

Approved in the case *J.G. et al. v. Mills et al.*, 04 civ 5415

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

IMPORTANT NOTICE TO FAMILIES AND STUDENTS WHO ARE RETURNING TO COMMUNITY SCHOOLS IN NEW YORK CITY FROM DJJ OR OCFS RESIDENTIAL FACILITIES, OR RESIDENTIAL CARE UNDER OCFS CONTRACT

Are you a student (or parent of a student) who has or is coming home from being in detention with DJJ or from placement with OCFS?

If so, you might be a member of the plaintiff class in a lawsuit against the New York City Department of Education (DOE) and the New York State Education Department about your rights to education.

→ There is a proposed class action settlement between the plaintiffs (students) and the New York State Education Department, that is being considered for approval by the federal court in Brooklyn. This settlement will not settle claims against the City DOE -- those claims are still part of an active lawsuit.

→ The pages in this poster describe what the case is about and what the State Education Department has agreed to do and continue to do to help protect the education rights of students who have been in DJJ's Passages Academy and students who are returning home to New York City community schools from DJJ or OCFS.

Please read this notice for more information.

QUESTIONS OR MORE INFORMATION

If you have questions after reading this notice, or you would like a copy of the full Stipulation and Order of Settlement, call the lawyers for the students:

Advocates for Children
(212) 822-9510
or
The Legal Aid Society
(212) 577-3265

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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J.G., *et al.*,

Plaintiffs,

vs.

RICHARD MILLS, in his official
capacity as Commissioner of the
New York State Education
Department, *et al.*,

Defendants.

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**NOTICE OF PROPOSED
SETTLEMENT PURSUANT TO
Fed.R.Civ.P. Rule 23(e)**

Docket No. 04-cv-05415
(ARR)(SMG)

**IMPORTANT NOTICE REGARDING STUDENTS RETURNING TO COMMUNITY
SCHOOLS IN NEW YORK CITY FROM DEPARTMENT OF JUVENILE JUSTICE
(DJJ) OFFICE OF CHILDREN AND FAMILY SERVICES (OCFS), OR RESIDENTIAL
FACILITIES OPERATED UNDER CONTRACT WITH OCFS**

Nature of the Case

The plaintiffs in this case are students and parents of students who are returning to New York City schools from court-ordered DJJ detention, OCFS placement, or placement with OCFS in other residential facilities, or students who spent time in school at Passages Academy at DJJ (“court-ordered settings”). In December 2004, the named plaintiffs sued for violations of their educational rights. The lawsuit is against Richard Mills as Commissioner of the New York State Education Department (the “State Defendant”), and Joel Klein, Chancellor of the New York City School District, the New York City Board of Education (“NYCBOE”) and the New York City Department of Education (“NYCDOE”)(the “City Defendants”).

Claims Against State Defendant

On behalf of themselves and other students in similar situations (“the

class”), the plaintiffs alleged that the State Defendant violated their rights to educational services when they were discharged from DJJ, OCFS or OCFS-contracted residential facilities. The plaintiffs who were in school in Passages Academy in DJJ also alleged that the State Defendant violated their right to educational services while they were in DJJ detention. Plaintiffs with disabilities alleged that the State deprived them of special education services (“a free appropriate public education”) in Passages and when they were discharged from court-ordered settings. In addition, plaintiffs alleged that the State Defendant failed to monitor and oversee the City Defendants and to provide sufficient resources to ensure enforcement of disabled students’ rights under special education law.

The State Defendant has vigorously denied all of the allegations against it in this lawsuit.

Settlement with the State Defendant

The class representatives have tentatively agreed to settle the lawsuit with the Commissioner of the State Education Department. The proposed settlement is not yet final and must be approved by the Court. The lawsuit against the New York City Department of Education has not been settled and remains active. For purposes of settling with the State Defendant only, the Court has temporarily approved a group (a “class”) of student plaintiffs. If the Court gives final approval to the proposed settlement, all the terms of the settlement will apply to everyone in that group. This also means that, during the three years of the settlement period, no member of the class can bring a new lawsuit asserting the same claims against the State Education Department. This settlement was negotiated in many sessions, under court supervision, between the

students' lawyers (the Legal Aid Society and Advocates for Children) and lawyers for the New York State Education Department and the Attorney General's office.

Who is in the Class of Plaintiffs?

The Court has certified a class and subclasses for purposes of settlement between plaintiffs and the State Defendant only, as follows:

1. A plaintiff class consisting of students aged 7-21 without a high school diploma who are residents of New York City and who, during the period from December 14, 2004 through the end of the stipulation period either: (a) seek or sought to re-enroll in New York City community schools after being discharged from court-ordered settings; or (b) attended or attend the Passages Academy school while in DJJ custody;
2. A plaintiff subclass ("Subclass A") consisting of those class members with and without disabilities who attend or have attended the Passages Academy school while in DJJ custody and who allege that they have not received general or special education services to which they are entitled in Passages Academy;
3. A plaintiff subclass ("Subclass B") consisting of class members who seek or sought to re-enroll in New York City community schools after being discharged from court-ordered settings; and
4. A plaintiff subclass ("Subclass C") consisting of class members with disabilities who seek or sought to re-enroll in New York City community schools after being discharged from court-ordered settings and who allege that they have not received a free appropriate public education upon their discharge from court-ordered settings.

Information about the Settlement

All class members and those who represent the interests of class members have the right to learn more about the terms of the proposed settlement, to comment on the settlement, and to object to its terms if they believe those terms are not fair and adequate to the class. This notice is to advise class members and interested persons of the general terms of the proposed settlement and to explain how to obtain a

complete copy of the proposed settlement and how to comment upon or object to its terms. All comments or objections will be considered by the judge before a decision is made whether to approve the proposed settlement. What follows is a summary of the settlement. You may contact one of the attorneys for the plaintiff class listed below to obtain a complete copy of the settlement agreement.

Summary of the Proposed Settlement

This settlement is only with the Commissioner of the State Education Department. This agreement does not affect claims that the plaintiff students and parents have against the New York City Department of Education. No finding of liability is being made and the agreement is not evidence of any wrongdoing by the State Defendant. The Order will last for three years from the date the Court approves the settlement and will automatically terminate three years after it is approved by the Court. On the date the settlement is approved by the Court, all claims in the Complaint against the State Defendant will be dismissed. However, the settlement does not prevent any individual student or parent on behalf of a class member from pursuing existing due process administrative hearings and any appeals arising from those proceedings.

Actions the State Education Department Will Take

- The State Education Department (NYSED) will issue a field memorandum regarding students returning to community schools from court-ordered settings, and post the memorandum on its website.
- NYSED will continue to monitor the policies and procedures of the NYCDOE, OCFS and OCFS contract agency-affiliated schools regarding class member students returning to New York City community schools from court-ordered settings for compliance with federal and state special education law, in connection with the return to and reenrollment of class members in NYC community schools.

- NYSED will make available on its website, and by request, any current NYSED guidance documents and guidance documents as they are issued by NYSED for school districts concerning reenrollment and transfer of records for students returning to community schools from court-ordered settings.
- NYSED will make available on its website, and by request, a document entitled “Guidelines for Completing Transcript Summary Form for Students Returning to NYC Public Schools,” and any subsequent version of that document.
- NYSED will continue to discuss with OCFS and NYCDOE the translation of credits for courses taken by class members in OCFS facilities upon their return to NYC Community schools and will update plaintiffs’ counsel on the status of those discussions.
- In addition to continuing technical assistance to schools and programs, NYSED will respond to requests for technical assistance to schools and programs serving court-involved youth.
- NYSED will provide training about re-enrollment and transfer of records requirements for youth discharged from residential placements. Training materials used during these workshops (and updates and new information) will be posted on the NYSED website. After each such training, all new training or informational materials in final form prepared by NYSED or the United States Department of Education regarding Title I, Part D, or re-enrollment and transfer of records requirements, will be posted on the NYSED website and NYSED will alert school districts by electronic mail of such postings and include web addresses for them.
- NYSED will continue to promote efforts by NYCDOE and OCFS to develop agreements between those agencies that will facilitate effective and timely transition of class members and their credits and records, including agreements regarding sharing education information through technology and facilitating records transfer.

Monitoring and Quality Assurance

- For the school year 2007-08 and annually thereafter, NYSED will conduct targeted on-site monitoring and desk audits of OCFS and OCFS-contracted facility schools and programs. NYSED will conduct on-site monitoring of the NYCDOE’s Passages Academy (which provides education to students in the custody of DJJ) every three years, and of the

educational services of at least 12 OCFS residential facilities and/or OCFS contract agency-affiliated schools per year.

- Whenever NYSED finds a deficiency that warrants corrective action, NYSED will request such corrective action, set specific timelines for corrective action, and conduct appropriate follow-up to monitor implementation of the corrective action. Where it deems appropriate, NYSED will also offer training and guidance to the sending or receiving school personnel involved.
- NYSED will provide plaintiffs' counsel semi-annually during the duration of the stipulation and order with copies of completed reports of all monitoring and corrective actions concerning the on-site monitoring, desk audits, coordinated monitoring and corrective action described in the Stipulation and Order for Passages Academy, OCFS residential school programs, and OCFS contract agency-affiliated schools
- With respect to claims for attorneys' fees and expenses, the proposed settlement agreement provides that upon approval of the Stipulation and Order of Settlement by the Court, the State Defendant shall pay a negotiated amount of \$25,000 to Advocates for Children, 151 West 30th Street, New York, New York, and \$25,000 to The Legal Aid Society, 199 Water Street, New York, New York, as co-counsel to the class, in full satisfaction of any and all claims against the State Defendant for attorneys' fees and expenses incurred in this action, conditioned on the approvals of all necessary state officials as required by Public Officers Law § 17.

The Court Must Approve this Settlement and You May Comment or Object.

This settlement has not yet been approved by the Court. If the Court approves it, members of the class will be bound by these terms. The Court will hold a hearing to consider this settlement on October 3, 2008 at 2:00 p.m., in the United States Courthouse at 225 Cadman Plaza East, Brooklyn, New York 11201.

If you would like to comment or object to the fairness and adequacy of this settlement you must do so by mailing a letter that will be received by August 29 2008, to:

J.G. Settlement Mailbox
Juvenile Rights Practice
The Legal Aid Society
199 Water Street, 3rd Floor
New York, NY 10007

Comments should *not* be addressed to the Court or to the Clerk of the Court.

If you wish to comment on or object to the fairness and adequacy of the settlement, you may also appear at the Courthouse on October 3, 2008, at 2:00 p.m., and be heard briefly by the Court.

How to Get Additional Information

For a copy of the proposed settlement or additional information about it, please contact one of the lawyers for the plaintiff class listed below:

Matthew Lenaghan (212) 822-9510
Nancy Rosenbloom (212) 577-3265