate determinations
13 as to whether such students need special education evaluation.
14 It is the specific purpose of this paragraph to give information
15 to the Special Education Department and not to stay or impede
16 any pending disciplinary action.

17 23. Reasonable notice shall be given to students'
18 parents of all rights described in 25 C.F.R. Part 31k (proposed
19 regulations).

20 24. In the event that a special education student's
21 behavior is determined not to be related to his disability, as
22 provided in the proposed regulations, section 31k.45, and his
23 behavior is not proscribed by the proposed regulations, section
24 31k.27, then such student shall be given due process in an
25 instance of disciplinary action, including emergency suspension,
26 as is hereinafter provided in Section V.

27 25. Special education students who are suspended or
28 expelled shall be provided on-going, free and appropriate

1 educational services, by or through the school.

2 V

3 PROVISIONS REGARDING DUE PROCESS

4 The Bureau of Indian Affairs, its agents and employees,
5 shall implement, or continue to implement the following practices
6 or policies regarding the preservation of students' rights to
7 due process:

8 26. School personnel shall abide by the terms of the
9 Court's judgment in Annie Velasco, et. al. v. Ray Sorenson, et.
10 al., No. CIV-78-734-PHX-CAM, which is incorporated herein by
11 this reference.

12 27. School personnel shall abide by the provisions
13 of 25 C.F.R. Part 42, which are incorporated herein by this
14 reference.

15 28. School personnel shall abide by the provisions
16 of 62 BIAM Part 9, Students' Rights and Responsibilities, which
17 are incorporated herein by this reference.

18 29. School personnel shall abide by the provisions
19 of the Students' Rights and Responsibilities Handbook, then in
20 effect, concerning the discipline of students at Phoenix Indian
21 High School, to the extent such provisions are not inconsistent
22 with any other provision hereof. Further, the Special Master
23 shall participate in the review or amendment of such Handbook,
24 for the ensuing school year, to the extent that he deems
25 necessary for compliance with this Agreement.

26 30. Written notice of any emergency suspension shall
27 comply with the following:

28 a) Written notice shall be reasonably calculated

1 to give actual notice to the student, the student's parents, and
2 the student's lay or legal representative if known;

3 b) Written notice shall apprise the student that
4 he or she has a right to postponement of the time for the hearing
5 upon request by the student, his parents, or his legal or lay
6 representative if know, in such manner as shall be established
7 by the school;

8 c) The foregoing notice provisions do not suspend the
9 requirement of the Velasco judgment for oral notification or an
10 oral informal conference;

11 d) Written notice of any emergency suspension shall
12 also be forwarded to the Tribe in which the student is enrolled,
13 or the Tribe in whose jurisdiction the student and his or her
14 family reside, only if such notice has been authorized in
15 writing by the student's parent or by the student if 18 years of
16 age or older, at such time and in such manner as shall be
17 established by the school. The school may continue to provide
18 such notice to the appropriate BIA agency.

19 e) A copy of all written notices of emergency
20 suspension shall be delivered within one week to the Special
21 Master.

22 31. The school shall make arrangements for trans-
23 portation of a suspended student, both to and from his home, prior
24 to effecting such emergency suspension.

25 32. The decision to suspend a student on an emergency
26 basis shall be made by the school principal, or his authorized
27 representative, in a fair and impartial manner.

28 33. The school shall provide such supportive

1 educational services as shall reasonably assist a suspended
2 student in making up lost school work. The provisions of this
3 paragraph shall not be interpreted as a limitation on any
4 requirements set forth in 25 C.F.R. Part 31k (proposed regulations)
5 as may affect special education students.

6 34. Written notice of a disciplinary hearing shall
7 comply with the following:

8 a) Written notice shall be reasonably calculated
9 to give actual notice to the student, the student's parents, and
10 the student's lay or legal representative if known;

11 b) Written notice shall apprise the student that
12 he or she has a right to a postponement of the time for the
13 hearing upon request by the student, his parents, or his legal
14 or lay representative if known, in such manner as shall be
15 established by the school;

16 c) Written notice shall apprise the student that
17 he or she has the right to require any witness, including staff
18 persons or other students, to appear at the hearing upon the
19 student's request.

20 d) Written notice of any disciplinary hearing shall
21 also be forwarded to the Tribe in which the student is enrolled,
22 or the Tribe in whose jurisdiction the student and his or her
23 family reside, only if such notice has been authorized in
24 writing by the student's parents or by the student if 18 years
25 of age or older, at such time and in such manner as shall be
26 established by the school. The school may continue to provide
27 such notice to the appropriate BIA agency.

28 e) A copy of all written notices of disciplinary

1 hearings shall be delivered within one week to the Special
2 Master.

3 35. A disciplinary hearing shall be held no later
4 than two weeks from the date of the notice thereof.

5 36. A disciplinary hearing shall be conducted in a
6 manner calculated to protect all the rights of students as
7 provided herein and by applicable law.

8 37. A copy of all written disciplinary decisions
9 shall be delivered within one week to the Special Master.

10 38. A student aggrieved by a disciplinary decision
11 may appeal to the Phoenix Area Office by filing a written
12 Notice of Appeal within thirty (30) days of the date of entry
13 of the written disciplinary decision. The entire record on
14 appeal shall be transmitted by the school to the Area Office
15 within five (5) days after receipt of the Notice of Appeal. The
16 Area Office shall render a written decision within twenty (20)
17 days from receipt of the record. The decision on appeal, by
18 the Area Office, shall be mailed to the student, to his or
19 her parents, and to his or her lay or legal representative,
20 if any, within 24 hours.

21 39. During the period of monitoring by the Special
22 Master, as herein provided, a student aggrieved by a disciplinary
23 decision may appeal directly to the Special Master by filing a
24 written notice of Appeal within thirty (30) days of the date of
25 entry of decision. An appeal to the Special Master shall proceed
26 as otherwise provided herein and shall be made in the alternative
27 to an appeal to the Area Office. At the beginning of the
28 current school year, the school will notify the students of the

1 appeal provisions of this paragraph by posting notice of such
2 appeal procedures in the dorms and education buildings, and by
3 oral notice at a general assembly of students.

4 41. A copy of a decision on appeal to the Area Office
5 shall be delivered within one week to the Special Master.

6 VI

7 IN-SERVICE TRAINING PROGRAM

8 42. In order to fully effectuate the provisions and
9 intent of this Agreement, the School shall implement an in-service
10 training program within sixty (60) days of the date of execution
11 hereof. Such training program shall provide for instruction and
12 advice on the terms and provisions of this Agreement, and on all
13 rules, regulations and judicial decisions incorporated herein by
14 reference; and for periodic re-training as school personnel and
15 practical considerations reasonably require. This training shall
16 be provided to all School employees or personnel as appropriate
17 to insure compliance by them within their respective areas of
18 responsibility to the School and to the students.

19 WHEREFORE, the parties hereto, by and through counsel
20 undersigned, hereby stipulate to the entry of an Order by this
21 Court, approving this Settlement Agreement and incorporating same
22 by reference as if fully set forth therein.

23 Dated this 19th day of September, 1985.

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