

United States District Court for the Eastern District of New York
J. G. et al. v. Mills, et al., 04 CV 5415

IF YOU ARE OR WERE A STUDENT WHO ATTENDED SCHOOL WHILE IN SECURE OR NON-SECURE DETENTION (“DJJ/PASSAGES ACADEMY”) OR WHO RETURNED TO A NEW YORK CITY PUBLIC SCHOOL FROM AN OCFS RESIDENTIAL FACILITY OR RESIDENTIAL CARE UNDER OCFS AFTER DECEMBER 14, 2001 (“COURT-ORDERED SETTINGS”)

PLEASE READ THIS NOTICE, BECAUSE YOU MAY BE PART OF A CLASS.

ADDITIONALLY, IF YOU ARE OR WERE A STUDENT DESCRIBED ABOVE AND YOU BELIEVE YOU WERE:

- Denied re-enrollment at an New York City Department of Education (“DOE”) enrollment location (a location authorized by the DOE to directly enroll a student or provide a school placement) upon your return from a court-ordered setting; or
- Not enrolled by the DOE within five school days of seeking re-enrollment at an enrollment location, upon your return to the DOE from a court-ordered setting;

YOU MAY BE ABLE TO GET ONE OR MORE OF THE FOLLOWING FREE EDUCATIONAL SERVICES:

- Re-enrollment in a DOE community school if you are under age 21. (A student placed on a school register in a New York City School by an enrollment center must be permitted to attend that school).
- Counseling sessions with a specially trained counselor to, if necessary: review your transcript, assist your high school with credit decisions, develop a plan to progress towards graduation, explore alternative placements, and assist in any transfer or application process. The counselor will determine whether you would benefit from any of the following:
 - Tutoring, which will be offered in small groups or one-to-one by the DOE.
 - The opportunity to earn extra credits, which may include summer school, or additional classes provided after school and/or weekends.
 - Help with basic reading or math. For students with disabilities, this help will be consistent with the student’s needs.
 - School-based Counseling.
- For students age 21 or older, counseling sessions to discuss available public adult educational opportunities, and/or vocational options and services, and, if appropriate, assistance in completing applications and/or making appointments with an institution or program.

If you have any questions, call Advocates for Children at 212-822-9510 or Legal Aid at 212-577-3933

To be eligible to receive these Compensatory Relief services, you must fill out the attached form and return it to _____ADDRESS_____ by May 31, 2011. If the settlement is approved, upon receipt and review of the form, you will be contacted to meet with a counselor to talk about your options and find a program that is right for you.

If you are eligible to receive these Compensatory Relief services and you do not want to participate in this part of the settlement, you may choose that option on the enclosed form and return it not later than May 31, 2011.

IN ADDITION, IF THIS SETTLEMENT IS APPROVED, THE DEPARTMENT OF EDUCATION HAS COMMITTED DURING THE TIME OF THE SETTLEMENT TO TAKE CERTAIN ACTIONS, DESCRIBED IN DETAIL IN SECTION 11 BELOW.

THIS SETTLEMENT WILL AFFECT YOUR RIGHTS. PLEASE READ THE ATTACHED NOTICE FOR COMPLETE INFORMATION ABOUT THIS SETTLEMENT.

Remember, 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 to sign up to return to school. Contact 311 for the location and hours of the Borough Enrollment Center near you.

If you have any questions, call Advocates for Children at 212-822-9510 or Legal Aid at 212-577-3933

If you are or were a resident of the City of New York and are a student aged 7-21 without a high school diploma who, after December 14, 2001, either (a) are or were enrolled in school while in secure or non-secure detention (“DJJ/Passages Academy”) or (b) seeks or sought to re-enroll in New York City public schools after being discharged either from DJJ/Passages Academy or from the custody of the New York State Office of Children and Family Services (“OCFS”), you may be part of a class action lawsuit.

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

The proposed settlement resolves a lawsuit over:

- 1) whether the Department of Education (“DOE”) deprived students enrolled at DJJ/Passages Academy of educational services to which they are entitled; and
- 2) whether the DOE promptly and appropriately provided students with educational placements upon their return to New York City schools from court-ordered settings.

In exchange for the release of the Class's claims, the Defendants have agreed to the terms of a proposed settlement. Also as part of the settlement, defendants have agreed to provide eligible members of a Compensatory Relief Subclass counseling sessions and educational services. The full procedures for requesting educational services under the terms of this proposed settlement are explained in the Stipulation of Settlement (“Stipulation”), and summarized below. Additionally, the rights and entitlements of class members are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

ASK FOR ADDITIONAL EDUCATIONAL SERVICES	By May 31, 2011, inform the DOE in writing (you must use the attached form) of your wish to participate in the counseling sessions. Once you meet with the specially trained counselor to discuss your education, it will be determined if you should receive additional educational services. <u>You must fill out the form and attend a counseling session to be eligible for the educational services offered under this settlement.</u>
CHOOSE NOT TO PARTICIPATE	If you qualify to receive the compensatory services you may exclude yourself from the compensatory relief offered in this settlement by filling out and returning the enclosed form. This is called “opting out.” If you opt out, you will be free to bring any individual claims for wrongful acts by the New York City DOE related to a delay in enrollment at a New York City school after returning from a court-ordered placement. If you choose to opt out, you must return the opt-out form by May 31, 2011.
OBJECT	You may write to the Court if you don't like the proposed Settlement.
GO TO THE FAIRNESS HEARING	You may ask to speak in Court concerning the fairness of the proposed Settlement.

- **If you do nothing**, you will not be able to receive the free counseling and educational services being provided through this settlement and will also give up your right to bring individual claims about the special educational services you did not get in DJJ/Passages Academy and the educational services you did not get upon your return to the DOE from court ordered settings between December 14, 2001, and present.
- 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 finally certify the proposed Class and Subclasses and whether to approve the proposed Agreement. The educational services

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described above will be available if the Court certifies the Class and Subclasses 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 and parents of students who, from December 2001 to the present, attended school at DJJ/Passages Academy, or who returned to New York City schools after attending school at DJJ/Passages Academy, an OCFS placement, or a placement with OCFS in other residential facilities. These placements are referred to here as "Court-ordered Settings." The students (the "*Named Plaintiffs*") filed the Complaint on December 14, 2004, alleging that the DOE (the "*Defendants*") violated federal and state law by depriving the Plaintiffs of educational services upon their return from Court-ordered Settings or while they were in DJJ/Passages. Defendants have denied any liability, wrongdoing or violation of law concerning these allegations. Students also sued the New York State Education Department about these issues and reached a settlement with the State in 2008.

2. What is a class action?

The Named Plaintiffs made their claims through a class action complaint on behalf of themselves and also on behalf of other students 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, sue 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. A U.S. Magistrate Judge is presiding over this class action. After the Settlement Fairness Hearing scheduled for April 28, 2011 at 11 a.m., the Judge will decide whether to certify the Class and Subclasses proposed in the Settlement.

3. Why did I get this notice?

You received this notice because DOE records show that you enrolled in DJJ/Passages Academy between December 14, 2001 and a date to be determined by the Court. 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 Class and Subclasses in this case.

4. Why is there a proposed settlement?

The Court did not decide in favor of Named Plaintiffs or Defendants. 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 settlements in the best interests of all Class Members.

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 Class or the proposed Compensatory Relief Subclass.

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

The parties are requesting that the Judge certify a Class and a Subclasses 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 Class:

If you have any questions, call Advocates for Children at 212-822-9510 or Legal Aid at 212-577-3933

All students aged 7-21 without a high school diploma who, during the period from December 14, 2001 through the end of the Stipulation period, which at a minimum will last two years, are or were residents of the City of New York; and either (a) are or were enrolled at Passages Academy, or (b) seek or sought to re-enroll in New York City public schools after being discharged from the custody of the New York State Office of Children and Family Services (OCFS).

Additionally, some class members may be part of the "Compensatory Relief Subclass." Everyone who fits the following description is a member of the Compensatory Relief Subclass:

Class Members who, at any time between December 14, 2001, and a date set by the Court, sought re-enrollment in Community School upon their discharge from a Court-Ordered Setting, and were not provided with a school placement within five school days or, if the student so requested, referral to an interview school within five school days.

6. **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 Advocates for Children at 212-822-9510 or Legal Aid at 212-577-3933 for more information.

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

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

The educational services described in this section are only available to you IF you are a Compensatory Relief Subclass Member. Here is a brief summary of the educational services that may be available to Compensatory Relief Subclass Members as part of this settlement:

- **Re-Enrollment:**

If a Compensatory Relief Subclass member is of school age and wishes to re-enroll, the subclass member will be referred to an enrollment location for prompt re-enrollment. (A student placed on a school register in a New York City School by an enrollment center must be permitted to attend that school).

- **Counseling sessions:**

If you are a Compensatory Relief Subclass member and are enrolled in a DOE high school, you are eligible to meet with a specially trained counselor. The counselor will 1) review any OCFS transcripts and, if necessary, assist your high school with credit decisions and/or discuss credit decisions that have been made with the high school, 2) develop a plan for you to progress toward graduation, including exploring alternative placements, and assisting in the transfer or application process, 3) recommend, if appropriate based on available educational information, that you receive: (i) tutoring, (ii) assistance in earning credits if you have fallen behind, (iii) help with reading or math, and/or (iv) school based guidance.

If you returned from a Court-ordered Setting and are in middle school, you are eligible to meet with a specially trained counselor who will recommend, if appropriate based on available educational information, that you receive: (i) tutoring, (ii) help with reading or math, and/or (iii) school based guidance.

If you returned from a Court-ordered Setting and are over 21, you are eligible to meet with a specially trained counselor or other DOE employee with knowledge regarding adult education opportunities. You will be provided guidance in accessing available public adult education and/or vocational options

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and services, including, if appropriate, assistance in completing applications and/or making appointments with an institution or program.

- **Tutoring**

If recommended by the counselor, you may receive tutoring, which will be offered in small groups or one-to-one by the DOE. This will be provided and/or overseen by instructors who are trained in teaching and/or trained in the subject matter in which the tutoring is provided.

- **Assistance in Earning Credits If You Have Fallen Behind**

If recommended by the counselor, you may receive educational services to allow you to earn additional credits outside of the regular school schedule. Available services may include summer school, additional classes provided after school and weekend classes.

- **Help with Reading and Math**

If recommended by the counselor, you may receive help in basic reading and math skills. This will be provided and/or overseen by a professional educator. For students with disabilities, this help with basic skills will be consistent with the student's determined needs.

8. **What do I need to do to get the free educational services?**

If you are a Compensatory Relief Subclass member and you want to get the services mentioned above, you must fill out the form attached and then attend a scheduled counseling session with a designated counselor. You must send in the form no later than May 31, 2011. If you have a question call Advocates for Children at 212-822-9510 or Legal Aid at 212-577-3933.

9. **When can I start receiving the free educational service?**

If the Court approves the settlement (see paragraph 11 below), and you have submitted the form discussed above, the DOE will contact you to tell you when to come in for your counseling session. This will happen no earlier than September 30, 2010.

YOU MUST FILL IN THE ATTACHED FORM, RETURN IT TO THE DOE BY MAY 31, 2011, AND THEN MEET WITH A COUNSELOR AT A SCHEDULED TIME

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 this discussion and your transcript and other available educational records. You will be offered educational services depending on your needs as determined by the counselor.

To be eligible for the counseling sessions and the educational services, you will be required to sign a statement that your enrollment at a DOE school when you returned from a Court-ordered Setting was delayed. 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. If there is still a question, the matter will be brought to the Court's attention for resolution.

If you have any questions, call Advocates for Children at 212-822-9510 or Legal Aid at 212-577-3933

THE PROPOSED SETTLEMENT – WHAT ACTIONS THE DOE HAS COMMITTED TO TAKE DURING THE TERM OF THE SETTLEMENT

10. What does the proposed settlement provide in the future?

In addition to the educational services described above, the DOE has committed to certain actions in the future, during the life of the settlement. If this settlement is approved, the DOE must, during the time of the settlement:

- Enroll students returning to New York City community schools from DJJ/Passages Academy within two school days of discharge from Passages Academy.
- Provide a school placement to students returning to New York City schools from OCFS or agencies under contract with OCFS within five school days of appearing at a New York City DOE enrollment location seeking enrollment.
- Provide a placement for students with disabilities returning from OCFS, either in accordance with the student's last DOE IEP or a "Comparable Services Plan."
- Develop a new IEP for students with disabilities returning from OCFS.
- Require schools to enroll students who have been assigned to the school by a DOE Enrollment Office.
- For students returning directly from DJJ/Passages Academy to a DOE community school, provide student records (e.g., transcripts, report cards, and Education Plans) from the student's time in DJJ/Passages Academy to the student's community school.
- Request records from OCFS for students returning from OCFS.
- Provide records to OCFS for students being sent to OCFS.
- Prepare a guide to assist New York City school staff on how to get educational records, award credits, and make programming decisions for students returning from DJJ/Passages Academy and OCFS placement to the New York City schools.
- Make training available for schools concerning the requirements included in the settlement, and specifically invite 10 schools a year to participate.
- Ensure that a principal or his/her designee evaluates any OCFS transcripts for students enrolled at their school after their return from OCFS.
- Ensure that DJJ/Passages Academy identifies any incoming student that has an IEP, and for such student, request a copy of the IEP.
- Determine if a student entering DJJ/Passages needs a three-year re-evaluation. For such students who have attended DJJ/Passages for 60 days, take steps to begin the review process.
- Create an Education Plan for students with disabilities who attend DJJ/Passages Academy, and review that Plan after 30 days.
- Make available remedial services to students at DJJ/Passages Academy who are performing below grade-level.
- Provide all 8th grade students in DJJ/Passages Academy the opportunity to take State standardized examinations which are required for promotion. Provide eligible high school

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students in DJJ/Passages Academy the opportunity to take Regents and Regents Competency tests.

- Designate individuals at Enrollment Offices who will be available to provide assistance to students returning from Court-ordered Settings with the re-enrollment process

SETTLEMENT PROCEDURES:

11. When will the Court determine if it approves the settlement?

The Court will hold a hearing on April 28, 2011, at 11:00 a.m. to decide whether to certify the proposed Class and Subclass and whether to approve the proposed Settlement ("*Settlement Fairness Hearing*"). If the Judge certifies the proposed Class and Subclasses 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, and no appeal is filed, the DOE will begin contacting eligible students to schedule counseling sessions, no earlier than 30 days after the settlement is approved.

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

You can only opt out if you are a member of the Compensatory Relief Subclass. If you are a member and you wish to opt out, you may only exclude yourself from the compensatory relief portion of this settlement. You may do so by filling out the enclosed form, indicating you want to "opt-out" and returning it to [ADDRESS] no later than May 31, 2011. 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 a delay in enrollment to a New York City school after return from a court ordered setting during the time period covered by this lawsuit.

All Class Members, even those who choose to opt out of the Compensatory Relief Subclass, will be bound by the terms of the proposed settlement concerning DOE's future compliance with DOE policy and state and federal law.

LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

Yes. Attorneys from the Legal Aid Society and Advocates for Children of New York 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 in this matter. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. Will the lawyers be paid?

The Agreement provides that Class Counsel' may seek reasonable attorneys' fees for investigating the facts, litigating the case, and negotiating the proposed settlement. **Any payment of Attorneys' fees will be made to class counsel and will not reduce the amount of educational services provided by the DOE under this settlement.**

If you have any questions, call Advocates for Children at 212-822-9510 or Legal Aid at 212-577-3933

OBJECTING TO THE PROPOSED SETTLEMENT

You can tell the Court that you don't agree with certification of the Class or Subclasses 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 Subclasses, 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 *J.G. et al. v. Mills, et al.* 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 address postmarked no later than April 4, 2011:

**J.G. Settlement Mailbox, c/o J.R.P. at L.A.S
199 Water Street, 3rd Floor
New York, NY 10038**

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 do not have to come to court to receive educational benefits under the settlement.

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 April 28, 2011, at 11:00 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 13D. 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. The Judge 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. Legal Aid and Advocates for Children will answer questions the Judge 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 have 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.

**If you have any questions, call Advocates for Children at 212-822-9510
or Legal Aid at 212-577-3933**

18. **May I speak at the hearing?**

You may ask the Court for permission to speak at the Settlement Fairness Hearing. Please note that any appearance will be at your own expense. To do so, you must send a letter saying that it is your intention to appear in *J.G. et al. v. Mills, et al.*, No. 04 Civ. 5415. 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 April 4, 2011, and be sent to the following addresses:

The Clerk of the Court
U.S. District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Nancy Rosenbloom
The Legal Aid Society
199 Water Street, 6th Floor
New York, NY 10038

Abigail Goldenberg, Esq.
100 Church Street, Room 2-191
New York, NY 10007

19. **What if I do nothing at all?**

If you are eligible for free educational services because you are a Compensatory Relief Subclass member, but do not return the form or attend the counseling session, you will NOT be able to receive these services and you will have given up your right to sue for individual claims for damages based on the practices alleged in the lawsuit

Whether or not you are a Compensatory Relief Subclass member, you do not need to do anything to receive the future protections of this Settlement listed in paragraph 10.

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.afc.org. You can call Legal Aid at 212-577-3933 and Advocates for Children at 212-822-9510 for more information.

If you have any questions, call Advocates for Children at 212-822-9510 or Legal Aid at 212-577-3933