UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

C.P., individually and on behalf of F.P., a minor child; D.O. individually and on behalf of M.O., a minor child; S.B.C., individually and on behalf of C.C., a minor child; A.S., individually and on behalf of A.A.S., a minor child; M.S., individually and on behalf of her minor child, H.S.; Y.H.S., individually and on behalf of his minor child, C.H.S.; E.M., on behalf of her minor child, C.M.; M.M., individually and on behalf of K.M.; L.G., individually and on behalf of her minor child, T.M.; E.P., individually and on behalf of her minor child, Ea.P.; and on behalf of ALL OTHERS SIMILARLY SITUATED, Plaintiffs, v. NEW JERSEY DEPARTMENT OF EDUCATION; DR. LILY LAUX, Commissioner of Education, in her official capacity, Defendants.	Civil Action No. 19-cv-12807-ESK-MJS Edward S. Kiel, U.S.D.J. Matthew J. Skahill, U.S.M.J.

DECLARATION OF JUDITH A. GRAN

I, Judith A. Gran, hereby declare:

1. I am an attorney at law, admitted to practice in the Commonwealth of Pennsylvania since 1983 and admitted in this matter *pro hac vice.* I am a partner of Reisman Gran Zuba LLP (RGZ), formerly Reisman Carolla Gran & Zuba LLP, in Cherry Hill, New Jersey. RGZ is a member of the current Class Counsel team in this matter.

2. I submit this declaration in support of the Parties' Joint Motion to Amend Consent Order and Settlement Agreement and Request Appointment of a Special Master.

3. This Declaration is based upon my personal knowledge. If called to testify, I could and would testify competently to the facts set forth herein.

4. In the course of my work as an attorney, I have participated in the litigation of numerous class action suits, including the following: *Halderman v. Pennhurst State Sch. & Hosp,* No. 74-1345 (E.D. Pa.); *Jackson v. Fort Stanton Hosp. & Training Sch.,* 757 F. Supp. 1243 (D.N.M.), *rev'd in part, appeal dismissed in part,* 964 F.2d 980 (10th Cir. 1992); *Homeward Bound v. Hissom Memorial Center,* No. 85-C-437-E, 1987 WL 27104 (N.D. Okla. 1987); *Bogard v. Duffy,* 88-C-2414 (N.D. Ill.); *Merry v. Parkway Sch. Dist.,* No. 88-2129-C-4 (E.D. Mo.); *Richard C. v. Snider,* No. 2:89-cv-02038-WLS (W.D. Pa.); *People First of Tennessee v. Arlington Developmental Center,* 1998 U.S. App. LEXIS 9537 (6th Cir.), *cert. denied,* 525 U.S. 1001 (1998); *Nelson v. Snider,* No. 94-cv-440, 160 F.R.D. 46 (E.D. Pa. 1994); *Travis D. v. Eastmont Human Services Center,* 96-cv-00063-CSO (D. Mont.); *Arc of Delaware v. Meconi,* No. 02-cv-00255-KAJ (D. Del.); *Sanchez v. Johnson,* 416 F.3d 1051 (9th Cir. 2004); *Ligas v. Hamos*, 05-4331 (N.D. Ill); *Gaskin v. Commonwealth of Pennsylvania,* No. 94-4048 (E.D. Pa.); *Messier v. Southbury Training Sch.,* No. 3:94-cv-01706-EBB (D. Conn.); *People First of Tennessee v. Clover Bottom Developmental Ctr.,* No. 3-95-1227 (M.D. Tenn.); *United States of America and People First of Tennessee v. State of Tennessee,* No. 92-2062 (W.D. Tenn.).

5. Each of these cases was brought to remedy systemic violations of the rights of persons with disabilities to (a) appropriate services in the most integrated setting, and (b) appropriate special education services in the least restrictive environment. The defendants in those cases included state agencies and state officials. With the exception of *Sanchez v. Johnson,*

each case resulted in meaningful, systemic remedies for members of the plaintiff class, including creation of high-quality community services for persons with the most complex support needs.

6. In some of the above cases, the plaintiffs filed motions for contempt of court orders and consent decrees. Plaintiffs also filed motions for enforcement and additional relief, or negotiated agreed orders and amended consent decrees that resolved obstacles to compliance.

7. In my experience, in an action for systemic change, it is almost always necessary to remedy non-compliance with the Court's orders or consent decree by seeking additional relief. Even where pretrial discovery created a thorough record of the relevant violations of class members' rights and the factors that contributed to those violations, the root causes of non-compliance on the part of a complex state system rarely become fully apparent until the implementation phase of an order or decree.

8. It is often difficult to draw a bright line between contempt proceedings and negotiated orders for additional relief. In my experience, the most successful orders resolving non-compliance in class actions for system change are the product of negotiations among the parties, often with the assistance of experts and other stakeholders. A proceeding for additional relief may begin with a motion for contempt but end with a negotiated remedy.

9. In its opposition to the proposed Amended Consent Order, the Rue Law Group (RLG), which apparently thinks that the plaintiffs should have filed a motion for contempt instead of a negotiated amended order, asserts that "[u]nlike a case proceeding toward trial, the complexity, expense, and likely duration of a motion for contempt are minimal." ECF 643, Memorandum of Law in Opposition to Joint Motion To Amend Consent Order (hereinafter Mem. Opp.) at p. 9, Page ID:18812.

10. RLG further asserts that "enforcement [would not] introduce meaningful delay relative to the proposed amendment. A contempt proceeding would place the question of compliance before the Court now and permit the imposition of coercive remedies upon a finding of non-compliance." ECF 643, Mem. Opp. at p. 11, Page ID:18814.

11. Based on my experience with motions for contempt and negotiated agreements for further relief, I disagree strongly with these statements. I will use examples from two of the above class actions, *Halderman v. Pennhurst* (E.D. Pa.) and *United States and People First of Tennessee v. State of Tennessee* (W.D. Tenn.), to explain why I consider these statements to be wrong.

12. Both cases were brought on behalf of residents of large state institutions for persons with intellectual and developmental disabilities, Pennhurst State School & Hospital and Arlington Developmental Center, respectively, against the state officials responsible for the care of those persons. Both cases were intensively litigated and settled in consent decrees that plainly spelled out the obligations of state officials toward class members. In both cases, as here, post-settlement monitoring documented the record of non-compliance.

13. In *Halderman v. Pennhurst,* the Court approved a consent decree on April 5, 1985. As the attorney with principal responsibility for enforcement of the consent decree on behalf of class representative the Arc of Pennsylvania, I filed motions for contempt against three of the defendants within the first two years of the implementation period, one against Philadelphia County and the Commonwealth of Pennsylvania and the other against two of the other county defendants and the Commonwealth.

14. The motion for contempt against the two suburban counties and the Commonwealth was extremely straightforward: It sought compliance with the provisions of the

consent decree that all class members from those counties who were presently institutionalized be placed in community homes. Approximately 74 class members had not been provided that relief. There was no systemic barrier to community placement; the two counties and the Commonwealth had ample capacity to implement the required services.

15. Nevertheless, the motion for contempt was not resolved quickly. It was filed in March, 1989, two years after approval of the consent decree. A four-day hearing was held in July, 1989. The Court found the defendants in contempt in an opinion and order of August 28, 1989. The counties were given a deadline of July, 1990 to place the class members in the community. *Halderman v. Pennhurst State Sch. & Hosp.,* Civil Action No. 74-1345, 1989 U.S. Dist. LEXIS 10147, at *7 (E.D. Pa. Aug. 28, 1989); *see Halderman v. Pennhurst State Sch. & Hosp.,* 154 F.R.D. 594, 598 (E.D. Pa. 1994). The Commonwealth defendants appealed, and the Court of Appeals for the Third Circuit, after briefing and oral argument, affirmed the district court's orders on April 17, 1990. *Halderman v. Pennhurst State Sch. & Hosp.,* 901 F.2d 311, 325 (3d Cir. 1990).

16. This example shows that even in a simple, straightforward case of non-compliance with an unambiguous provision of a consent decree, which did not even implicate any systemic flaws in a public service system, resolution of a motion for contempt can easily take a year or more.

17. The third motion for contempt of the consent decree in *Halderman v. Pennhurst* addressed issues that were significantly more complex. It also took considerably more time and effort to resolve. The contempt motion was filed to remedy serious deficiencies in the services provided to class members in the City of Philadelphia. The motion asked the Court to appoint a team of experts to review the services for class members in Philadelphia, identify the systemic

barriers to compliance and recommend measures to assure that services for class members complied with the consent decree.

18. The defendants agreed to a review by an expert team, although they did not agree that they were in contempt of the decree. After the review was completed, the parties attempted without success to negotiate a settlement; the Court appointed a Special Master who further documented the root causes of the defendants' non-compliance; and ultimately, because the parties still could not reach agreement, the Court set the motion for hearing.

19. Three months of intensive discovery followed, during which the plaintiffs retained multiple experts, and the parties conducted numerous depositions and made site visits. The Court held nine days of hearing. Three months later, the Court issued an opinion finding the defendants in contempt of nearly every facet of the consent decree and issued a 14-point order, and appointed a Special Master with extensive powers, including the power to levy massive fines (up to $5,000 per day per defendant for each of the approximately 500 class members in Philadelphia), and to supervise the development and implementation of remedial plans for creation or improvement of systems for providing adequate dental and medical services to class members and for reporting, investigating and resolving incidents of abuse, neglect, injury and death of class members. *Halderman v. Pennhurst State Sch. & Hosp.,* 154 F.R.D. 594, 611-14 (March 28, 1994). Later, as a result of continued non-compliance with the contempt orders, the Court ordered and approved a Quality Assurance Plan.

20. The Court appointed a Special Master who was highly skilled at managing implementation, and who established a collaborative structure for working with the parties and their attorneys. Nevertheless, implementation of the contempt orders was not easy. Early in the implementation period, it became clear that the defendants could not accomplish such an

apparently simple task as providing each class member with an up-to-date individual support plan. The defendants soon faced fines of more than $13 million and counting for this violation alone. As a result, the Philadelphia Commissioner of Health voluntarily created a new unit within the Department of Health to manage implementation and assigned her most competent senior staff to lead the unit. This turned out to be a remedy that worked. It is unlikely that the Court could or would have ordered such a change or that it would have been effective if ordered by the Court without a highly motivated government official.

21. In *USA v. Tennessee,* a similar history of multiple motions for contempt followed entry of a consent decree in September, 1994. Within a year, the plaintiffs had filed four motions for contempt. Some were brought to remedy emergent, life-threatening conditions in the institution, such as the grave lack of medical care that led to the deaths of several class members during the Court Monitor's second monitoring visit to the institutions. An emergency order was entered promptly to correct the defendants' failure to provide adequate medical staff in the institution.

22. The Court found the defendants in contempt of five paragraphs of the emergency order and imposed fines of $1,000 a week for each violation until the violations were corrected. *USA v. Tennessee,* No. 92-2062, ECF 417 (W.D. Tenn. Aug. 9, 1995). Later that same month, the Court again found the defendants in contempt and imposed a fine of $1,000 per day for each violation of a paragraph of the order. The defendants appealed the order imposing contempt sanctions. *Id.,* ECF 432.

23. By November, 1995, the defendants had complied with only two of the five provisions of the contempt order, and the Court found that they continued to be in contempt because they had failed to hire a developmental physician and the requisite number of nurses,

deficiencies that did not appear systemic or especially difficult to correct. *USA v. Tennessee,* No. 92-2062, ECF 480 (W.D. Tenn. November 6, 1995).

24. A year later, the defendants had hired the necessary staff, but the Court found that they still were not in full compliance with the five provisions of the relevant order and that a medical emergency still existed. *USA v. Tennessee,* No. 92-2062, ECF 632 (W.D. Tenn. November 19, 1996).

25. By February, 1998, two and a half years after the defendants were first found in contempt, the fines in the Court's registry had amounted to approximately $4 million. *USA v. Tennessee,* No. 92-2062 ECF 795 (W.D. Tenn. February 12, 1998). The Court Monitor continued to find that services at Arlington Developmental Center were deficient and out of compliance with substantial portions of the consent decree until the institution closed in 2010.

26. This brief history of efforts to correct dangerous and life-threatening conditions in a state-operated facility illustrates two realities about contempt as a tool to coerce compliance. First, it is neither quick nor simple, and second, it does not automatically achieve the desired result. Although fines are a traditional form of contempt sanctions, unless the fines are levied at a truly Draconian level, states can afford to pay them.

27. Meanwhile, the plaintiffs filed a fourth motion for contempt on December 15, 1995. This was a more global motion for contempt of the consent decree, based on the Court Monitor's findings of non-compliance in her most recent compliance review. *USA v. Tennessee,* No. 92-2062, ECF 509 (W.D. Tenn.). The People First plaintiffs for whom I was lead counsel filed a Motion for Further Relief, seeking the planned development of the community services class members needed to leave the institution and receive services in the most integrated setting

appropriate. *Id.,* ECF 564 (March 29, 1996). The Court set a hearing on the motion for contempt for June 21, 1996. *Id.,* ECF 583 (May 24, 1996).

28. Before the scheduled hearing, the parties engaged in intense negotiation and reached agreement on remedial measures in lieu of further contempt sanctions. In particular, the State agreed to the creation of a community placement and development plan. This was significant to People First plaintiffs because at the time, Tennessee had only an embryonic service system for persons with intellectual and developmental disabilities, and was ranked 48th in the nation in investment in community services.

29. The Community Plan for West Tennessee was developed by the state in a collaborative process that included state officials, an expert in planning for creation of community service systems, representatives of the plaintiff parties and the parents of institutional residents, and the Court Monitor. The plan was submitted to the Court on March 20, 1997, and after a hearing and comments by the parties, it was approved and adopted by the Court, enforceable in its entirety as an order of the Court. *USA v. Tennessee,* No. 92-2062, ECF 753 (W.D. Tenn. August 21, 1997).

30. Implementation of the Community Plan for West Tennessee, and a companion plan for transition of Arlington residents to the community, was highly successful. All Arlington residents moved to the community by 2010, and within the next seven years the residents of Tennessee's other institutions did so as well. From being 48th in the nation, Tennessee's community service system became one of the best in the nation. In my judgment, this result could not have been received through traditional contempt sanctions such as fines, but only through the planned development of community services and the specific staffing and support that class members needed in the community.

31. In my opinion, the proposed amended consent decree provides a remedy "that promises realistically to work *now,*" *Swann v. Charlotte-Mecklenberg Bd. of Educ*., 402 U.S. 1, 13 (1971) (emphasis added), because it provides for the development of a compliance plan by the Special Master, which will be enforceable as an order of the Court. In other words, the amended consent decree brings us now to the same place at which the parties arrived in other cases for systemic reform only after lengthy contempt proceedings: an implementation plan that assigns specific responsibilities, personnel, resources, and tasks to be accomplished within specified time frames.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2026

/s/ Judith A. Gran
Judith A. Gran