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★ SEP 18 2008 ★

BROOKLYN OFFICE

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9/12/08

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

D.S., by and through his mother and next friend S.S.;
D.W.1; D.W.2, by and through his mother and next
friend N.W.; N.L., by and through her mother and
next friend S.L.; R.H., by and through his mother and
next friend H.G.; and L.H., on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

NEW YORK CITY DEPARTMENT OF
EDUCATION and NEW YORK CITY BOARD OF
EDUCATION,

Defendants.

No. 05 Civ. 4787 (JBW)(CLP)

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

WHEREAS, on August 27, 2008, the parties to the above-entitled action (the "Action") entered into a Stipulation of Settlement (the "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;

WHEREAS, the Plaintiffs have made an application pursuant to Rule 23 of the Federal Rules of Civil Procedure for Class Certification and for approval of the Settlement; and

WHEREAS, the Plaintiffs seek and Defendants have agreed to certification of a Class defined as all persons who have not earned a High School Diploma on or before June 30, 2008 and who, at any time during the Class Period and while on the school

register at Boys and Girls High School (“B&G”), have been, will be, or are at risk of being (1) denied a program with at least five and one-half hours of instruction designed to lead towards Graduation, unless fewer hours of instruction are necessary for Graduation, (2) wrongfully turned away from B&G, (3) subjected to Partial Day Exclusion, and/or (4) placed in the Attendance Academic Intervention Program (“AAIP”), also known as the “auditorium program,”

WHEREAS, the Plaintiffs seek and Defendants have agreed to certification of a Compensatory Education Subclass defined as all persons who have not earned a High School Diploma on or before June 30, 2008 and who, at any time during the Compensatory Education Subclass Period and while on the school register at B&G, were (1) denied a program with at least five and one-half hours of instruction designed to lead towards Graduation, unless fewer hours of instruction were necessary for Graduation, (2) wrongfully turned away from B&G, (3) subjected to Partial Day Exclusion, and/or (4) placed in the AAIP, also known as the “auditorium program,” 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, THE COURT FINDS THAT:

A. Notice of the Proposed Class Certification and Subclass Certification is appropriate under Rule 23(d)(2) of the Federal Rule of Civil Procedure and shall be provided as set forth in the Stipulation.

B. Notice of the Settlement to the Proposed Class is required under Federal Rule of Civil Procedure 23(c)(2)(A) and 23(c)(2)(B), and shall be provided as set forth in the Stipulation. The method, form and content of such notice as set forth herein are appropriate and meet the requirements of Rule 23(c)(2)(a) and 23(c)(2)(B).

C. Notice of the Settlement to the Proposed Subclass is required under Federal Rule of Civil Procedure 23(c)(2)(B). The method, form and content of such notice as set forth herein for notifying the Subclass of the Settlement and its terms and conditions, meet the requirements of Rule 23(b)(2)(B) 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.

NOW, THEREFORE, IT IS HEREBY ORDERED, this 12th day of September, 2008 that:

1. 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 Friday, November 14, 2008, at 10:00 a.m. for the following purposes:

- a) To determine whether to certify the Class and Subclass and whether to appoint Advocates for Children of New York, Inc., and Morrison & Foerster, LLP as class counsel;
- b) to determine whether the proposed Settlement is fair, reasonable, and adequate and should be approved by the Court;

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next friend S.L.; R.H., by and through his mother and
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WHEREAS, the Plaintiffs seek and Defendants have agreed to certification of a Class defined as all persons who have not earned a High School Diploma on or before June 30, 2008 and who, at any time during the Class Period and while on the school

register at Boys and Girls High School (“B&G”), have been, will be, or are at risk of being (1) denied a program with at least five and one-half hours of instruction designed to lead towards Graduation, unless fewer hours of instruction are necessary for Graduation, (2) wrongfully turned away from B&G, (3) subjected to Partial Day Exclusion, and/or (4) placed in the Attendance Academic Intervention Program (“AAIP”), also known as the “auditorium program,”

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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, THE COURT FINDS THAT:

A. Notice of the Proposed Class Certification and Subclass Certification is appropriate under Rule 23(d)(2) of the Federal Rule of Civil Procedure and shall be provided as set forth in the Stipulation.

B. Notice of the Settlement to the Proposed Class is required under Federal Rule of Civil Procedure 23(c)(2)(A) and 23(c)(2)(B), and shall be provided as set forth in the Stipulation. The method, form and content of such notice as set forth herein are appropriate and meet the requirements of Rule 23(c)(2)(a) and 23(c)(2)(B).

C. Notice of the Settlement to the Proposed Subclass is required under Federal Rule of Civil Procedure 23(c)(2)(B). The method, form and content of such notice as set forth herein for notifying the Subclass of the Settlement and its terms and conditions, meet the requirements of Rule 23(b)(2)(B) 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.

NOW, THEREFORE, IT IS HEREBY ORDERED, this 12th day of September, 2008 that:

1. 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 Friday, November 14, 2008, at 10:00 a.m. for the following purposes:

- a) To determine whether to certify the Class and Subclass and whether to appoint Advocates for Children of New York, Inc., and Morrison & Foerster, LLP as class counsel;
- b) to determine whether the proposed Settlement is fair, reasonable, and adequate and should be approved by the Court;

- c) 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;
- d) to determine whether the proposed Injunctive Relief, Monitoring and Compensatory Relief in the Stipulation are fair and reasonable relief for the Class and Subclass and should be approved by the Court; and
- e) to rule upon such other matters as the Court may deem appropriate.

2. The Court reserves the right to approve the Settlement with or without modification and with or without further notice of any kind.

3. The Court approves the form, substance, and requirements of the Notice of Proposed Class Certification and Settlement of Class Action and Settlement Fairness Hearing (the "Settlement Notice"), attached as Exhibit A to this Order.

4. Defendants shall cause the Settlement Notice, substantially in the form annexed to this Order, to be mailed, by first class mail, postage prepaid, within ten (10) business days of the date of this Order to all students who were on the register at Boys & Girls High School during the Compensatory Education Subclass Period. The first and second pages of the Settlement Notice shall be translated into Spanish and will provide instructions to receive a Spanish translation of the entire Settlement Notice. The Department of Education ("DOE") shall translate the Settlement Notice into Spanish and

afford Plaintiffs' Counsel an opportunity to review and comment on the translation prior to mailing. Defendants will use the addresses currently maintained in the DOE's electronic records. Defendants' Counsel shall, before the Settlement Fairness Hearing, file with the Court proof of mailing of the Settlement Notice in accordance with this paragraph.

5. The Court approves the form of Publication Notice of the proposed settlement to the Class and the Subclass in substantially the form and content annexed to the Stipulation to be revised consistent with the Settlement Notice, and directs that Defendants shall cause the Publication Notice to be published one-time in *The Brooklyn Daily Eagle*, *Our Time Press*, and *The Daily News* as soon as practicable after the date the Settlement Notice is mailed, but in no event later ten (10) business days after such mailing. Defendants' Counsel shall, before the Settlement Fairness Hearing, file with the Court proof of publication of the Publication Notice.

6. The form and content of the Settlement Notice, and the method set forth herein notifying the proposed Class and Subclass 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.

7. Any Member of the Proposed Compensatory Education Subclass may request to be excluded from the Compensatory Education Subclass, in the event it is certified, by returning the form attached as Exhibit G of the Stipulation no later than November 21, 2008. A Compensatory Education Subclass Member who received a GED

prior to attending a counseling session described in paragraph 17 of the Stipulation and for whom no placement is available pursuant to paragraphs 24 and 25 of the Stipulation may elect to be excluded from the Compensatory Education Subclass by returning the form attached as Exhibit F of the Stipulation (the "Second Opt-Out Notice") within five (5) school days of being notified that no such placement is available and being provided the Second Opt-Out Notice. Any member of the Compensatory Education Subclass who submits a valid and timely request for exclusion shall have no rights to Compensatory Educational Services and will not be deemed to have released any of the Defendants with regard to his or her right, if any, to seek individual relief in an appropriate forum.

8. Any Member of the Proposed Class or Subclass may enter an appearance in the case at his or her own expense, individually or through counsel of their own choice.

9. Any Member of the Proposed Class or Subclass may appear and show cause, if he or she has any reason why the Class or Subclass should or should not be certified or the Settlement should or should not be approved as fair, reasonable, and adequate, or why a judgment should or should not be entered thereon. The Court will consider comments and/or objections to class certification, the Settlement, including the Injunctive Relief, Monitoring, and 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, Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, and copies of all such papers are served, on or before Monday, November 3, 2008, upon each of the following: Shawn V. Morehead, Esq., Advocates for Children, 151 West 30th Street, 5th Floor, New York, NY 10001; and Eamonn Foley, Esq., New York City Law

Department, 100 Church Street, New York, NY 10007. Persons who intend to comment on or object to certification of the class or subclass, the proposed settlement, including the Injunctive Relief, Monitoring 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.

10. Any Member of the Proposed Class or Subclass who does not make his or her objection in the manner provided in Paragraph 9 shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to class certification, to the fairness, reasonableness, or adequacy of the Settlement, and to the award of attorney's fees and expenses, unless otherwise ordered by the Court.

11. Attendance at the Settlement Fairness Hearing is not necessary; Members of the Proposed Class and Subclass do not need to appear at the hearing or take any other action to indicate their approval.

12. 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 43 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 45 of the Stipulation shall govern the rights of the Parties.

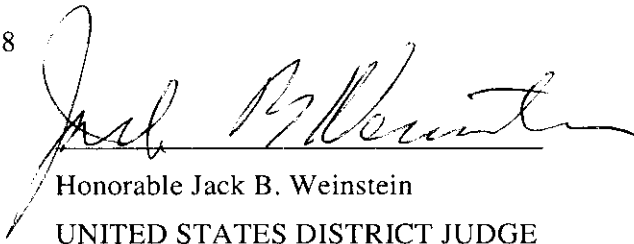
13. This Order shall not be construed or used as an admission, concession, or declaration by or against any Defendants of any fault, wrongdoing, breach, or liability. This Order shall not be construed or used as an admission, concession, or declaration by or against Named Plaintiffs or the Class that 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.

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

15. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement until this Order is superceded by an order finally approving the Settlement. The Court may approve the settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Proposed Class or Subclass.

Dated: Brooklyn, New York

September 12, 2008


Honorable Jack B. Weinstein
UNITED STATES DISTRICT JUDGE

**IF YOU ARE OR WERE A STUDENT AT
BOYS & GIRLS HIGH SCHOOL AFTER OCTOBER 11, 2002,
PLEASE READ THIS NOTICE:**

IF YOU ARE OR WERE A STUDENT AT BOYS & GIRLS, AND YOU WERE:

- put on a shortened class schedule (sometimes called an M3 or M5),
- wrongfully turned away from Boys & Girls even though you were registered,
- wrongfully kept out of school for all or part of the school day, and/or
- placed in the Attendance Academic Intervention Program ("AAIP") or the auditorium program,

YOU MAY BE ABLE TO GET ONE OR MORE OF THESE FREE EDUCATIONAL SERVICES AS PART OF A CLASS ACTION SETTLEMENT:

- Career training and/or GED preparation in both public and private programs if, as of July 1, 2008, you are:
 - 17 years old with fewer than 22 credits,
 - 18 years old with fewer than 33 credits, or
 - 19 years old or older.

Options for qualified students include career training in welding, automotive repair, plumbing, information technology, office administration, hairdressing and locksmithing.

- The ability to go to high school to work toward a diploma even after you turn 21 years old. If you are out of school now, you can go back to high school as long as you are under 21 on the day you sign up to return to school.
- Tutoring or guidance services at a Service Center operated by the Medgar Evers College School of Professional and Community Development and located at Boys & Girls.
- Help with reading skills in a literacy program at Boys & Girls during or after school hours.

To receive a placement in a career training or GED program, you must meet with a counselor to talk about your options and find a program that is right for you. You may meet with a counselor at:

[insert location in all caps or otherwise easily readable]

during any of the following times:

December 1-4 and December 8-11, 2008, 3:00 p.m. – 8:00 p.m.

January 5-8, 2009, 3:00 p.m. – 8:00 p.m.

February 9-12, 2009, 3:00 p.m. – 8:00 p.m.

If none of these times work for you, call [insert #] to schedule an appointment.

If you want tutoring, help with reading, or guidance services you may go to one of the sessions above or you may visit the Service Center located at Boys & Girls when it opens.

If you want to continue to attend school past the age of 21, you must go to a counseling session on one of the days listed above OR visit the Service Center no later than the end of the school year during which you turn 21 or the end of the fall semester of the 2009/2010 school year, whichever comes first.

These educational services are being made available as part of the settlement of a class action lawsuit. That settlement may affect your rights. Please read the following notice carefully for complete information about the settlement of the lawsuit. If you have any questions, call Advocates for Children at [insert number]. If you do not want to participate in the settlement, you must choose that option on the enclosed form and return it no later than November 21, 2008.

Even if you were NOT subject to any of the above practices, please see the section at the end of this notice "For All Students At Boys & Girls."

If you are younger than 21 years old and want to re-enroll in a public high school, you may go to a Borough Enrollment Center anytime to sign up to return to school. Contact 311 for the location and hours of the Borough Enrollment Center near you.

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

If You Are or Were a Student at Boys & Girls after October 11, 2002, and You Were Put on a Shortened Class Schedule (Sometimes Called an M3 or M5), Wrongfully Turned Away From Boys & Girls Even Though You Were Registered, Wrongfully Kept Out Of School for All or Part of the School Day, and/or Put in the Attendance Academic Intervention Program ("AAIP") or the Auditorium Program, You May Be Able to Get Free Educational Services as part of a Class Action Settlement.

If one or more of these things happened to you, and you have not earned a High School diploma by June 30, 2008, you will be entitled to additional educational services under this settlement, if it is approved.

YOUR LEGAL RIGHTS MAY BE AFFECTED BY THIS CASE WHETHER OR NOT YOU ACT. READ THIS NOTICE CAREFULLY.

The proposed settlement resolves a lawsuit over whether the Department of Education ("DOE") wrongfully put students at Boys & Girls on shortened class schedules, wrongfully turned students away even though they were on the register, wrongfully subjected students to partial day exclusion, and/or placed students in the AAIP.

For students who were subject to these practices, this proposed settlement provides for:

- (1) placement in a DOE or Non-DOE Career Training Program, GED Program, or Adult Education Program, at the DOE's expense,
- (2) the ability to attend a DOE High School past the age of 21,
- (3) access to academic support services and guidance services provided by a service center located at Boys & Girls, and/or
- (4) access to literacy program services provided at Boys & Girls.

To get many of the services described above, the student must attend a counseling session. Not all students are eligible for all of these additional educational services. The full procedures for deciding which educational services you may receive under the terms of this proposed settlement are explained in the Stipulation of Settlement (the "Agreement" or "Settlement").

If you are or were a student at Boys & Girls, but you were NOT subject to any of the above practices, please see the section at the end of this notice "For All Students At Boys & Girls."

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

ASK FOR ADDITIONAL EDUCATIONAL SERVICES	<p>Meet with a Counselor from the Service Center to identify a program that meets your needs. Counseling sessions will be held at [insert location] between 3:00 p.m. and 8:00 p.m. on December 1-4, 2008; December 8-11, 2008; January 5-8, 2009; and February 9-12, 2009. <u>You must go to a counseling session to be eligible for a placement in a career training or GED program under this settlement.</u></p> <p>To get tutoring, guidance, or help with reading, you may attend a counseling session or visit the Service Center located at Boys & Girls at any time.</p> <p>If you want to stay in school past the age of 21, you must attend a counseling session OR visit the Service Center before the end of the school year during which you turn 21 or the end of the fall semester of the 2009/2010 school year, whichever comes first.</p>
CHOOSE NOT TO PARTICIPATE	You may exclude yourself from the compensatory educational services portion of this settlement by filling out and returning the enclosed form. If you opt out, you will be free to bring any individual claims for compensation for wrongful acts by DOE at Boys & Girls alleged in this lawsuit. If you choose to opt out, you must return the opt-out form by November 21, 2008.
OBJECT	Write to the Court about why you don't like the proposed Settlement or why you don't think the proposed Class or Subclass should be certified.
GO TO A HEARING	Ask to speak in Court concerning certification of the proposed Class or Subclass and/or the fairness of the proposed Settlement.

- **If you do nothing**, you will not be able to receive free educational services and will also give up your right to bring individual claims concerning Boys & Girls' alleged wrongful exclusions between October 11, 2002 and June 30, 2008.
- These rights and options – **and the deadlines to exercise them** – are explained in this Notice.
- The Court in charge of this case still has to decide whether to certify the proposed Class and Subclass and whether to approve the proposed Agreement. The educational services described above will be available if the Court certifies the Class and Subclass and approves the proposed Agreement after the procedures detailed in this notice are followed.

BASIC INFORMATION**1. What is this lawsuit about?**

This federal lawsuit was brought by students of Boys & Girls who alleged that they were illegally excluded from the educational program at Boys & Girls. Named Plaintiffs filed the Complaint on October 11, 2005, alleging that the DOE and the Board of Education (together, the "Defendants") violated the due process clause of the 14th Amendment of the U.S. Constitution, 42 U.S.C. § 1983, the New York Constitution, the New York Education Law and the regulations promulgated thereunder when they placed the Named Plaintiffs on shortened and/or inadequate class schedules, placed them in the AAIP, and/or wrongfully transferred or discharged them from Boys & Girls. Defendants have denied any liability, wrongdoing or violation of law concerning these allegations and asserted affirmative defenses.

2. **What is a class action?**

3. The Named Plaintiffs made their claims through a class action complaint on behalf of themselves and also on behalf of other students at Boys & Girls who may have been affected by these practices. In a class action, one or more people called "Class Representatives", who include the Named Plaintiffs here, act on behalf of people who have similar claims. The Class Representatives and all people who have similar claims are the "Class Members" or the "Class." One court resolves the issues for all Class Members except for any Class Members who properly exclude themselves from the Class. U.S. District Judge Jack Weinstein is presiding over this class action. After the Settlement Fairness Hearing scheduled for November 14, 2008 at 10 a.m. (see Question 15), Judge Weinstein will decide whether to certify the Class and Subclass proposed in the Settlement. **Why did I get this notice?**

You received this notice because you were on the register at Boys & Girls some time between October 11, 2002 and June 30, 2008, and you have not received a high school diploma from the DOE. While you were there you may have been subjected to one of the practices that were challenged by this case. If that happened to you, you might be a member of the proposed "Compensatory Education Subclass," also called the "Subclass."

WHO IS IN THE PROPOSED SETTLEMENT?

To see if you may be affected by this settlement or if you can receive educational services from it, you first have to determine if you are a Member of the Proposed Subclass.

4. **How do I know if I am part of the proposed settlement?**

The parties are requesting that Judge Weinstein certify a Class and a Subclass and approve the proposed settlement set forth in the Agreement under Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure. Everyone who fits the following description is a member of the proposed Compensatory Education Subclass:

Everyone who has not earned a High School Diploma on or before June 30, 2008 and who, at any time between October 11, 2002 and June 30, 2008, and while on the school register at Boys & Girls, was (1) denied a program with at least five and one-half hours of instruction designed to lead towards Graduation, unless fewer hours of instruction were necessary for Graduation, (2) wrongfully turned away from Boys & Girls, (3) wrongfully subjected to partial day exclusion, and/or (4) placed in the AAIP.

If you are a Boys & Girls student, but were not subject to one or more of the practices described above, you are not part of the proposed Compensatory Education Subclass, but you will receive the benefit of a court order requiring the DOE to comply with the law so that these practices do not happen. Please see question number 11 below for more information.

5. **I'm still not sure if I am included.**

If you are still not sure whether you are included, you can ask for further clarification. You can call [insert number] or visit www.advocatesforchildren.org for more information.

6. **Why is there a proposed settlement?**

The Court did not decide in favor of Named Plaintiffs or Defendants. At this time, the Court has not certified the proposed Class or Subclass. Instead, both sides agreed to a proposed settlement that they believe is fair, adequate, and reasonable. That way, they avoid the cost of a trial, and the people affected will receive benefits sooner. The Class Representatives and their attorneys think the proposed settlement is in the best interests of all Class Members.

THE PROPOSED SETTLEMENT – WHAT YOU MAY RECEIVE IF YOU ARE A SUBCLASS MEMBER

7. What does the proposed settlement provide for the Subclass Members?

In exchange for the release of the Subclass Members' claims, the Defendants have agreed to the terms of a proposed settlement. The additional educational services described in this section are only available to you IF you are a Subclass Member. Here is a brief summary of the additional educational services that are available to Subclass members as part of the settlement:

Career or Vocational Training

You may be eligible for placement in a Non-DOE or DOE GED or Career Training Program or a DOE Adult Education Program if, as of July 1, 2008, you have a GED or are 17 years old with fewer than 22 credits, 18 years old with fewer than 33 credits, or 19 years old or older. The types of placements available include programs in welding, automotive repair, plumbing, information technology and administration, hairdressing, and cosmetology, as well as many other options. You may also use the counseling and academic services offered by the service center at Boys & Girls.

Additional Time In High School

If you are currently in school, either at Boys & Girls or another DOE High School, and you expect to turn 21 before you get a High School Diploma, you will have the right to continue to attend a DOE High School past the school year during which you turn 21. If you are out of school you may reenroll as long as you are under 21 when you sign up for school and may continue to attend a DOE High School past the age of 21. You may stay in school until you obtain your diploma as long as you are making satisfactory progress.

Service Center

For students who are members of the Compensatory Education Subclass described above, the DOE will establish a Service Center at Boys & Girls which will be operated by the Medgar Evers College School of Professional and Community Development to provide academic support and guidance services for the Compensatory Education Subclass Members. The Service Center will open during the fall semester of the 2008/2009 school year and operate until the end of the fall semester of the 2010/2011 school year. Services will be available both during and after regular school hours. These services are available to you even if you are attending a school or program other than Boys & Girls.

Literacy Program

The DOE will provide a literacy program at Boys & Girls using the Scholastic Read 180 Reading Intervention Program. The literacy program will begin during the spring semester of the 2008/2009 school year and will be offered until the end of the fall semester of the 2010/2011 school year. This literacy program will be provided both during and after regular school hours. If you are a Compensatory Education Subclass Member, the literacy program is available to you even if you are attending a school or program other than Boys & Girls.

8. What do I need to do to get these educational services?

If you want to use the Service Center or the Literacy Program, you just need to go to the Service Center. If you would like to continue to attend a DOE High School past the age of 21, you **must** attend a

counseling session OR speak with a counselor at the Service Center about this no later than the end of the school year during which you turn 21 or the end of the fall semester of the 2009/2010 school year, whichever comes first.

To be placed in a Non-DOE or DOE GED or Career Training Program, you must meet with a counselor. These counseling sessions will be held between 3:00 p.m. and 8:00 p.m. on December 1-4, 2008, December 8-11, 2008, January 5-8, 2009, and February 9-12, 2009 at _____. You do not need to make an appointment to attend a counseling session during these dates and times; just go. If you cannot attend a counseling session during any of these times, you can call [insert #] to schedule a session at another time.

***YOU MUST MEET WITH A COUNSELOR NO LATER THAN FEBRUARY 28, 2009,
TO RECEIVE A PLACEMENT IN A DOE OR NON-DOE CAREER TRAINING
OR GED PROGRAM***

If you would like to receive a reminder of the dates and times of the counseling sessions, you may fill out and return the enclosed form. Indicate on the form that you want to participate in the settlement and would like a reminder of the counseling session. As long as you send in the form by October 31, 2008, you will receive a reminder. You DO NOT have to return the form in order to attend a counseling session or receive academic support and literacy services at the Service Center; return the form only if you want to be reminded of the dates and times of the counseling sessions.

At the counseling session, you and the counselor will discuss the types of programs and services that are available to you. The counselor will recommend programs and services based on your transcript as well as your interests, abilities and preferences. You will be offered a placement in the program of your choice, as long as you meet the eligibility criteria and there are seats available in the program. You will be notified of your placement in a program either at your counseling session or within a week after your round of counseling sessions is complete.

A list of the programs expected to be available is in Schedule A of the Stipulation. If the DOE concludes that a program listed in Schedule A does not meet certain criteria, DOE and Plaintiffs' Counsel will have identified alternate programs by the time the guidance sessions begin.

If you have a specialized interest or need that cannot be accommodated by a program on Schedule A, you may apply for payment of the costs associated with enrollment in an accredited or otherwise licensed educational program of your choice. The project coordinator of the Service Center, in consultation with the counselors, will decide on your application. However, funds for programs other than those on Schedule A are limited, and even if your application is granted you may not be approved for payment of the entire cost of your program.

To receive any of these educational services, you will be required to sign a statement under penalty of perjury that you were subject to one or more of the practices at Boys & Girls complained of in this lawsuit: placing students on shortened schedules, wrongfully turning away Boys & Girls students despite their being on the register, wrongfully excluding students from school for part of the school day, and placing students in the AAIP. If, based on the information in your statement, DOE believes that you are not eligible to receive these educational services it will notify Plaintiffs' counsel and, if necessary, the matter will be brought to the Court's attention for resolution.

The Named Plaintiffs

The Named Plaintiffs have agreed to and approved the Settlement, and are eligible for the same benefits as you. Because they have been involved with the litigation and in the decision-making process and because their educational requirements are already known to the Defendants, the Named Plaintiffs will not need to attend the counseling sessions described above, and their placements will be negotiated

directly with counsel for the Defendants. If the Settlement is approved, the Named Plaintiffs will be eligible for the same kinds of placements and services described above.

9. When would I have access to the educational services offered under the Settlement?

The Court will hold a hearing on November 14, 2008, at 10:00 a.m. (see Question 15) to decide whether to certify the proposed Class and Subclass and whether to approve the proposed Settlement ("Settlement Fairness Hearing"). If Judge Weinstein certifies the proposed Class and Subclass and approves the proposed Settlement after the Settlement Fairness Hearing, there could still be appeals. If any appeal is filed it is uncertain how long it might take to resolve. If the proposed settlement is approved, the Service Center will open at Boys & Girls during the fall semester of the 2008/2009 school year, and the literacy program will begin during the spring semester of the 2008/2009 school year. The counseling sessions that you must attend in order to be placed in a Career Training Program, GED Program, or Adult Education Program will be held in December 2008, January 2009, and February 2009. If you are placed in one of these programs, the start date will vary depending on the individual program.

If you are under 21 and you are not currently in school and would like to re-enroll in a DOE High School, you may do so at any time. You do not need to wait until after the Settlement is approved. To re-enroll in school, you may go to a Borough Enrollment Center. Contact 311 for the location and hours of the Borough Enrollment Center near you.

10. What am I giving up to get these services?

If you do not choose to be excluded from the subclass, the Subclass is certified, and the proposed settlement is approved at the Fairness Hearing, you cannot sue, continue to sue, or be part of any other lawsuit against the DOE about the practices at Boys & Girls that are the subject of this lawsuit: placing students on shortened schedules, wrongfully turning away Boys & Girls students despite their being on the register, wrongfully excluding students from school for part of the school day, and placing students in the AAIP. It also means that all of the Court's orders will apply to you and legally bind you.

If the Class is certified and the Court approves the Settlement, all Class Members, even those who choose to opt out of the Subclass, will be bound by the terms of the proposed settlement concerning Boys & Girls' future compliance with DOE policy and state and federal law.

The release contained in the proposed settlement states:

"Settled Claims" means any and all claims (i) that have been asserted in the Action by the Named Plaintiffs, Class Members, or any of them against any of the Released Parties, or (ii) that could have been asserted in any forum by the Named Plaintiffs, Class Members, or any of them against any of the Released Parties which arise out of, relate to, or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint, except that "Settled Claims" does not include (a) claims to enforce the Settlement or any provision thereof; (b) claims for injunctive relief that are raised in *E.B. v. New York City Board of Education*, 02 Civ. 5118 (E.D.N.Y.), *J.G. v. Mills*, 04 Civ. 5415 (E.D.N.Y.), or *Jose P. v. Ambach*, 96 Civ. 1834 (E.D.N.Y.); (c) claims pursuant to the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, or N.Y. Educ. Law § 4404, to the extent that those claims do not arise out of nor are based upon the allegations, facts, occurrences, representations or omissions that establish the individual as a Compensatory Education Subclass Member; or (d) claims for individual compensatory relief relating to events that occur after July 1, 2008 brought by Current B&G Students.

11. What if I do not want to participate in the settlement?

You may choose to be excluded from the Compensatory Education Subclass by filling out the enclosed form, indicating that you want to "opt-out" or be excluded from the settlement, and returning it to [insert

address] no later than November 21, 2008. If you have received your GED prior to attending a counseling session and you want to enroll in a non-DOE career training program but there are no seats available when you attend your counseling session, you may also ask to be excluded from the Compensatory Education Subclass by filling out a form that you will receive at the session. If you ask to be excluded, you will have no rights to the additional educational services provided for in the Settlement. You will, however, keep your right to sue the DOE for individual relief arising from any of the practices at Boys & Girls complained of in this lawsuit.

FOR ALL STUDENTS AT BOYS & GIRLS

12. What does the settlement provide for students at Boys & Girls who are at risk of being put on modified schedules or otherwise denied a full instructional program?

In addition to the benefits provided to members of the Subclass, if the Court certifies the proposed Class and Subclass, everyone in the Subclass, plus all students at Boys & Girls through the fall semester of the 2010/2011 school year, will be in a "Class" protected by this Settlement.

Who is in the Proposed Class

You are in the proposed Class if you are currently on the register at Boys & Girls or will be on the register at Boys & Girls at any time before the end of the fall semester of the 2010/2011 school year OR you were enrolled at Boys & Girls any time between October 11, 2002 and June 30, 2008, and you were or are at risk of being (1) denied a program with at least five and one-half hours of instruction designed to lead towards Graduation, unless fewer hours of instruction were necessary for Graduation, (2) wrongfully turned away from Boys & Girls, (3) wrongfully subjected to partial day exclusion, and/or (4) placed in the AAIP. You are NOT a member of the proposed Class if you received a High School Diploma before June 30, 2008.

Even if you decide to be excluded from the Subclass, you are still a member of the Class if you are or were at Boys & Girls and the Court certifies the Class. You cannot opt out of the Class if the Class is certified and the Settlement is approved, but you can object to certification and/or the Settlement if you don't like any part of it by taking the steps explained in questions 15 and/or 18.

Benefits to the Class

As part of the Settlement, the DOE has agreed to provide all current Boys & Girls students with program cards that tell them they have the right to attend school full time until they receive a regular high school diploma or until the end of the school year in which they turn 21 and to have a program with at least five and one half hours of instruction designed to lead toward graduation, unless fewer hours of instruction are necessary for graduation.

The DOE has also agreed not to exclude, transfer, or discharge current Boys & Girls students from school without following state and federal law as well as the DOE's policies and procedures. The DOE will also train the Boys & Girls administration and student support staff about the DOE's obligations under the Settlement. In addition, an Outside Monitor will review and report on DOE's compliance with the requirements of the Settlement.

These agreements and the monitoring will be in place through the fall semester of the 2010/2011 school year, unless extended as described in the Agreement. If, after receiving this notice, and during the period of the Agreement, you believe that you have been excluded from Boys & Girls or transferred or discharged from Boys & Girls in violation of the Agreement, you may, after exhausting available administrative remedies if any, seek appropriate injunctive relief in the United States District Court for the Eastern District of New York. For information on how to seek such relief and provide the required notice to Defendants, see Paragraph 31 of the Agreement.

LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

Attorneys from Advocates for Children of New York and the law firm of Morrison & Foerster LLP have asked the Court to appoint them to represent you for the purposes of this Settlement, *if you are a Class Member*. Lawyers appointed by the Court to represent a class are called Class Counsel. You will not be charged for being represented by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the lawyers be paid?

The Agreement provides that the DOE will pay Class Counsel's reasonable attorneys' fees for investigating the facts, litigating the case, and negotiating the proposed settlement. **The payment of these fees will not affect the recovery of additional educational services by Class Members in any way.**

OBJECTING TO THE PROPOSED SETTLEMENT

You can tell the Court that you don't agree with certification of the Class or Subclass or with the proposed settlement or some part of it.

15. How do I tell the Court that I don't agree with class certification and/or don't like the proposed settlement?

If you are a member of the proposed Class or Subclass, you can object to class certification and to the proposed settlement. You can give reasons why you think the Court should not certify the Class or Subclass or approve the Settlement. The Court may consider your views. To object, you must send a letter saying that you object to *D.S. et al. v. New York City Dept. of Educ., et al.*, United States District Court, Eastern District of New York, No. 05 Civ. 4787 (JBW)(CLP). Be sure to include your name, address, telephone number, your signature, and the reasons you object to the proposed settlement. **Mail the objection to the following addresses postmarked no later than November 3, 2008:**

**The Clerk of the Court
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201**

**Shawn V. Morehead, Esq.
Advocates for Children of New York, Inc.
151 West 30th Street
New York, New York 10001**

**Eamonn Foley, Esq.
New York City Law Department
Office of the Corporation Counsel
100 Church St., Room 2-197
New York, NY 10007-2601**

THE COURT'S SETTLEMENT FAIRNESS HEARING

The Court will hold a hearing to decide whether to certify the proposed Class and Subclass and whether to approve the proposed settlement. You may attend and you may ask to speak, but you don't have to.

16. When and where will the Court decide whether to certify the Class and Subclass and whether to approve the proposed settlement?

The Court will hold a Settlement Fairness Hearing on November 14, 2008, at 10:00 a.m. at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, in Courtroom 10B. At this hearing, the Court will consider whether to certify the Class and Subclass and whether the proposed settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Jack Weinstein will listen to people who have properly asked to speak at the hearing. After the hearing, the Court will decide whether to approve the proposed settlement.

17. Do I have to come to the hearing?

No. Advocates for Children and Morrison & Foerster, LLP, will answer questions Judge Weinstein may have. But, you are welcome to come at your own expense. If you send an objection, you don't have to come to court to talk about it. As long as you mailed your written objection on time, the Court may consider it. You may also pay your own lawyer to attend, but it is not necessary.

18. May I speak at the hearing?

You may ask the Court for permission to speak at the Settlement Fairness Hearing. To do so, you must send a letter saying that it is your intention to appear in *D.S. et al. v. New York City Dept. of Educ., et al.*, No. 05 Civ. 4787 (JBW)(CLP). Be sure to include your name, address, telephone number, your signature and any witnesses you may call to testify and exhibits you intend to introduce into evidence at the hearing. **Your letter must be postmarked no later than November 3, 2008**, and be sent to the following addresses:

**The Clerk of the Court
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201**

**Shawn V. Morehead, Esq.
Advocates for Children of New York, Inc.
151 West 30th Street
New York, New York 10001**

**Eamonn Foley, Esq.
New York City Law Department
Office of the Corporation Counsel
100 Church St., Room 2-197
New York, NY 10007-2601**

19. What if I do nothing at all?

If you are eligible for free educational services because you are a Compensatory Education Subclass Member, but do not attend a counseling session or go to the Service Center as described above, you will NOT be able to receive these services. In addition, if the Subclass is certified and the Settlement is approved, you will have given up any right you may have had to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the DOE challenging the practices alleged in this lawsuit.

If you are or will be at Boys & Girls, but you have not been subjected to the practices described by this lawsuit, you do not need to do anything to receive the protections of this Settlement. You only need to take action if you were subjected to these practices at Boys & Girls in the past.

GETTING MORE INFORMATION

20. Are there more details about the proposed settlement?

This notice summarizes the proposed settlement. More details are in the Agreement itself. To the extent that this notice varies from the Agreement, the terms of the Agreement are controlling. You can access a copy of the Agreement by visiting the Advocates for Children website at www.advocatesforchildren.org. You can call [insert number] or visit www.advocatesforchildren.org for more information.