



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
500 PEARL STREET
NEW YORK, NEW YORK 10007-1312**

**RICHARD J. HOLWELL
UNITED STATES DISTRICT JUDGE
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Date: December 27, 2007

Pages (including cover): 11

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LV, RC, AD, NA, ADJ, YG, LO, AP, RLB, RD,
and JYW, individually; and VSG, HR, CW, SS,
MG, MS, ST, RZ, MC and JP, on behalf of
themselves and all others similarly situated,

Plaintiffs,

-against-

NEW YORK CITY DEPARTMENT OF
EDUCATION; NEW YORK CITY BOARD OF
EDUCATION; JOEL KLEIN, in his individual and
official capacity as Chancellor of the New York
City School District,

Defendants.

No. 03 Civ. 9917 (RJH)

**PRELIMINARY ORDER FOR NOTICE AND HEARING IN CONNECTION
WITH SETTLEMENT PROCEEDINGS**

WHEREAS, on December 11, 2007, the parties to the above-entitled action (the "Action") entered into a Stipulation and Agreement of Settlement (the "Settlement" or "Stipulation") which is subject to review under Rule 23 of the Federal Rules of Civil Procedure and which, together with the exhibits to the Stipulation, sets forth the terms and conditions for the proposed settlement of the claims alleged in the Action on the merits and with prejudice; and

WHEREAS, pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure and by Memorandum and Order dated September 15, 2005, the Action was certified as a class action on behalf of all persons who have obtained, or will in the future obtain, for the benefit of a child with disability, a favorable order by an impartial hearing officer against, or stipulation of settlement placed on the record at an impartial due

process hearing with, the New York City Department of Education, or who are children with disability who are the beneficiaries of such order or stipulation of settlement, and (2) who fail to obtain, or at risk of failing to obtain, full and timely implementation of such order or settlement; and

WHEREAS, the Court having read and considered the Stipulation and the accompanying documents; and the parties to the Stipulation having consented to the entry of this Order, as more fully set forth in the Stipulation; and all capitalized terms used herein having the meanings defined in the Stipulation;

NOW, THEREFORE, IT IS HEREBY ORDERED, this 27TH day of December, 2007 that:

1. The Class is now defined as (a) under Rule 23(b)(2), the Injunctive Relief Subclass, defined as the class of all persons who, on or subsequent to the Commencement Date, (i) obtain or obtained a favorable Order by an Impartial Hearing Officer against the DOE or stipulation of settlement placed on the record at an impartial hearing with the DOE and (ii) fail or failed to obtain full and timely implementation of such Order or settlement and (b) under Rule 23(b)(3), the Compensatory Relief Subclass, defined as the class of all persons who, on or after December 13, 2000 and on or before January 31, 2008, (i) have obtained a favorable Order by an Impartial Hearing Officer against the DOE or a stipulation of settlement placed on the record at an impartial hearing with the DOE and (ii) failed to obtain full and timely implementation of such Order or settlement.
2. Lead Plaintiffs AD, NA, YG and LO are removed as Lead Plaintiffs but retain any rights they may have as class members.

3. A hearing (the "Settlement Fairness Hearing") pursuant to Rule 23(e) of the Federal Rules of Civil Procedure is hereby scheduled to be held before the Court on

April 4, 2008, at 10:00 a.m. for the following purposes:

- a) to determine whether the proposed Settlement is fair, reasonable, and adequate and should be approved by the Court;
 - b) to determine whether the Order and Final Judgment as provided under the Stipulation should be entered, dismissing the Complaint herein, on the merits and with prejudice, and to determine whether the release by the Class of the Settled Claims, as set forth in the Stipulation, should be provided to the Released Parties;
 - c) to determine whether the proposed Injunctive Relief and Compensatory Relief in the Stipulation are fair and reasonable and should be approved by the Court;
 - d) if necessary, to consider Plaintiffs' Counsel's application for an award of attorneys' fees and expenses; and
 - e) to rule upon such other matters as the Court may deem appropriate.
4. The Court reserves the right to approve the Settlement with or without modification and with or without further notice of any kind. The Court further reserves the right to enter its Order and Final Judgment approving the Stipulation and dismissing the Complaint on the merits and with prejudice regardless of whether it has awarded attorneys' fees and expenses.
5. The Court approves the form, substance, and requirements of the Notice of Proposed Settlement of Class Action, Motion for Attorneys' Fees and Settlement Fairness

Hearing (the "Settlement Notice") and the Proof of Claim form, annexed to the Stipulation as Exhibits F and I respectively.

6. The Court appoints The Garden City Group, Inc. as the Claims Administrator.
7. The Claims Administrator shall cause the Settlement Notice and the Proof of Claim, substantially in the forms annexed to the Stipulation, to be mailed, by first class mail, postage prepaid, within thirty (30) calendar days of receipt of the information described in paragraph 8, in English, to all Class Members (and their counsel, if known) who can be identified with reasonable effort. The Claims Administrator shall use its best efforts to ensure that each counsel so identified does not receive multiple mailings. The Settlement Notice and Proof of Claim shall include a cover letter with the following statement in Urdu, Russian, Spanish, Arabic, Haitian Creole, Bengali, Chinese, and Korean: "If you received an impartial hearing order concerning a special education student that required the New York City Department of Education to take action or make a payment, you may be entitled to payment and/or educational services through a proposed class action settlement. To get a copy of the Settlement Notice in [insert language], call [insert toll free telephone number]."
8. The Defendants shall, within fourteen (14) calendar days after the entry of this Preliminary Order, provide the Claims Administrator with a CD-ROM containing an electronic file, in fixed length ASCII format, Microsoft Excel format or in a Microsoft Access database table format, containing the names and last known addresses of each person and their counsel, to the extent counsel appeared, who requested an impartial hearing that resulted in an Impartial Hearing Officer's order or

stipulation of settlement on the record on or after December 13, 2000 and on or before the date of entry of the Preliminary Order.

9. For orders issued between the date of the entry of the Preliminary Order and January 31, 2008, the Defendants shall provide by February 14, 2008 the Claims Administrator with a CD-ROM containing supplemental electronic file, in fixed length ASCII format, Microsoft Excel format or in a Microsoft Access database table format, containing the names and last known addresses of each person and their counsel, to the extent counsel appeared, who requested an impartial hearing that resulted in an Impartial Hearing Officer's order or stipulation of settlement on the record on or after the date this Preliminary Order was entered and on or before January 31, 2008. Within ten (10) calendar days of receiving such supplemental electronic file, the Claims Administrator shall cause the Settlement Notice and the Proof of Claim including the cover letter referenced in paragraph 7, substantially in the forms annexed hereto, to be mailed, by first class mail, postage prepaid, in English, to all Class Members (and their counsel, if known) identified in the supplemental electronic file.
10. In order to effectuate the obligations set forth herein with respect to the Claims Administrator, the DOE is authorized to provide the Claims Administrator with student records information that is protected under the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g; 34 C.F.R. Part 99, such information shall be used only in accordance with this order and shall not otherwise be disclosed by the Claims Administrator.
11. The Settlement Notice and the Proof of Claim shall be made available in Urdu,

Russian, Spanish, Arabic, Haitian Creole, Bengali, Chinese, and Korean, upon telephone request to the Claims Administrator's toll-free telephone number.

12. Class Members may request a copy of their impartial hearing order or stipulation of settlement on the record by calling the Claims Administrators' toll-free telephone number any time before June 30, 2008. To allow the Claims Administrator to provide these requested documents, the Defendants shall, on or before February 14, 2008 provide the Claims Administrator with a CD-ROM containing, in pdf format, copies of all Impartial Hearing Officers' orders or stipulations of settlement on the record entered on or after December 13, 2000 and on or before January 31, 2008.
13. The Court approves the form of Publication Notice of the proposed settlement in substantially the form and content annexed to the Stipulation as Exhibit E and directs that The Garden City Group, at Defendants' expense, shall cause the Publication Notice to be published in *The New York Daily News*, *the Brooklyn Paper*, *the Staten Island Advance*, one Spanish language newspaper, and one Chinese language newspaper within ten days of the mailing of the Notice pursuant to paragraph 7. Lead Plaintiffs' Counsel shall, at or before the Settlement Fairness Hearing, file with the Court proof of publication of the Publication Notice.
14. The form and content of the Settlement Notice, and the method set forth herein of notifying the Class of the Settlement and its terms and conditions, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto.

15. In order to be entitled to Compensatory Relief, in the event the Settlement is effected in accordance with the terms and conditions set forth in the Stipulation, each Compensatory Subclass Member shall take the following actions and be subject to the following conditions:

- a) A properly executed Proof of Claim, substantially in the form attached to the Stipulation as Exhibit I, must be submitted to the Claims Administrator, at the Post Office Box indicated in the Notice, postmarked not later than June 30, 2008. Such deadline may be further extended by an order of this Court. Each Proof of Claim shall be deemed to have been submitted when postmarked if properly addressed and mailed by first class mail, postage prepaid.
- b) The Proof of Claim submitted by each Compensatory Relief Subclass Member must satisfy the following conditions: (i) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of the preceding subparagraph, (ii) where required, it must be accompanied by the required documentation as set forth in the Stipulation, and (iii) the Proof of Claim must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.
- c) As part of the Proof of Claim, each Compensatory Subclass Member shall submit to the jurisdiction of the Court with respect to the claim submitted, and shall (subject to effectuation of the Settlement) release all Settled Claims as provided in the Stipulation.

16. Class Members shall be bound by all determinations and judgments in this Action, whether favorable or unfavorable.

17. The Court will consider comments and/or objections to the Settlement, including the Injunctive Relief, the Compensatory Relief, or the request for attorneys' fees and reimbursement of expenses only if such comments or objections and any supporting papers are filed in writing with the Clerk of the Court, United States District Court, 500 Pearl Street, New York, New York 10007, and copies of all such papers are served, on or before March 21, 2008, upon each of the following: Shawn V. Morehead, Esq., Advocates for Children, 151 West 30th Street, 5th Floor, New York, NY 10001; and Jeffrey S. Dantowitz, Esq., New York City Law Department, 100 Church Street, New York, NY 10007 on behalf of the Defendants.
18. Attendance at the Settlement Fairness Hearing is not necessary; however, persons wishing to be heard orally with regard to the approval of the proposed settlement, including the Injunctive Relief, and Compensatory Relief, and/or the request for attorneys' fees are required to indicate in a written submission their intention to appear at the hearing and file such submission with the Clerk of the Court, United States District Court, 500 Pearl Street, New York, New York 10007, and copies of all such papers must be served, on or before March 21, 2008, upon each of the following: Shawn V. Morehead, Esq., Advocates for Children, 151 West 30th Street, 5th Floor, New York, NY 10001; and Jeffrey S. Dantowitz, Esq., New York City Law Department, 100 Church Street, New York, NY 10007 on behalf of the Defendants. Persons who intend to comment on or object to the proposed settlement, including the Injunctive Relief, and Compensatory Relief, and/or counsel's application for an award of attorneys' fees and expenses and desire to present evidence at the Settlement Fairness Hearing must include in their written

submissions the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Fairness Hearing. Class Members do not need to appear at the hearing or take any other action to indicate their approval.

19. Pending final determination of whether the Settlement should be approved, the Lead Plaintiffs, all Class Members, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence or prosecute any action which asserts Settled Claims against any Released Party.
20. As provided in the Stipulation, Defendants must pay the Claims Administrator the reasonable and customary fees and costs (or such other fees and costs as may have been agreed) associated with giving notice to the Class
21. If any specified condition to the Settlement set forth in the Stipulation is not satisfied and Plaintiffs' Counsel or Defendants' Counsel elect to terminate the Settlement as provided in paragraph 39 of the Stipulation, then, in any such event, the Stipulation, including any amendment(s) thereof, shall be null and void, of no further force or effect, and without prejudice to any Party, and may not be introduced as evidence or referred to in any actions or proceedings by any person or entity, and each Party shall be restored to his, her or its respective position as it existed immediately prior to the execution of the Stipulation. In such event, paragraph 40 of the Stipulation shall govern the rights of the Parties.
22. This Order shall not be construed or used as an admission, concession, or declaration by or against any Defendants of any fault, wrongdoing, breach, or liability. This Order shall not be construed or used as an admission, concession, or declaration by or

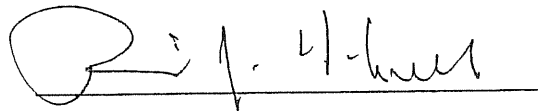
against Lead Plaintiffs or the Class that their claims lack merit or that the relief requested in the Action is inappropriate, improper or unavailable, or as a waiver by any Party of any defenses or claims he, she, or it may have.

23. The Court reserves the right to continue the Settlement Fairness Hearing without further written notice.

24. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement.

Dated: New York, New York

December 27, 2007

A handwritten signature in black ink, appearing to read "Richard Holwell", written over a horizontal line.

Honorable Richard Holwell

UNITED STATES DISTRICT JUDGE