

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

RAY M., A MINOR UNDER THE AGE 21 YEARS,
BY HIS MOTHER JUANA D.; JACKEY S., A
MINOR UNDER THE AGE 21 YEARS, BY HIS
MOTHER YIN JIANG S.; MIGUEL F., A MINOR
UNDER THE AGE 21 YEARS, BY HIS MOTHER
EVELYN Q.; KATIE B., A MINOR UNDER THE
AGE 21 YEARS, BY HER MOTHER CARRIE B.;
ANGEL C., A MINOR UNDER THE AGE 21 YEARS,
BY HIS MOTHER MARGARITA V.; BENJAMIN L.,
A MINOR UNDER THE AGE 21 YEARS, BY HIS
MOTHER ANGELA L.: INDIVIDUALLY and ON
BEHALF OF THEMSELVES AND ALL OTHERS
SIMILARLY SITUATED,

94 Civ. 1103 (EHN)/(JLC)

Plaintiffs,

- against -

BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK; RAMON
CORTINES, CHANCELLOR OF THE BOARD OF
EDUCATION OF THE CITY OF NEW YORK; HOWARD
S. TAMES, EXECUTIVE DIRECTOR OF THE
DIVISION OF SPECIAL EDUCATION OF THE
BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK; NEW
YORK STATE EDUCATION DEPARTMENT; THOMAS
SOBOL, COMMISSIONER OF EDUCATION OF THE
STATE OF NEW YORK; NEW YORK CITY
TRANSPORTATION DEPARTMENT; and MARIO M.
CUOMO, GOVERNOR OF THE STATE OF NEW YORK,
Defendants.

FILED
1994
MAY 17 10 30 AM '94
U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

**ORDER PRELIMINARY APPROVING SETTLEMENT, DIRECTING NOTICE TO THE
CLASS AND SETTING A HEARING ON PROPOSED SETTLEMENT**

UPON the request of all parties to this action to have the proposed Stipulation and Order that was made and entered into by and among plaintiffs, the State defendants and the City defendants (the "Stipulation") approved pursuant to Rule 23 of the Federal Rules of Civil Procedure; and

UPON all other proceedings heretofore had in this action;

IT IS on this 7th day of January, 1999, DECREED, ADJUDGED AND ORDERED AS FOLLOWS:

1. The Court will set a hearing to determine whether the proposed Stipulation of settlement proposed among the parties to this action is fair, reasonable, adequate and legal pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

2. The hearing shall be held at ten o'clock a.m. on the 28th day of January, 1999, in Courtroom 304 at the District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York (or at such adjourned dates as the Court may direct without further notice), for the purpose of considering, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the fairness, reasonableness, adequacy and legality of the proposed settlement and whether or not it should be approved.

3. Persons who are members of the plaintiff class, other parents of preschool special education students in New York City, parties to the action, the Interagency Council of Mental Retardation and Development Disabilities Agencies, Inc. (the "IAC") and other entities or persons who provide special education services to preschool students in New York City may voice their opposition to the terms of the Stipulation provided that they submit such objections in writing, by filing such objections with the Clerk of the United States District Court for the Eastern District of New York, with copies served upon counsel for plaintiffs, who will provide copies to counsel for the State defendants and the City defendants. All written objections shall be submitted on or before January 26, 1999. Upon the filing of such written objections, plaintiff class members, other parents of preschool special education students in New York City, parties to the action, the IAC, and other entities or persons who provide special education services to preschool students in New York City may appear at the hearing, personally or by counsel, and be heard in support of or in opposition to the proposed settlement.

4. Notice to the class of the hearing shall be provided as follows:

(a) one time publication of the Notice annexed to this Order as Exhibit "1" (the "Notice") within 5 days after entry of this order in one English language periodical (The New York Post), one Spanish language periodical (El Diario), one Chinese language periodical (The World Journal), one Haitian-creole language periodical (The Haiti Observateur), and on one Russian Language periodical (Novoye Russkoye Slovo) in New York City;

(b) posting of the Notice as of 5 days after entry of this order for a period of 2 weeks at all Committees of Special Education and all Committees of Preschool Special Education in New York City and all New York City schools and private programs with special education programs for preschool students. The Notice will be posted in English, Spanish, Haitian Creole, Chinese and Russian; and

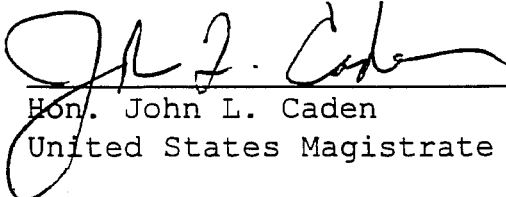
(c) distribution of the Notice in English, Spanish, Haitian-Creole, Chinese and Russian to students in preschool special education programs in New York City within 5 days after entry of this order. Posters and/or fliers regarding the Notice shall also be available for distribution through Advocates for Children of New York, Inc., and local community groups.

This notice is hereby determined to be the best notice practicable under the circumstances of the nature of this action and the proposed settlement, and to meet the requirements of Rule 23(e) of the Federal Rules of Civil Procedure.

5. If the settlement shall not be approved or consummated for any reason whatsoever, the Stipulation and all proceedings had in connection with it shall be without prejudice to the rights of the parties status quo ante settlement and execution of the Stipulation by the parties.

6. The Court may adjourn the hearing from time to time at any time prior to or during the hearing, and may recommend that the District Court Judge presiding over the action approve or not approve the proposed settlement at or after the hearing without further notice except to counsel for the parties to the action, and with such modifications, if any, as may be agreed upon by the parties or ordered by the Court.

Dated: New York, New York
January 7, 1999



Hon. John L. Caden
United States Magistrate Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
RAY M., ET AL.,

94 Civ. 1103 (EHN) (JLC)

Plaintiff,

- against -

**NOTICE OF CLASS
ACTION SETTLEMENT
HEARING**

BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK; NEW
YORK STATE EDUCATION DEPARTMENT, ET AL.,

Defendant.
-----X

**TO: PARENTS OF ALL PRESCHOOL STUDENTS AGES 3-5 IN NEW YORK CITY
WHO REQUIRE OR ARE RECEIVING SPECIAL EDUCATION SERVICES**

THIS NOTICE IS GIVEN pursuant to Rule 23 of the Federal Rules of Civil Procedure and pursuant to an Order, dated January 7, 1999, entered by the Honorable Magistrate Judge John L. Caden of the District Court for the Eastern District of New York (the "Court"), in the above captioned civil action (the "Action"), to advise you that:

1. A hearing will be held before the Court on January 28, 1999, at ten o'clock a.m. in Courtroom 304 of the District Court for the Eastern District of New York, 225 Cadman

Plaza East, Brooklyn, New York (or at such adjourned dates as the Court may direct) (the "Hearing") to determine whether the proposed final settlement of the Action (the "Settlement") should be approved by the Court as fair, reasonable, adequate and legal.

2. The Action has been certified as a class action consisting of a class (the "Class") including,

All disabled preschool students living in New York City, ages three through five, who have not been or will not be timely evaluated, recommended for, and/or provided special education services;

All disabled preschool students living in New York City, ages three through five, who are limited English proficient ["LEP students"] and who have been or will be referred to the [CPSE] for a determination as to whether they require special education services and for whom defendants failed to timely provide (i) an evaluation in the student's dominant language by appropriately licensed clinicians; and/or (ii) special education services recommended by the [CPSE] on the Individualized Education Program ["IEP"] and provided by appropriately licensed and trained professionals [the "LEP class"];

All disabled preschool students living in New York City, ages three through five, who have been or will be referred to the [CPSE] for a determination as to whether they require special education services and for whom defendants failed to consider, recommend and/or provide special education services in the least restrictive environment ["LRE"].

3. Plaintiffs claim that City and State defendants violated federal and state law by failing to provide to class

members appropriate special education services in the LRE that meets their needs, including language needs. City and State defendants deny plaintiffs' claims.

4. By Stipulation Order dated November 7, 1996, the LEP class claims against the New York State Education Department, the Commissioner of Education of the State of New York, and the Governor of the State of New York (collectively, "State defendants") were resolved.

5. The plaintiff class representatives, the State defendants and the City defendants have entered into a stipulation (the "Stipulation") resolving all of plaintiffs' remaining claims, including all of plaintiffs' claims against City Defendants relating to the timely evaluation, recommendation and provision of special education services in the LRE.

6. Pursuant to the Stipulation, the State and City defendants agree to undertake various actions to address plaintiffs' claims, which are summarized below:

(a) the New York State Education Department (the "SED") will issue clinical practice guidelines (the "Guidelines") providing guidance in making recommendations for the placement and provision of appropriate services in the LRE;

(b) the SED, upon request, will assist the Board of Education of the City School District of the City of New York (the "Board") to comply with regulations governing the integration of students with disabilities in the Board's Universal prekindergarten program;

(c) the SED, upon request, will offer training and technical assistance on the provision of special education services in the LRE pertaining to the Universal Prekindergarten program in New York City;

(d) the SED will collect and analyze data and reports provided by the Board and private preschool programs regarding special education services being provided to and needed by preschool students in New York City;

(e) the SED will work with the New York State Office of Child and Family Services and the New York State Department of Health to promote opportunities for placement of class members in the LRE;

(f) the SED will monitor the programs that provide special education services to preschool students in New York City and will respond to complaints received regarding such programs pursuant to the requirements of applicable law and regulations;

(g) the Board will provide the SED with the data and information required under this Stipulation and the Stipulation resolving claims regarding the LEP class;

(h) the Board will revise its standard operating procedures to be consistent with the applicable requirements of the Guidelines and guidelines that the SED has promulgated regarding the provision of special education services to LEP preschool students;

(i) the Board will cooperate with the SED's monitoring of its preschool special education programs;

(j) the Board will take certain measures to provide timely evaluations of preschool students;

(k) the New York City Department of Transportation will take certain measures to address the transportation needs of preschool students in New York City; and

(l) the SED and the Board will each provide plaintiffs' counsel annual written reports describing their compliance with the terms of the Stipulation.

7. The actions described in paragraph 6, above, are intended to summarize the major provisions of the Stipulation, but do not set forth all of the obligations and rights of the

parties under the Stipulation. The provisions of the Stipulation, however, and not the summary set forth in paragraph 6 above, will govern the obligations and rights of the parties if the Court approves the Settlement. Class members and other parties in interest may request a copy of the Stipulation by writing to counsel for plaintiffs at the address listed in paragraph 10, below.

8. The Stipulation expires on August 31, 2001, at which time the action will be terminated.

9. Counsel for plaintiffs, as well as the State defendants and City defendants, believe that the terms and conditions specified in the Stipulation are reasonable, fair, adequate, legal and in the best interests of the class.

10. At the Hearing, the Court shall hear evidence and argument relating to the fairness, reasonableness, adequacy and legality of the proposed settlement. Any member of the class, party to the action, representative of the IAC or other entities or persons who provide special education services to preschool students in New York City may object to the terms of the Stipulation, voice their approval, or remain silent. Any person who wishes to object to the approval of the settlement must file

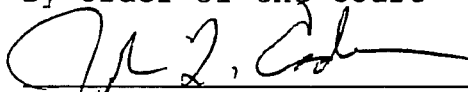
objections, in writing, with the Clerk of the United States District Court for the Eastern District of New York, with copies served upon, Counsel for Plaintiffs at DAVIS POLK & WARDWELL, Attn: Audrey Ritfeld, Legal Assistant, 450 Lexington Avenue, New York, New York 10017, not later than nine (2) days prior to the hearing date set forth above, that is, not later than January 26, 1999.

11. If you do not have any objection to the Stipulation or Settlement, you are not required to attend the Hearing, although you are welcome to attend the Hearing even if you have no objection to the Stipulation or Settlement. If you plan on attending the Hearing and require the assistance of a translator, please notify counsel for plaintiffs in writing at the address listed in paragraph 10, above, so that arrangements can be made to provide a translator for you, if at all possible. Please be aware that the Hearing will address questions regarding the Settlement, and is not a required CPSE conference or IEP meeting. The Court may adjourn the hearing to a date subsequent to January 28, 1999 without further written notice.

12. Please do not contact the Court or the Clerk's Office for information about this action or the Hearing. Please

address any questions you may have regarding the Hearing, the Settlement or the Stipulation in writing to plaintiff's counsel at the address indicated in paragraph 10, above.

By Order of the Court



Hon. John L. Caden
United States Magistrate Judge

Dated: Brooklyn, New York
January 7, 1999