

BUREAU OF SPECIAL EDUCATION

May 10, 2005

SUBJECT: Notice of Proposed Settlement of Class Action Lawsuit

Gaskin v. Pennsylvania Department of Education

TO: School District Superintendents

Intermediate Unit Executive Directors

Intermediate Unit Special Education Directors

FROM: Linda O. Rhen, Ed.D.

Director

This is to provide each school district and intermediate unit with a copy of the Notice of Proposed Settlement of Class Action Lawsuit regarding the settlement of the lawsuit known as Gaskin v. Pennsylvania Department of Education. The court has set a hearing date for consideration of the proposed settlement for Friday, June 24, 2005 at 9:00 a.m., in Courtroom 11A, United States Courthouse, 601 Market Street, Philadelphia.

The Court has ordered the Department to forward the enclosed Notice of Proposed Settlement to every school district and intermediate unit in Pennsylvania. As ordered by the Court, the Department requests that each school district and intermediate unit take the following actions:

1. Distribute a copy of the Notice to the parents of special education students;
2. Post a copy of the Notice on a bulletin board in each school building where it may be seen by parents; and
3. Inform parents how to access copies of the Notice and proposed Settlement Agreement on the websites of the Pennsylvania Department of Education http://www.pde.state.pa.us/special_edu/cwp/view.asp?a=177 <http://www.pde.state.pa.us/special_edu/cwp/view.asp?a=177&Q=109539> &Q=109539

and the Public Interest Law Center of Philadelphia
<http://www.pilcop.org> <<http://www.pilcop.org/>> .

Thank you for your cooperation in this matter.

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT

TO: The parents of all students who are eligible for special education and who have been denied the opportunity to receive a free appropriate education in regular classrooms with individualized supportive services OR have been placed in regular education classrooms without the supportive services, individualized instruction, and accommodations they need to succeed in the regular classroom.

This notice describes a proposed Settlement Agreement between students with disabilities and the Pennsylvania Department of Education and all other defendants. This Notice tells you what the parties have agreed to do, how to get more information, and how to object to the proposed Settlement Agreement if you think it is not fair.

PROPOSED SETTLEMENT

This case was filed on June 30, 1994 by 12 students with disabilities and 11 disability organizations, collectively known as the plaintiffs, against officials of the Pennsylvania Department of Education (PDE) and the State Board of Education. The plaintiffs' claims arose under the Individuals with Disabilities Act (IDEA) and related federal statutes. The plaintiffs alleged that PDE had failed to assure that students with disabilities are included in regular education classroom to the maximum extent appropriate and that students receive appropriate supplementary aids and services in regular classrooms. The settlement obligates PDE to undertake a series of reforms of its systems for exercising general supervision over special education throughout Pennsylvania. The goal of those reforms is that local school districts increase their capacity to provide the supplementary aids and services in regular education classrooms that students with disabilities need to receive a meaningful benefit from education. The parties have agreed to the following undertakings:

1. PDE policies will require Individual Education Programs (IEP) teams to consider, and school districts to provide, the full range of supplementary aids and services in regular classrooms to all students with disabilities, including those with significant disabilities, who can benefit from education in regular education classes with such services.
2. PDE will establish the Special Education Bureau Director's Advisory Panel on Least Restrictive Environment (the "Panel") to review system-wide progress in the delivery of individualized specially designed instruction in regular education classrooms, to report on the status of implementation of this agreement, and advise PDE on implementation. Nine of the Panel's 15 members will be parents of children with disabilities; 12 will be selected by the organizational plaintiffs in this case.
3. PDE will modify its IEP format to assure that IEP teams consider the provision of supplementary aids and services in regular education classes before removing students from the regular education

environment.

4. PDE will conduct a new form of compliance monitoring called Least Restrictive Environment (LRE) monitoring, in which PDE will identify the school districts most in need of systemic LRE-related changes, provide appropriate intervention to bring about those changes, and exercise continued oversight, including sanctions if needed, to determine whether intervention is effective. Each year, school districts will be assigned a data-based LRE Index Score according to which the districts will be identified for intervention. These scores will be included in publicly available school district report cards. In the districts most in need of intervention, PDE will examine a representative sample of Individualized Education Programs to determine whether the district is satisfying its obligation to provide a free, appropriate public education in the least restrictive environment. PDE will require specific staff training for district personnel to target the particular violations found.

5. PDE will investigate all complaints submitted by a parent or student, without exception, and each time a violation of a student's right to receive supplementary aids and services in a regular education classroom is identified in a complaint resolution or due process hearing, will monitor whether the school district has corrected the violation for all similarly situated students.

6. PDE will synchronize the special education planning cycle with its compliance monitoring cycle and will require school districts' special education plans to include appropriate corrective action when monitoring finds a failure to provide meaningful education benefit to students with disabilities in regular education classes and neighborhood schools.

7. PDE will provide on-site training and technical assistance to school districts to build capacity in the provision of supplementary aids and services in regular education classrooms. Training and technical assistance will be based on a needs assessment to identify the assistance needed to implement research-based practices.

8. PDE will support a grant proposal submitted by the plaintiffs to an external funding source to support advocacy and advocacy training on issues relating to the provision of supplementary aids and services in regular education classrooms.

9. PDE will provide of total of \$350,000 to the individual plaintiffs to resolve their claims for compensatory education and other relief. PDE will pay the plaintiffs' counsel the sum of \$1,825,000 for attorney fees and costs.

10. The Settlement Agreement will be enforceable for five years from the date of its approval by the Court. Throughout the life of the agreement, PDE will send regular written certifications concerning its compliance with the agreement. The parties will seek to resolve disputes by informal means and mediation before petitioning the Court for enforcement.

HOW TO OBJECT TO THIS SETTLEMENT AGREEMENT IF YOU THINK IT IS UNFAIR

If you do not want to object to this proposed Settlement Agreement, it is not necessary for you to take any action. If, however, you want to comment on the proposed Settlement Agreement or object to it as not being fair, you or your attorney on your behalf may file written comments or objections on or before June 10, 2005. Written comments and objections should be submitted to the Court at this address: Office of the Clerk, United States District Court for the Eastern District of Pennsylvania, 601 Market St., Philadelphia, PA 19106. You should send a copy of your comments to one of the attorneys for each party at the addresses contained below.

HOW TO OBTAIN MORE INFORMATION

You can get a complete copy of the proposed Settlement Agreement by writing to plaintiffs' attorneys. You may also examine the court papers filed in this case, which can be viewed at the Office of the Clerk for the United States District Court in Philadelphia. If you have any questions or would like more information about this Notice, you may contact your own lawyer or the lawyers for the class.

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