

From: Pedicone, Henry (OTDA)
Sent: Wednesday, March 23, 2005 5:01 PM
To: otda.dl.hear.legal.ref
Cc: 'Garvin Smith'
Subject: Rivera v. Bane (production of documents by HRA)

Attached is a copy of the Stipulation of Settlement in the Matter of Rivera v. Bane. The original document was dated February 18, 2005, and so ordered on February 22, 2005, by Faviola Soto, J.S.C. Among the most significant provisions:

1. The prior December 22, 1995 judgment is vacated and replaced by the Stipulation of Settlement. The requirement for HRA to provide the hearing packet and specifically identified documents within three days is ended.
2. The State (as in OTDA) is obliged to supervise the City in accordance with the applicable statutes and regulations. As you know, 18 NYCRR Section 358-3.7 was revised in 1997 to require that such documents be provided within a "reasonable time."
3. The Stipulation of Settlement sets forth HRA's agreement to what constitutes a "reasonable time" to provide documents in its hearings, as well as the consequences for its failure to comply.
4. For **hearing packets**, a "reasonable time" for mailing is now within **five** business days after the request, where the request is made seven or more business days before the hearing. Where the request is made less than seven days before the hearing, the packet must be presented at the hearing. Where HRA does not meet these requirements, HRA has agreed to withdraw its notice.
5. For **specifically identified documents** from the case record, a "reasonable time" for mailing is "before the date of the hearing." Where the request is made less than five days before the hearing, a "reasonable time" is **at** the hearing. Where HRA does not meet these requirements, the ALJ, in essence, must apply one or more of the remedies set forth in 18 NYCRR Section 358-3.7(b)(4) (e.g., recess, adjournment, document preclusion, etc.), with the additional availability of the specific authority to direct HRA to withdraw its notice.
6. As is done currently, where the hearing outcome results from HRA's failure to provide documents, outcome reason codes 07, 47 (for reversals), or 23 (for agency withdrawals) should be used, as we will be required to produce monitoring reports as part of the Stipulation of Settlement.
7. The Stipulation of Settlement does not apply to any requests for documents other than hearing "evidence packets" or "specifically identified documents." Please note that the Stipulation vacates only the December 22, 1995 judgment. It does not vacate or supersede the Court's decision of July 25, 1995, which found "as a matter of law, that DSS regulations do not require HRA to respond to blanket requests for documents such as entire case records or all documents from a particular year."

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