

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

STANLEY NG, PARENTS AGAINST
DISCRIMINATION, and DENNIS CHEN, on behalf of
themselves and all others similarly situated,

Plaintiffs,

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant.

----- X

**STIPULATION AND ORDER
OF SETTLEMENT AND
DISCONTINUANCE**

07 Civ. 4805 (DLI) (MDG)

WHEREAS, plaintiffs commenced this action by filing a complaint with the United States District Court for the Eastern District of New York on November 19, 2007 on behalf of two putative classes, alleging discrimination on the basis of race and national origin in connection with admissions to the Specialized High School Institute (“SHSI”), a New York City Department of Education (“DOE”) extra-curricular, voluntary educational program that helps prepare students for the entrance examination for the DOE’s Specialized High Schools, and seeking declaratory, injunctive, and compensatory relief, as well as costs and attorney’s fees;

WHEREAS, the Court has not certified either of plaintiffs’ proposed classes;

WHEREAS, plaintiffs served a motion for class certification on January 11, 2008, voluntarily withdrew such motion on March 20, 2008, and have not subsequently served or filed any other motion for class certification;

WHEREAS, the parties have exchanged relevant documents and have engaged in significant discovery;

WHEREAS, defendant denies any and all liability arising from plaintiffs’ allegations;

WHEREAS, the parties wish to resolve the issues in this litigation amicably and without further proceedings and without admission of fault or liability;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. The above-referenced action is hereby dismissed with prejudice, except as specifically provided below.

2. The duration of this Stipulation and Order of Settlement and Discontinuance (hereafter “Stipulation and Order”) shall be three years following the date of entry by the Court of this Stipulation and Order.

3. The Court shall retain jurisdiction over the parties and this action solely for the purpose of enforcement of this Stipulation and Order until three years following the date of entry of this Stipulation and Order, whereupon the Court’s jurisdiction over this action shall terminate.

4. As used in this Stipulation and Order, “SHSI” refers either to the Specialized High School Institute or any successor program, under that or another name, that is substantially the same program.

5. As used in this Stipulation and Order, the term “admissions criteria” refers to the required qualifications for student applicants to SHSI.

6. As used in this Stipulation and Order, the term “eligible applicants” refers to student applicants to SHSI who meet the admissions criteria as described in paragraph “5” above.

7. Defendant New York City Department of Education (“DOE”) agrees that:

- a. Admissions criteria for SHSI during the duration of this Stipulation and Order will not include a student's race or ethnicity. Annexed to this Stipulation and Order as Exhibit "A" is a copy of the DOE policy concerning admission to the SHSI program that began in July 2008. This DOE policy includes the admissions criteria for student applicants to the program that commenced in July 2008.
 - b. During the duration of this Stipulation and Order, eligible applicants will be selected as follows: Applications will be made available without regard to race or ethnicity to all students meeting the admissions criteria. After applications have been received, students will be selected as follows: All eligible applicants will be selected at random for admission to SHSI if the number of eligible applicants exceeds the number of available spaces in SHSI. If the number of eligible applicants is equal to or less than the number of available spaces in SHSI, all eligible applicants will be selected for admission to SHSI.
 - c. DOE will pay to the Center for Individual Rights the sum of twenty-three thousand seven hundred eighty dollars and thirty-four cents (\$23,780.34) in full satisfaction of any and all claims for costs, expenses, and attorney's fees incurred on behalf of plaintiffs in connection with the present action.
 - d. DOE will pay to plaintiff Stanley M. Ng the sum of one dollar (\$1.00), by a check in that amount made payable to "Stanley M. Ng."
8. In consideration for defendant's implementation of the provisions regarding admissions to SHSI as set forth in paragraphs "7.a." and "7.b" above and payment of

the amounts set forth in paragraphs “7.c.” and “7.d.” above, plaintiffs dismiss all claims that were or could have been raised by plaintiffs in this action with prejudice, and release defendant, its successors and assigns, and all past and present officials, employees, representatives, and agents of DOE or the City of New York from any and all liability, claims, and/or rights of action based on any act, omission, event, or occurrence, past or present, described in or arising from the allegations set forth in the complaint in this litigation.

9. Except as provided for in paragraphs “7.a” and “7.b” of this Stipulation and Order, nothing herein shall prevent defendant from modifying its policies and procedures concerning SHSI. If defendant modifies the SHSI admissions criteria in any year covered by this Stipulation and Order from those SHSI admissions criteria that were used in the preceding year, defendant shall provide plaintiffs’ counsel with written notice of such modification not later than twenty-eight (28) calendar days prior to such modification. Such written notice shall be transmitted by e-mail, facsimile, and first-class mail, addressed to the attorney(s) of record for plaintiffs.

10. If plaintiffs wish to assert any objections to, or requests for relief concerning the modification, they must file such objections and/or requests in Court no later than twenty-eight (28) calendar days after receipt of defendant’s notice of modification. If plaintiffs do not file any objections and/or requests for relief in Court within this twenty-eight day period, plaintiffs are barred from seeking relief or asserting any objections to the modification.

11. Except as provided for in paragraphs “7.a” and “7.b,” this Stipulation and Order does not cover, and the Court’s jurisdiction does not extend to, policies and procedures concerning the operation or continuation of SHSI. Nothing shall prevent defendant from discontinuing SHSI, or, except as provided for in paragraphs “7.a” and “7.b,” modifying policies

and procedures concerning the operation of SHSI, including but not limited to policies and procedures related to curriculum, program structure, or the size of the program. Notwithstanding this provision, if defendant discontinues SHSI in any year covered by this Stipulation and Order, defendant shall provide the Court and plaintiffs' counsel with notice of such discontinuance fourteen (14) calendar days prior to promulgation of public notice that the program is being discontinued.

12. This Stipulation and Order does not cover, and the Court's jurisdiction does not extend to, the operation of activities or programs other than SHSI, now in existence or that may come into existence, that are designed to support students in their preparation for the Specialized High Schools Admissions Test ("SHSAT") or provide educational enrichment to middle school students. Nothing shall prevent defendant from continuing or initiating activities or programs, other than SHSI, that are designed to provide academic enrichment and/or to provide test preparation for the SHSAT.

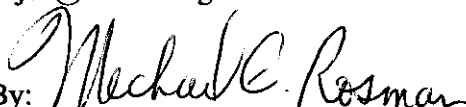
13. Nothing contained herein shall be deemed to be an admission by defendant that it has in any manner or way violated plaintiffs' rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York, or any other rules, regulations, or bylaws of any department or subdivision of DOE or the City of New York. This Stipulation and Order shall not be admissible in, nor is it related to, any other litigation or settlement negotiation.

14. This Stipulation and Order contains all of the terms and conditions agreed to by the parties. No oral agreement entered into at any time, nor any written agreement entered into by these parties prior to the execution of this Stipulation and Order regarding the subject

matter of the instant proceeding, shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

Dated: New York, New York
November 26, 2008

CENTER FOR INDIVIDUAL RIGHTS
Attorney for Plaintiffs
1233 20th St., NW, Suite 300
Washington, DC 20036
(202) 833-8400
Fax: (202) 833-8410
hajec@cir-usa.org

By: 
Michael E. Rosman
Christopher J. Hajec
Of Counsel

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Defendant
100 Church Street
New York, NY 10007
(212) 788-0931
Fax: (212) 788-0940
mrichter@law.nyc.gov

By: _____
Marilyn Richter
Toni Gantz
Assistant Corporation Counsel

SO ORDERED:

Hon. Dora L. Irizarry
United States District Judge

Exhibit A



MEMORANDUM

TO: Community District Superintendents
Principals and Guidance Counselors of Schools with Grade 6
School Support Organization Leaders

FROM: Sandy Ferguson, Executive Director of Middle School Enrollment

DATE: Spring 2008

SUBJECT: SPECIALIZED HIGH SCHOOLS INSTITUTE (SHSI)

The Specialized High Schools Institute (SHSI) is an extracurricular high school preparation program that prepares students to compete more effectively when taking the Specialized High Schools Admissions Test (SHSAT). The SHSAT is used to determine admission to the following eight Specialized High Schools: Bronx High School of Science; Brooklyn Technical High School; The Brooklyn Latin School; High School for Mathematics, Science and Engineering at City College; High School of American Studies at Lehman College; Queens High School for the Sciences at York College; Staten Island Technical High School and Stuyvesant High School. The Specialized High Schools Institute will include rigorous coursework in literature, writing, mathematics and science, as well as group guidance activities. There will be a focus on study habits, time management, critical thinking and test preparation skills.

Program Schedule:

SHSI lasts for sixteen months and consists of two components:

7th Grade Foundations:

- Summer: a five-week summer session (July 8-August 6, 2008) during the summer between grade 6 and grade 7
- School-Year: an extracurricular program held twice a week on Wednesday after school, and Saturday during the day

8th Grade Intensive:

- Summer: a five-week summer session (Summer, 2009) during the summer between grade 7 and grade 8
- Grade 8 School-Year: an extracurricular program – prior to the administration of the Specialized High Schools Admissions Test in October – held twice a week on Wednesday after school and Saturday during the day

Students, with the support of their families, must commit to participate in:

- the full-day, five-week summer sessions for both Summer 2008 and 2009
- the full-day sessions on Saturdays (9:00 am – 2:50 pm) and after-school sessions on Wednesdays (4:30 pm – 7:00 pm) during the 2008 and 2009 school years

Students must be economically disadvantaged and qualify for Free Lunch status under Title I in order to be eligible for the program. Should the number of eligible applicants exceed the number of available seats, random selection will be used to select from the pool of qualified applicants. Students who participate in the SHSI program receive no preference for selection to a Specialized High School and must attain a score sufficient to obtain an offer to a Specialized High School in order to attend such a school.

The 2008 summer program will be conducted at SHSI sites located throughout the city convenient for public transportation. Parents and students must be willing to make a commitment to attend the full program in order to participate this summer. MetroCards, breakfast and lunch will be provided during the summer sessions.

Selection Process:

Entry to SHSI takes place during the Spring of the 6th grade. The entering cohort of 6th grade students will begin the program in July 2008 and continue through October 2009 – when they will be required to take the Specialized High Schools Admissions Test (SHSAT).

A pre-populated application will be generated and delivered to the current school for each student who meets the eligibility requirements for the program. Schools will distribute applications to the identified, eligible students for whom an application was created. Eligible students interested in attending the program should verify the biographical information, sign and return the pre-populated application to their current school no later than Wednesday, May 7, 2008. The current school must deliver the application to their Borough Enrollment Office no later than Monday, May 12, 2008.

In NYC Public Schools: Schools with 6th grade students will distribute the attached pre-populated application to all current 6th graders who meet the following, minimum eligibility criteria.

Public School Student Eligibility:

- Economically disadvantaged students, as defined by Title I Free Lunch status
- Level 3 (Minimum Scaled Scores of at least 675-ELA; 675-Mathematics) on Spring, 2007 grade 5 standardized tests
- Minimum of 90% Attendance

In Private/Parochial Schools: 6th grade students who meet the following minimum eligibility criteria will have access to applications and information online at the Department of Education's website: <http://schools.nyc.gov/ChoicesEnrollment/Middle/SHSI>

Private/Parochial School Student Eligibility:

- Economically disadvantaged students, as defined by Title I Free Lunch status
- At or above the 85th percentile in Reading and Mathematics on grade 5 assessments
- Minimum of 90% Attendance

Students are required to return completed applications to their schools by Wednesday, May 7, 2008. ALL APPLICATIONS should then be delivered (not faxed) to your Borough Enrollment Office no later than Monday, May 12, 2008.

Families of accepted students will be notified in June of 2008.

Questions relating to this memorandum should be referred to: Sandy Ferguson, Executive Director for Middle School Enrollment at 212-374-4944. You may also contact us at: SHSI@schools.nyc.gov.