

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LYDIA REBECCA GASKIN <i>et al.</i>,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	No. 94-CV-4048
)	(JUDGE ROBRENO)
COMMONWEALTH OF PENNSYLVANIA,)	
PENNSYLVANIA DEPARTMENT OF)	
EDUCATION, <i>et al.</i>,)	
)	
<i>Defendants.</i>)	

**JOINT MOTION FOR PROVISIONAL
APPROVAL OF SETTLEMENT AGREEMENT**

Pursuant to Rule 23(e), plaintiffs and defendants move the Court for provisional approval of the Settlement Agreement that is attached as Exhibit A. The parties also move the Court to approve the form of notice that is attached as Exhibit B, enter an order providing for distribution of the notice and opportunity for the parents of class members to submit objections to the proposed Settlement Agreement and to be heard on the fairness and reasonableness of the settlement, and set a date for hearing. In support of their motion, the parties say as follows:

1. This case was filed on June 30, 1994 as a class action suit by twelve students in local school districts in Pennsylvania who asserted that they had been denied the right to be educated in regular classes with supplementary aids and services. Plaintiffs Lydia Rebecca Gaskin; Anne Corr; John Forte; Brett Michael Koneski; Samuel Luckenbill; Lisa McCann; Sarah Noe; Merrin Rainey; Elizabeth

Moser Royer; Hassan Sabree; Michael Wintering; and Tiffany Zimenoff (hereinafter referred to, collectively, as “the individual plaintiffs”) asserted that the Pennsylvania Department of Education, as the state educational agency, had the responsibility and authority to assure that those local educational agencies and others throughout the Commonwealth provide “the whole range” of supplementary aids and services to students with disabilities in regular classes and train their personnel to deliver these services adequately. The individual plaintiffs were joined by Pennsylvania organizations which had advocated for students with disabilities throughout the Commonwealth. The organizational plaintiffs are Plaintiffs The Arc, Pennsylvania; Autism Support and Advocacy in Pennsylvania; Disabled in Action; the Learning Disabilities Association of Pennsylvania; Parents’ Union for Public Schools; Pennsylvania Protection & Advocacy Association; and Pennsylvania TASH (hereinafter referred to, collectively, as “the organizational plaintiffs”).

2. The defendants are the Commonwealth of Pennsylvania; Pennsylvania Department of Education; the Secretary of Education; the Commissioner of Basic Education; the Director of the Bureau of Special Education; and the members of the State Board of Education.

3. Plaintiffs’ claims arose under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-14185 (IDEA); Section 504 of the Rehabilitation Act 29 U.S.C. § 794 and Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134 against defendant the Pennsylvania Department of Education (PDE).

4. A class consisting of all school-age students with disabilities in Pennsylvania who have been denied a free appropriate education in regular education 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 was certified on June 12, 1995, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

5. The plaintiffs claimed that the Pennsylvania Department of Education had violated its statutory duty to ensure that students with disabilities are educated with their peers who do not have disabilities to the maximum extent appropriate and that, as a consequence, plaintiffs and other members of the class have been removed from regular education classes and schools even though they could benefit from being educated in regular classes with the use of supplementary aids and services. Plaintiffs alleged, further, that PDE failed to assure that they and other class members placed in regular education classrooms for at least part of the school day were provided the supplementary aids and services they need to succeed in regular education classes.

6. The defendants denied these allegations.

7. The parties engaged in extensive discovery. There were numerous discovery disputes; the Court held several proceedings on discovery and issued a number of discovery orders. The parties exchanged approximately eighteen expert reports on subjects including the defendants' scheme for monitoring local school districts; their system of comprehensive personnel development and the delivery of technical assistance and training; special education placement patterns in Pennsylvania; the services and specially designed instruction actually received by a sample of special education students in Pennsylvania; and the educational experiences of the individual plaintiffs.

8. The parties also exchanged settlement proposals and drafts and engaged in settlement discussions before two different United States Magistrate Judges, the Honorable James R. Melinson and the Honorable Arnold C. Rapoport, both of the Eastern District of Pennsylvania. These settlement

discussions began in June, 1999 and continued, off and on, until April 30, 2002, when they were discontinued.

9. Following a discovery dispute in the spring of 2002, the Court ordered the appointment of the Honorable Louis C. Bechtle, a retired federal judge, as Discovery Master in this case. Judge Bechtle developed a process for resolution of discovery disputes and set deadlines for the completion of all discovery. Judge Bechtle resolved numerous discovery disputes, reviewed hundreds of pages of documents and issued a detailed ruling on the discoverability of these documents and parts thereof.

10. Discovery ended on May 30, 2003. In July, 2003, the parties filed cross-motions for summary judgment, followed by responses and replies. Collectively, the submissions on summary judgment were voluminous.

11. On March 24, 2004, the Court heard oral argument on the cross-motions for summary judgment. Following the argument, the parties agreed to engage in settlement talks and to seek the assistance of Judge Bechtle as a mediator, due to Judge Bechtle's familiarity with the case and the parties' trust in his fairness and objectivity.

12. The parties executed a detailed Agreement to Mediate, and submitted an order governing mediation that was submitted and entered by the Court. From July through mid-December, 2004, the parties negotiated a comprehensive settlement agreement covering all the issues in the case. The negotiations included representatives of the plaintiff parties; they included mediation sessions before Judge Bechtle, face to face meetings of the negotiating teams, correspondence and exchange of drafts. The negotiations were at arms length. The parties have concluded their negotiations and reached agreement.

13. In the proposed settlement, the Pennsylvania Department of Education agrees to a series of undertakings that, collectively, will require and encourage local school districts to provide supplementary aids and services to students with disabilities in regular education classrooms. The undertakings cover virtually every aspect of PDE's special education system, from policies and procedures and individual education planning to compliance monitoring, complaint resolution, special education planning and personnel development. The result will be a seamless system in which school district staff are informed of their responsibility to develop and provide supplementary aids and services in regular education classes, enabled to develop the skills they need to fulfill this responsibility, monitored for their compliance with this responsibility and required to take corrective action when they fail to fulfill it.

14. The following is a summary of the undertakings contained in the Settlement Agreement:
- a) PDE policies will require 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, to enable them to benefit from education in regular education classes with such services.
 - b) PDE will establish the Special Education Bureau Director's Advisory Panel on Least Restrictive Environment ("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; twelve will be selected by the organizational plaintiffs in this case.

- c) PDE will modify its IEP format to assure that IEP teams consider the provision of supplementary aids and services in regular education classrooms before removing students from the regular education environment.
- d) PDE will conduct a new form of compliance monitoring called 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 made public. 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.
- e) 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 class 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.
- f) 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 educational benefit to students with disabilities in regular education classes and neighborhood schools.

- g) 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 needs to implement research-based practices.
- h) 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 classrooms.
- i) PDE will provide a 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.
- j) 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.

15. Counsel are experienced in class action litigation; consider the proposed Settlement Agreement to be fair and reasonable; and recommend its approval by the Court.

WHEREFORE, the parties respectfully ask the Court:

1. To grant provisional approval of the Settlement Agreement;
2. To approve the form of notice attached as Exhibit B;
3. To enter an order providing notice to the parents of class members and an opportunity for them to submit objections to the proposed Settlement Agreement;
4. To set this matter for hearing.

Respectfully submitted,

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