

FILED
IN CLERKS OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ DEC 28 2007 ★
JK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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D.D., a minor, by and through his Parent and Next Friend,
V.D.; A.C., a minor, by and through his Parent and Next
Friend, V.S; B.T., a minor, by and through his Parent and
Next Friend, D.N., individually and on behalf of all others
similarly situated,

Plaintiffs,

-against-

NEW YORK CITY BOARD OF EDUCATION;
NEW YORK CITY DEPARTMENT OF EDUCATION;
JOEL KLEIN, Chancellor of New York City Schools; DR.
ANGELO GIMONDO, Superintendent, Community
School District 30; NELLY REAL-KORB, Chairperson,
Committee on Preschool Special Education (CPSE)
District30; MICHELLE FRATTI, Superintendent,
Community School District 25; BETH MARINO,
Chairperson, CPSE District 25; MICHAEL A. JOHNSON,
Superintendent, Community School District 29; JOE
BLAIZE, Chairperson, CPSE District 29; RICHARD P.
MILLS, Commissioner of the New York State Education
Department; THE CITY OF NEW YORK,

Defendants.

**STIPULATION AND ORDER
OF SETTLEMENT AND
DISCONTINUANCE**

03 CV 2489
(DGT)(RLM)

----- x
WHEREAS, individual plaintiffs D.D. (by V.D.) and A.C. (by V.S.) allege that
defendants New York City Board of Education, New York City Department of Education
("DOE"), Joel Klein, Angelo Gimondo, Nelly Real-Korb, Michelle Fratti, Beth Marino, Michael
A. Johnson, Joe Blaize, and the City of New York (the "City defendants") have violated
plaintiffs' rights to a free appropriate preschool education that meets their individual needs as
guaranteed by federal and State statutes and the regulations promulgated thereunder;

WHEREAS, by Stipulation and Order dated March 12, 2007, the parties to the
above-captioned action resolved all claims brought by the individual plaintiffs on behalf of the
certified class;

WHEREAS, the Stipulation dated March 12, 2007, at paragraph "34," states "This Stipulation and Order does not resolve the damage claims or attorneys' fees/costs of the named, individual plaintiffs.";

WHEREAS, the sole remaining claims are those brought by individual plaintiff's D.D. and A.C.;

WHEREAS, defendants have denied any and all liability arising out of the allegations set forth in the Complaint; and

WHEREAS, the parties wish to resolve the issues in this action without further proceedings and without any defendant admitting any fault or liability;

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

1. In consideration of the foregoing, the defendants hereby agree to pay plaintiffs, by checks made payable to (1) "Emery Celli Brinkerhoff & Abady LLP, as attorney for plaintiff D.D.," the sum of Forty Five Thousand Dollars (\$45,000.00), and (2) "Emery Celli Brinkerhoff & Abady LLP, as attorney for plaintiff A.C.," the sum of Thirty Thousand Dollars (\$30,000.00), in full satisfaction of all claims that were or could have been raised in this action or in any related proceeding or action, including all claims for costs, expenses and attorneys' fees.

2. Plaintiffs agree that the payments set forth in paragraph "1" above shall be used solely for the purpose of obtaining compensatory educational services.

3. In consideration for the payments set forth in paragraph "1" above, plaintiffs agree to dismissal of all the claims against all defendants, and to release all defendants, their successors or assigns, and all present or former officials, employees, representatives and agents of the New York City Board of Education a/k/a the New York City Department of Education; the New York State Education Department; and The City of New York from any and all liability, claims, and/or rights of action arising from the allegations set forth in the Complaint herein, whether known or unknown, which they had, may now have, or may have in the future, including all claims for costs, expenses and attorneys' fees.

4. Plaintiffs shall execute and deliver to defendants' attorneys all documents necessary to effectuate this settlement, including, without limitation, a release based on the terms of paragraph "2" above and an Affidavit of No Liens, being substantially in the form annexed hereto as Exhibit B. The payments set forth above is subject to and conditioned on delivery of such documents to defendants' undersigned attorneys.

5. Plaintiffs will have the sole responsibility to satisfy any lien or claim, whether known or unknown, asserted against the settlement proceeds or arising from the settlement. If any lien, claim or action is brought against any defendant arising from the settlement or asserted against the settlement proceeds, plaintiffs will defend, indemnify and hold harmless all defendants and the related entities, agents, servants, faculty, trustees and employees of each of them.

6. Plaintiffs make no claim of or for vicarious liability against any other party, whether named or unnamed, for any acts or omissions of the defendants or their related entities, agents, servants, faculty, and employees alleged in the complaint.

7. Nothing contained herein shall be deemed to be an admission by any of the defendants or any of their employees of any of the plaintiffs' allegations, nor an admission by the defendants of any liability or that they have in any manner or way violated plaintiffs' rights or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, charters, by-laws, rules or regulations of the United States, the State of New York, or the City, or any other rules, regulations or bylaws of any department or subdivision of the City.

8. This Stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations.

9. Plaintiffs and their counsel may not use or reference this settlement for any purpose other than to enforce its terms.

10. Nothing contained herein shall be deemed to constitute a policy or practice of the City or State.

11. This Stipulation and Order contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation regarding the subject matter of the instant action and appeal shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein, except for the Stipulation and Order dated March 12, 2007, which is unaffected by this Stipulation and Order of Settlement of Discontinuance.

12. All payments required herein under paragraphs "1" shall be made within ninety (90) days of the day this agreement is so-ordered by the Court. If such sum is not paid within said time frame, then interest shall begin to accrue on the outstanding principal balance on the ninety-first (91st) day at a rate set forth in 28 U.S.C. §1961.


New York, New York
December 20, 2007

New York, New York
December 21, 2007

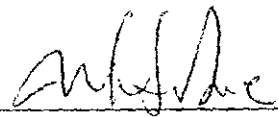
Dated:

Ilan M. Maazel
Emery Celli Brinkerhoff & Abady LLP
Attorneys for Plaintiffs
545 Madison Avenue, 3rd Floor
New York, New York 10022
(212) 763-5000

MICHAEL A. CARDOZO
Corporation Counsel for the City of New York
Attorney for Defendants
100 Church Street, Room 2-194
New York, New York 10007
(212) 788-0878

By: 

Ilan M. Maazel, Esq. (IM 5724)

By: 

Martin Bowe, Esq. (MB 8042)
Assistant Corporation Counsel

SO ORDERED:
s/ David Trager

Hon. David G. Trager
United States District Judge
Date: December 21, 2007