

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

ORIGINAL

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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, individually and on  
behalf of all others similarly situated,

STIPULATION AND ORDER  
FOR NOTICE TO THE  
PLAINTIFF CLASS

03 CV 2489  
(DGT)(RLM)

Plaintiffs,

-against-

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT, E.D.N.Y.

★ MAR 30 2007 ★

BROOKLYN OFFICE

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) District 30;  
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.  
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WHEREAS, on March 12, 2007, the parties to the above-mentioned action (the  
"Action") entered into a Stipulation and Order of Settlement (the "Stipulation"), which sets forth  
the terms and conditions for the proposed settlement of all claims seeking injunctive, declaratory  
or other equitable relief alleged in the Amended Complaint, a copy of which has been presented  
to this Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure; and

WHEREAS, the Stipulation is subject to the approval of this Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure upon a finding that the Settlement is fair, reasonable and adequate; and

WHEREAS, before this Court may approve the Stipulation it must direct that notice be provided, pursuant to Rule 23(e)(1)(B), in a reasonable manner to all Class Members who would be bound by the Stipulation; and

WHEREAS, pursuant to this Court's March 30, 2004 Order, this action was certified as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2); and

WHEREAS, the parties will seek the Court's approval of the Stipulation after notice to the Plaintiff Class and a hearing pursuant to Federal Rule of Civil Procedure 23(e); and

WHEREAS, the parties approve of and request that the Court find that the form of Notice attached hereto, and the manner of notification to class members, complies with Rule 23(e); and

WHEREAS, the Court has read and considered the Stipulation, and the parties to the Stipulation have consented to the entry of this Order;

NOW THEREFORE, IT IS HEREBY ORDERED, this 22 day of March, 2007, that:

1. A hearing (the "Fairness Hearing") is hereby scheduled to be held, pursuant to Federal Rule of Civil Procedure 23(e), before the Court at the United States Courthouse, 225 Cadman Plaza East, Brooklyn New York, on April 24, 2007 at 10 a.m., after which the Court shall determine whether the Stipulation shall be approved as a settlement of this class action. The Court may approve the proposed settlement without further notice of any kind to the Plaintiff Class, beyond that provided in this Order and the attached Notice to the Plaintiff Class. The

Court may adjourn or continue the Fairness Hearing to a new date without further notice to the Plaintiff Class, except that if the Fairness Hearing is adjourned or continued any Class Member who appeals on the original date or otherwise contacts the Court will be advised of the new date.

2. On or before April 13, 2007, the parties shall file with the Court submissions in support of the settlement.

3. No later than March 23, 2007, the New York City Department of Education shall mail by first class mail copies of the Notice to the Plaintiff Class to the parents of all preschool children in New York City who have an IEP dated March 12, 2007 or earlier, but are not receiving all of the services set forth in the IEP, including all preschool children currently on the "PN" or "PNA" list.

4. The Court finds that the form and substance of the Notice to the Plaintiff Class, as well as the manner of providing notice to Class Members set forth in this Order and Stipulation, are reasonably calculated to apprise Class Members of the pendency of this action, the existence and terms of the proposed settlement, Class Members' rights under the Stipulation, and Class Members' rights to comment on and object to the proposed settlement. The Court further finds that such notice is reasonable and shall constitute due, adequate and sufficient notice to all persons entitled to receive notice.

5. The Court will consider Class Members' written comments and/or objections to the proposed settlement only if such comments and/or objections, along with all supporting

materials, are postmarked not later than April 17, 2007 to the Clerk of the Court, United States District Court, 225 Cadman Plaza East, Brooklyn, New York 11201. The Court will promptly provide copies of any comments and/or objections to the following counsel for the parties to the Stipulation.

Ilann M. Maazel, Esq.  
Emery Celli Brinckerhoff & Abady LLP  
75 Rockefeller Plaza, 20<sup>th</sup> Floor  
New York, New York 10019  
Tel: (212) 763-5000  
Fax: (212) 763-5001

*Counsel for the Plaintiff Class*

Steven Banks, Esq.  
Office of the Attorney General  
State of New York  
120 Broadway, 24<sup>th</sup> Floor  
New York, New York 10271  
Tel:(212) 416-8621  
Fax:(212) 416-6075

*Counsel for Defendant Mills*

Jane R. Goldberg, Esq.  
Office of the Corporation Counsel  
100 Church Street, 4<sup>th</sup> Floor  
New York, New York 10007  
Tel: (212) 442-3229  
Fax: (212) 788-0877

*Counsel for all defendants except Mills*

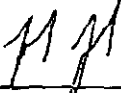
To object to the Stipulation, a Class Member may either (i) mail written objections in accordance with the terms of this paragraph, or (ii) appear at the Fairness Hearing. If a Class Member fails to do either (i) or (ii), that Class Member shall be deemed to have waived any objection to any aspect of the Stipulation, absent Court order otherwise.

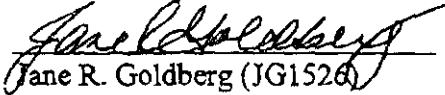
6. This Order shall be of no force or effect if the settlement is not finally approved and shall not be construed or used as an admission, concession or declaration by or against defendants of any fault, wrongdoing, breach or liability, or by or against the named plaintiffs or Class Members regarding the merits of their claims or the relief requested in this Action.

Dated: New York, New York  
March 12, 2007


Ilann Maazel (IM 5724)  
Matthew D. Brinckerhoff (MB 3552)  
Emery Celli Brinckerhoff & Abady LLP  
75 Rockefeller Plaza, 20<sup>th</sup> Floor  
New York, New York 10019  
(212) 763-5000  
Attorney for Plaintiffs

MICHAEL A. CARDOZO  
Corporation Counsel of the  
City of New York  
Attorney for City Defendants  
Jane R. Goldberg (JG 1526)  
Martin Bowe (MB 8042)  
100 Church Street, Room 2-194  
New York, New York 10007  
(212) 788-0878

By:   
\_\_\_\_\_  
Ilann Maazel (IM 5724)

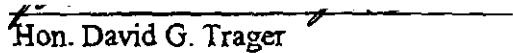
By:   
\_\_\_\_\_  
Jane R. Goldberg (JG1526)  
Assistant Corporation Counsel

ANDREW M. CUOMO  
Attorney General of the  
State of New York  
Attorney for State Defendant Mills  
120 Broadway – 24<sup>th</sup> Floor  
New York, New York 10271  
(212) 416-8621

By:   
\_\_\_\_\_  
Steven L. Banks (SB 4858)  
Assistant Attorney General

SO ORDERED:

s/David G. Trager

  
\_\_\_\_\_  
Hon. David G. Trager

Dated this 22<sup>nd</sup> day of March, 2007

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  
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behalf of all others similarly situated,

03 CV 2489  
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NEW YORK CITY BOARD OF EDUCATION;  
NEW YORK CITY DEPARTMENT OF  
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GIMONDO, Superintendent, Community  
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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.

----- x

**NOTICE TO CLASS MEMBERS OF PROPOSED SETTLEMENT**

This Notice is sent to you because you are, or may be, a member of the class whose rights are being determined in this case. This Notice will inform you of the terms of the proposed settlement of this class action, and of a court hearing to consider the fairness, reasonableness and adequacy of the settlement.

Attorneys for preschool children with Individual Education Programs (IEPs) and attorneys for the City of New York and the Commissioner of the New York State Education

Department have agreed to settle this class action lawsuit, *D.D. v. New York City Board of Education*, 03 Civ. 2489 (DGT) (RLM), pending in the U.S. District Court for the Eastern District of New York.

This class action lawsuit was filed on June 16, 2003. The class representatives claimed that they were disabled preschool children, had received IEPs, but that they did not receive all of the services required by their IEPs in a timely way. On behalf of the Plaintiff Class, the Class Representatives asked that the Court order defendants to provide all the services in plaintiffs' IEPs immediately, and in any event no later than 30 days after their IEP conferences. Defendants have denied the allegations and further deny that the Plaintiff Class is entitled to the relief sought by the Plaintiff Class.

By order dated March 30, 2004, the Court (Honorable David G. Trager) defined the Plaintiff Class as "All present and future New York City preschool students with IEPs who have not or will not timely receive all of the services required by their IEPs."

**NOTICE IS HEREBY GIVEN**, that the Honorable David G. Trager will hold a hearing on April 24, 2007 at 10 a.m., at the U.S. District Court, Eastern District of New York, 225 Cadman Plaza East, Courtroom 8D, Brooklyn, New York 11201, to decide if the settlement of the lawsuit on behalf of the Plaintiff Class is fair, reasonable and adequate and should be approved. If the Court approves the settlement, all members of the Plaintiff Class will be bound by its terms, and will be deemed to have released the defendants from liability for all classwide claims for injunctive or declaratory relief that were raised in the class action lawsuit.

**IMPORTANT:** This lawsuit did not ask for money for the Plaintiff Class, and the settlement does not provide money for the Plaintiff Class, except that the named plaintiffs sued for money for their own individual injuries, and those claims have not yet been resolved. If you have brought any individual claims that are now pending in court, or if you bring any individual claims in the future, **this settlement does not address those claims.**

This Notice provides information about the settlement and about how the parents and guardians of disabled preschool children can ask questions, make comments, or make objections about the settlement. **All written comments and/or objections must be postmarked by April 17, 2007.**

This Notice is given pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the Court. The Plaintiff Class and the disabled preschool children who started the lawsuit have been represented throughout the litigation by the firm Emery Celli Brinckerhoff & Abady LLP.

**SUMMARY OF THE AGREEMENT:** The key provisions of the agreement signed by the attorneys to settle the class action lawsuit (the "Stipulation") are as follows:

**Extension of Early Intervention:** In 2007, the State Education Department will pursue a legislative proposal to permit parents to keep their children in Early Intervention until the August 31 after their child turns three, so that children are not required to leave Early



Intervention on their third birthday, but instead could begin the preschool program in early September.

Expansion of Class Size Mid-Year: The State Education Department will submit a proposed regulation to the Board of Regents to permit special classes to expand to 13 students to accommodate disabled preschool children waiting to get into such classes.

Outreach to Service Providers: Every year, the New York City Department of Education ("DOE") will mail letters to all newly-licensed speech, physical, and occupational therapists in New York State encouraging them to work for or contract with the New York City Department of Education.

Internal Monitoring: The DOE will provide weekly reports to Committee on Preschool Special Education ("CPSE") administrators concerning placement of disabled preschool children, establish progressive monthly benchmarks for districts, and create a corrective action plan for districts lagging behind compliance guidelines.

School Improvement Team: The DOE will create a three-person School Improvement Team to provide assistance to preschool special education staff, especially in districts lagging behind compliance guidelines.

Enhanced Technology: The DOE has created a secure website accessible to related service providers and school/agencies, with lists of children (with identifying information redacted) and the services they require. The DOE has also created a secure website listing student vacancies by program, class size and staffing ratio, to more easily identify slots that can be filled by preschool children with IEPs in need of services.

UPK: The DOE will train CPSE administrators in how to use Universal Prekindergarten to serve disabled preschool children.

Monitoring: Defendants will provide plaintiffs' counsel with annual written reports describing their compliance with the Stipulation, and the DOE will provide annual reports concerning the total number of preschool children with IEPs who were not fully served within 30 days of the IEP conference, categorized by district and program type.

Ongoing Notice to Unserved Children: Through June 30, 2009, parents of preschool children who are not fully served within 30 days of their IEP conference will be informed of this settlement and given an opportunity to speak with attorneys for the Plaintiff Class.

Attorneys' Fees: Counsel for the plaintiff class, Emery Celli Brinckerhoff & Abady LLP, will receive \$655,000 in reasonable attorneys' fees and costs for their work on this case since 2003.

Duration of Stipulation: Most provisions of the Stipulation will expire on December 31, 2009, except that a few provisions will expire at the end of the 2008-2009 school year.

**Compliance with Stipulation:** If attorneys for the Plaintiff Class believe that defendants have violated the Stipulation, the attorneys for the Plaintiff Class can seek to enforce the Stipulation in federal court, but only after first attempting in good faith to resolve the dispute without judicial intervention.

**COURT APPROVAL:** The settlement of this lawsuit will not become final until the members of the Plaintiff Class have had an opportunity to consider the Stipulation and to make comments to the Court if they choose to do so. After that, the Court must approve the Stipulation. As described above, the Honorable David G. Trager will hold a hearing on April 24, 2007 at 10 a.m., at the U.S. District Court, Eastern District of New York, 225 Cadman Plaza East, Courtroom 8D, Brooklyn, New York 11201, to decide if the settlement of the lawsuit on behalf of the Plaintiff Class is fair, reasonable and adequate and should be approved.

**If you are a member of the Plaintiff Class, you have the right to object to and/or comment on the proposed settlement and to submit any supporting materials.** You may do so on your own or through an attorney of your choice. Your comment may be in favor of or against the proposed settlement. You may object to any aspect of the proposed settlement. To make sure your written objections and/or comments are received by the Court and considered at the hearing, you **MUST follow these instructions:**

1. Make your comment and/or objections in writing.
2. Send your comments and/or objections in writing addressed to:

Clerk of the Court  
U.S. District Court E.D.N.Y.  
225 Cadman Plaza East  
Brooklyn, N.Y. 11201

Re: D.D. v. New York City Department of Education, 03 Civ. 2489

3. Mail your written comments and/or objections and any and all supporting materials postmarked no later than April 17, 2007.
4. On the top of the first page of your comments and/or objections, write the name and number of the lawsuit: "D.D. v. New York City Department of Education, 03 Civ. 2489."
5. Do not telephone the Court regarding this Notice. The Court clerk is not able to provide any information or advice regarding this Notice.

In the alternative, you may make a comment or objection at the Hearing to take place on **April 24, 2007 at 10 a.m.**, at the U.S. District Court, Eastern District of New York, 225 Cadman Plaza East, Courtroom 8D, Brooklyn, New York 11201.

**IF YOU DO NOT FOLLOW THESE INSTRUCTIONS, YOU SHALL WAIVE ALL RIGHTS TO COMMENT ON AND/OR OBJECT TO THE SETTLEMENT, ABSENT COURT ORDER OTHERWISE.**

Any member of the Plaintiff Class who wishes to obtain additional information or a copy of the Stipulation may contact the attorneys for the Plaintiff Class:

Ilann M. Maazel, Esq.  
Matthew D. Brinckerhoff, Esq.  
Emery Celli Brinckerhoff & Abady LLP  
75 Rockefeller Plaza, 20<sup>th</sup> Floor  
New York, New York 10019  
Tel: (212) 763-5000