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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

TERESA E. DEAN, individually and
as parent and natural guardian for
J.D.J.,

Plaintiffs,

vs.

SCHOOL DISTRICT OF THE CITY OF
NIAGARA FALLS, NEW YORK,
CARMEN GRANTO,
CYNTHIA A. BIANCO,
MARIA CHILLE ZAFUTO,
JO A. HOLODY,

Defendants.

**NOTICE OF MOTION FOR AN
EXTENSION OF CERTAIN
DATES**

Civil Action No.:
07 CV 0094

PLEASE TAKE NOTICE that, upon the pleadings and proceedings had herein, and the annexed Declaration of Dennis R. McCoy, attested to on the 28th day of August, 2008, the undersigned will move this Court at a motion part thereof, to be held in and for the Western District of New York at the U.S. District Courthouse in Buffalo, New York, before the Honorable William M. Skretny on a date and time to be determined by the Court, for an Order pursuant to proposed Local Rule 16.2 for an extension of time to hold the initial mediation session.

DATED: August 28, 2007
Buffalo, New York

HISCOCK & BARCLAY, LLP

By: /s/ Dennis R. McCoy

Dennis R. McCoy, Esq.

April J. Orlowski, Esq.

Attorneys for Defendants

1100 M&T Center

Three Fountain Plaza

Buffalo, New York 14203

(716) 856-5400

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SCHOOL DISTRICT OF THE CITY OF
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CARMEN GRANTO,
CYNTHIA A. BIANCO,
MARIA CHILLE ZAFUTO,
JO A. HOLODY,

Defendants.

**ATTORNEY DECLARATION IN
SUPPORT OF MOTION FOR AN
EXTENSION**

Civil Action No.:
07 CV 0094

DENNIS R. McCOY, hereby declares under the penalties of perjury:

1. That I am a member of the law firm of Hiscock & Barclay, LLP, attorneys for the defendants in the above-referenced action. I make this declaration based upon my own personal knowledge of the facts and prior proceedings in this action, described herein.

2. This declaration is made in support of the defendants' motion brought pursuant to Proposed Rule 16.2 of the Local Rules of Civil Procedure for an extension of time in which to hold the initial mediation session.

3. Pursuant to a Scheduling Order of the Honorable Leslie G. Foschio, signed by Judge Foschio on May 31, 2006 [sic] and entered May 31, 2007 [Doc. 11] (hereinafter referred to as the "Scheduling Order"), the initial mediation session in this action was to be held no later than August 31, 2007. A copy of the Scheduling Order is attached hereto as **Exhibit A**.

4. Diligent efforts were made by counsel for the defendants to arrange for a date when all of the defendants, plus the claims examiner from New York City, could be available for the initial mediation session.

5. However, given the schedules of the defendants, several of whom are high-ranking officials in the Niagara Falls School District, coupled with trial schedules, it has proven impossible to comply with the August 31, 2007 date set forth in the Scheduling Order.

6. Prior to filing this motion, my colleague, April J. Orlowski, Esq., discussed an extension with plaintiffs' counsel, Mary E. Maloney, Esq.

7. Ms. Maloney has graciously agreed to an extension of four (4) weeks to complete the initial mediation session, provided that the defendants consent to an extension for the deadline for all motions to join other parties and to amend the pleadings, which were originally to be filed on or before September 28, 2007. See Scheduling Order, Exhibit A, at ¶ 5.

8. Accordingly, it is respectfully requested that the Scheduling Order be amended as follows: the initial mediation shall be held no later than September 28, 2007 and the date for motions to join other parties and to amend the pleadings shall be filed on or before October 26, 2007.

WHEREFORE, the defendants respectfully request that this Court enter an Order granting their motion for an extension in its entirety.

DATED: August 28, 2007
Buffalo, New York

/s/ Dennis R. McCoy
Dennis R. McCoy

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THERESA E. DEAN, Individually and as parent and
natural guardian for J.D.J.,

Plaintiff,

v.

SCHOOL DISTRICT OF THE CITY OF
NIAGARA FALLS, NEW YORK,
CARMEN GRANTO, CYNTHIA A. BIANCO,
MARIA CHILLE ZAFUTO and JO A. HOLODY,

Defendants.

SCHEDULING ORDER

07-CV-94S(F)

Pursuant to the Order of the Hon. William M. Skretny referring the above case to the undersigned for pretrial procedures and the entry of a scheduling order as provided in FED.R.CIV.P. Rule 16(b) and Local Rule 16.1(a) and a conference with counsel having been held on May 30, 2007, it is **ORDERED** that:

1. In accordance with Section 2.1A of the Plan for Alternative Dispute Resolution,¹ this case has been referred to mediation.
2. Motions to opt out of ADR shall be filed no later than **June 13, 2007**.
3. Compliance with the mandatory disclosure requirements found in Rule 26(a)(1) of the Federal Rules of Civil Procedure will be accomplished by **July 18, 2007**.
4. The parties shall confer and select a Mediator, confirm the Mediator's availability, ensure that the Mediator does not have a conflict with any of the parties in the case, identify a date and time for the initial mediation session, and file a stipulation confirming their selection on the form provided by the Court no later than **June 14**,

¹ A copy of the ADR Plan, a list of ADR Neutrals, and related forms and documents can be found at <http://www.nywd.uscourts.gov> or obtained from the Clerk's Office.

2007.

5. All motions to join other parties and to amend the pleadings shall be filed on or before **September 28, 2007.**

6. The initial mediation session shall be held no later than **August 31, 2007.**

7. All discovery in this case shall conclude on **December 31, 2007.** All motions to compel discovery shall be filed on or before **December 14, 2007.**

8. Plaintiff(s) shall identify any expert witnesses through interrogatories and provide reports pursuant to FED.R.CIV.P. 26 by **January 31, 2008**; Defendant(s) shall identify any expert witnesses through interrogatories and provide reports pursuant to FED.R.CIV.P. 26 by **March 31, 2008.** Motions to compel expert discovery shall be filed not later than **April 16, 2008.**

9. Dispositive motions, if any, shall be filed no later than **May 30, 2008.** Such motions shall be made returnable before Judge Skretny.

10. Mediation sessions may continue, in accordance with Section 5.11 of the ADR Plan, until **June 30, 2008.** The continuation of mediation sessions shall not delay or defer other dates set forth in this Scheduling Order.

11. In the event that no dispositive motions are filed, pretrial statements in strict compliance with Local Rule 16.1(d) shall be filed and served no later than **June 20, 2008.**

12. A final pretrial conference pursuant to FED.R.CIV.P. 16(d) and Local Rule 16.1(f) will be held on **July 9, 2008** at 9:00 a.m. before Judge Skretny.

13. Trial is set for **September 9, 2008** at 9:30 a.m.

No extension of the above cutoff dates will be granted except upon written application, filed prior to the cutoff date, showing good cause for the extension. The attached guidelines shall govern all depositions. Counsel's attention is directed to FED.R.CIV.P. 16(f) calling for sanctions in the event of failure to comply with any direction of this court.

SO ORDERED.

/s/ Leslie G. Foschio

LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

Dated: May 31, 2006
Buffalo, New York

GUIDELINES FOR DISCOVERY DEPOSITIONS

- (1) At the beginning of the deposition, deposing counsel shall instruct the witness to ask deposing counsel, rather than the witness's own counsel, for clarifications, definitions, or explanations of any words, questions, or documents presented during the course of the deposition. The witness shall abide by these instructions.
- (2) All objections, except those which would be waived if not made at the deposition under Fed.R.Civ.P. 32(d)(3)(B), and those necessary to assert a privilege, to enforce a limitation on evidence directed by the court, or to present a motion pursuant to Fed.R.Civ.P. 30(d), shall be preserved. Therefore, those objections need not and shall not be made during the course of deposition.
- (3) Counsel shall not direct or request that a witness not answer a question, unless that counsel has objected to the question on the ground that the answer is protected by a privilege or a limitation on evidence directed by the court.
- (4) Counsel shall not make objections or statements which might suggest an answer to a witness. Counsels' statements when making objections should be succinct and verbally economical, stating the basis of the objection and nothing more.
- (5) Counsel and their witness/clients shall not initiate or engage in private off-the-record conferences during depositions or during breaks or recesses, except for the purpose of deciding whether to assert a privilege.
- (6) Any conferences which occur pursuant to, or in violation of, guideline (5) are a proper subject for inquiry by deposing counsel to ascertain whether there has been any witness-coaching and, if so, what.
- (7) Any conferences which occur pursuant to, or in violation of, guideline (5) shall be noted on the record by the counsel who participated in the conference. The purpose and outcome of the conference shall also be noted on the record.
- (8) Deposing counsel shall provide to the witness' counsel a copy of all documents shown to the witness during the deposition. The copies shall be provided either before the deposition begins or contemporaneously with the showing of each document to the witness. The witness and the witness' counsel do not have the right to discuss documents privately before the witness answers questions about them.
- (9) There shall be only one question at a time put to a witness. Counsel shall permit the witness to fully answer before propounding subsequent or follow-up questions. If the witness indicates he or she does not understand the question, counsel shall simply rephrase the question. There is to be no characterization or comment by examining counsel as to any answer given by a witness. Should the

answer reasonably appear to counsel to be unresponsive, counsel may so advise the witness and his or her counsel and have the question repeated by the stenographer from the record.

- (10) Examining counsel shall not engage in any argument with opposing counsel as to these issues, rather his objection shall be taken on the record and appropriate relief from this court may be sought upon completion of the examination. Similarly, counsel for a witness shall not engage in any argument with examining counsel as to the objectionability of any question. Rather, he may note his objection and permit the witness to answer the question, subject to the objection.
- (11) If a witness or his or her counsel is unclear as to any question, he or she shall so advise counsel and permit the examining counsel an opportunity to rephrase or withdraw the witness' question. Neither witness nor counsel shall make any comment or engage deposing counsel in an argument (other than grounds therefore) about the nature of the question or the witness' request for clarification.
- (12) Examining counsel shall at no time interrupt a witness while he or she is attempting to answer a question. Counsel shall await the witness' complete response to a question before advancing any follow-up questions or moving on to a new subject.
- (13) Examining counsel shall refrain from unnecessary on-the-record recitation or lengthy quotations from discovery materials or documents except as is necessary to put specific questions to the witness related to such material or documents.
- (14) Authority: Fed.R.Civ.P. 16, 26(f), 30, 37(a); *Hall v. Clifton Precision*, 150 F.R.D. 525 (E.D.Pa. 1993).

FAILURE TO COMPLY WITH ANY THE FOREGOING MAY RESULT IN SANCTIONS PURSUANT TO FED.R.CIV.P. 37(b)(2), INCLUDING CIVIL CONTEMPT, AND ATTORNEYS FEES INCURRED BECAUSE OF A PARTY'S OR AN ATTORNEY'S NON-COMPLIANCE. SEE FED.R.CIV.P. 16(f).

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