

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

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JAMIE S., MELANIE V., BRYAN E., BIAGIO R., by their  
parents and next friends, KINA K., JANE P., PETER V.,  
BRIDGET E., AND DEBRA W., on their own behalf and  
on behalf of a class of similarly situated persons,

Plaintiffs,

v.

Case No. 01-C-0928

MILWAUKEE BOARD OF SCHOOL DIRECTORS,  
MILWAUKEE PUBLIC SCHOOLS, and WILLIAM  
ANDREKOPOLOUS, Superintendent of Milwaukee Public  
Schools in his official capacity, and the STATE OF  
WISCONSIN DEPARTMENT OF PUBLIC  
INSTRUCTION and ELIZABETH BURMASTER, State  
Superintendent of Public Instruction, in her official  
capacity,

Defendants.

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SETTLEMENT AGREEMENT

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## PARTIES, DEFINITIONS, AND RECITALS

1. Parties. This Settlement Agreement (“Agreement”) is made this 27th day of February, 2008, by and among the following Parties:
  - a. Jamie S., Melanie V., Bryan E., and Biagio R. individually and as representatives of a Class of persons similarly situated as defined by this Court; and
  - b. Wisconsin Department of Public Instruction and State Superintendent Elizabeth Burmaster in her official capacity.
  
2. Definitions.
  - a. *Action* shall mean Eastern District of Wisconsin Case No. 01-0928 and any related proceedings, as captioned above.
  - b. *MPS* shall mean Milwaukee Public Schools, Milwaukee Board of School Directors, and Superintendent William Andrekopoulos and their successors.
  - c. *DPI* shall mean the Wisconsin Department of Public Instruction and State Superintendent Elizabeth Burmaster and her successor.
  - d. *DRW* shall mean Disability Rights Wisconsin, Incorporated, successor to the Wisconsin Coalition for Advocacy (“WCA”), attorneys for the plaintiff Class/Class Members.
  - e. *Class Members* shall mean the class of students, defined by this Court on November 14, 2003, as the following: those students eligible for special education services from MPS who are, have been, or will be denied or delayed entry into the special education process which results in a properly constituted initial IEP meeting between the IEP team and the parents or guardians of the student, whose claims arose between September 13, 2000 and the date of the termination of this Agreement.
  - f. *Class* shall mean: those students eligible for special services from MPS who are, have been, or will be denied or delayed entry into the special education process which results in a properly constituted initial IEP meeting between the IEP team and the parents or guardians of the student.
  - g. *Claims* shall mean any civil claims that any Class Member could have alleged or asserted against DPI arising from or in connection with the denial of or delayed entry into the MPS special education process which results in a properly constituted initial IEP meeting between the IEP team and the parents or guardians of the student, that arose during the time period of September 13, 2000 up to and including the date the Court approves this Agreement, with the exception of any

Claims that are expressly allowed by this Agreement. Claims shall include all claims, demands, rights, liabilities, and causes of action of every nature and description, known or unknown, asserted or unasserted, including without limitation any claims that could have been asserted in this Action that are or could be construed to be related to the Class.

- h. *Settlement Agreement* or *Agreement* shall mean the terms and conditions of this Settlement Agreement and any Exhibits attached hereto.
- i. *Court* shall mean the United States District Court for the Eastern District of Wisconsin.
- j. *Fairness Hearing* shall mean a hearing before the Court, following appropriate notice to the Class Members, at which the Court shall determine whether to (a) approve this Agreement as fair, reasonable, and adequate, and (b) enter the appropriate Order.
- k. *Publication Notice* shall mean the summary notice of the proposed Settlement and Fairness Hearing for publication, in the form to be agreed upon by the Parties and submitted to the Court.
- l. *Class Member Settlement Notice* shall mean a “Notice of Pendency of Class Action Settlement Hearing” in the form agreed upon by the Parties and submitted to the Court attached as Exhibit A.

3. Recitals.

- a. Whereas DRW has brought this Action on behalf of the Class Members alleging violations of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, Section 504, Section 1983 and corresponding state laws.
- b. Whereas the Court on September 11, 2007, issued a Decision and Order that determined that MPS engaged in systemic violations of the rights of Class Members under the IDEA, and that determined that DPI did not adequately discharge its oversight obligations with respect to MPS’s IDEA compliance in the areas of systemic violation found by the Court, DPI and DRW seek a resolution of DRW’s claim against DPI that is consistent with the requirements of the IDEA, its implementing regulations, and any other relevant federal law, and the provisions of state law and regulations.
- c. Whereas DRW and DPI agree that the implementation of the terms of this Agreement and the achievement of the Outcomes identified in section I.A. of this Agreement represent an appropriate and adequate discharge of DPI’s oversight obligations with respect to the areas of systemic IDEA violations found by the Court, and further agree that the interests of the Class Members will be protected

if DPI is dismissed as a Party in this action at the time this Agreement is approved by the Court.

- d. Whereas DRW specifically reserves its right to obtain from MPS full compensation for Class Members for all Claims and for all reasonable attorneys fees and costs not paid by DPI in accordance with the terms of this Agreement.
- e. Whereas DRW and DPI have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate considering: (a) the substantial benefits the Class Members will receive from such settlement, (b) the attendant risks of litigation, and (c) the desirability of a prompt resolution given the length of this Action and the age and circumstances of the Class Members.
- f. Therefore, DRW and DPI, intending to be legally bound and in consideration of the mutual covenants and provisions set forth herein, the receipt of which by each settling Party is hereby acknowledged, DRW and DPI enter into the Agreement contained herein.

## **I. SYSTEMIC MONITORING**

### **A. Data Collection, Outcome Standards**

1. Timely Initial Evaluations, Extensions: Compliance Plan. DPI's Compliance Plan (described more fully in paragraph I.B.5.f. below) shall address the timeliness of initial evaluations for students suspected of having a disability and shall include specific steps and activities for increasing MPS' rates of timely initial evaluations. Fixed, annual benchmarks shall be an important part of the Compliance Plan, but failure to achieve such benchmarks shall not constitute a breach of this Agreement by DPI unless MPS fails to achieve substantial compliance with the Outcome Standards in paragraph I.A.2.a. below, by the end of the third measurement period. The purpose of the timely evaluation provisions of the Compliance Plan shall be to enable DPI to achieve the automatic partial termination of this Agreement as set forth in paragraph I.A.2.
2. Timely Initial Evaluations, Extensions: Outcome Standards. The provisions of this Agreement applicable to timely initial evaluations shall be dismissed with prejudice when the Independent Expert reports to the Court, based on data the Independent Expert finds to be accurate, and on the basis of sound statistical methodologies, that MPS has achieved substantial compliance with the following Outcome Standards:
  - a. As measured during a twelve (12) month period as designated in the Compliance Plan, ninety-five percent (95%) of MPS students initially referred for evaluation in each MPS school, will have their initial evaluation completed within the time

limits included in chapter 115 of the Wisconsin Statutes, as amended, unless there is evidence of a valid extension; and

- b. The level of compliance identified in I.A.2.a. is maintained during the subsequent twelve (12) month period.
  - c. Data from any 12 month period preceding the settlement of this Action submitted by DPI shall be considered in determining substantial compliance pursuant to this paragraph, subject to the Independent Experts' verification of the accuracy of the data pursuant to paragraph I.B.9., below, of this Agreement.
3. Initial IEP Team Parent Participation: Compliance Plan. DPI's Compliance Plan shall address the participation of parents or guardians at the initial IEP team meeting of students who have not previously received special education and shall include specific steps and activities for increasing MPS' rates of parent or guardian participation at initial IEP team meetings of students who have not previously received special education and the documentation of attempts to ensure parent or guardian participation at initial IEP team meetings of students who have not previously received special education. Fixed, annual benchmarks shall be an important part of the Compliance Plan, but failure to achieve such benchmarks shall not constitute a breach of this Agreement by DPI unless MPS fails to achieve substantial compliance with the Outcome Standards in paragraph I.A.4.a. below, by the end of the third measurement period. The purpose of the parent participation provisions of the Compliance Plan shall be to enable DPI to achieve the automatic partial termination of this Agreement as set forth in paragraph I.A.4.
  4. Initial IEP Team Parent Participation: Outcome Standards. The provisions of this Agreement applicable to timely initial evaluations shall be dismissed with prejudice when the Independent Expert reports to the Court, based on data the Independent Expert finds to be accurate, and on the basis of sound statistical methodologies, that MPS has achieved substantial compliance with the following Outcome Standards:
    - a. As measured during a twelve (12) month period as designated in the Compliance Plan, ninety-five percent (95%) of all initial IEP team meetings in each MPS school, of MPS students who have not previously received special education shall demonstrate one of the following:
      - i. the participation of at least one of the student's parents or guardians at the initial IEP team meeting; or
      - ii. where no parent or guardian attends the initial IEP team meeting, MPS establishes that it made reasonable attempts to ensure the parent's or guardian's participation at the meeting by satisfying measurable criteria established in the Compliance Plan; and

- b. The level of compliance identified in paragraph I.A.4.a. is maintained during the subsequent twelve (12) month period.
  - c. Data from any 12 month period preceding the settlement of this Action submitted by DPI shall be considered in determining substantial compliance pursuant to this paragraph, subject to the Independent Experts' verification of the accuracy of the data pursuant to paragraph I.B.9., below, of this Agreement.
5. Suspended Students Who Are Not Identified As Students With Disabilities: Compliance Plan. DPI's Compliance Plan shall include specific steps and activities to ensure that students who reach a set number of suspensions in a given school year are referred to a system of early intervention services designed to timely address the student's academic or behavior issues that resulted in suspensions. DPI's Compliance Plan will specify the system's early intervention procedures including the measurable criteria and the methods of measurement by which the student should be suspected of having a disability and should be referred for an evaluation to determine if the student is a student with a disability. Fixed, annual benchmarks shall be an important part of the Compliance Plan, but failure to achieve such benchmarks shall not constitute a breach of this Agreement by DPI unless MPS fails to achieve substantial compliance with the Outcome Standards in paragraph I.A.6.a. and I.A.6.b., below, by the end of the seventh measurement period. The purpose of the suspended students provisions of the Compliance Plan shall be to enable DPI to achieve the automatic partial termination of this Agreement as set forth in paragraph I.A.6.
6. Suspended Students Who Are Not Identified As Students With Disabilities: Outcome Standards. The provisions of this Agreement applicable to suspended students be dismissed with prejudice when the Independent Expert reports to the Court, based on data the Independent Expert finds to be accurate, and on the basis of sound statistical methodologies, that MPS has achieved substantial compliance with the following Outcome Standards:
- a. As measured during a twelve (12) month period as designated within the Compliance Plan, (i) ninety-five percent (95%) of MPS students in grades Kindergarten through Grade 5 in each school who are suspended ten (10) days or more during a school year; and (ii) ninety-five percent (95%) of MPS students in Grades 6 through 12 in each school who are suspended twenty (20) days or more during a school year shall be referred to a system of early intervention services approved by the Independent Expert designed to timely address the students' behavior issues that resulted in suspensions and which shall include the possibility of referral of the student for an evaluation to determine if the student is a student with a disability; and
  - b. The system of early intervention services for these referred students will be implemented with an eighty percent (80%) degree of integrity; and

- c. The levels of performance identified in paragraphs I.A.6.a. and I.A.6.b. are maintained during the subsequent twelve (12) month period.
7. Retained Students Who Are Not Identified As Students With Disabilities: Compliance Plan. DPI's Compliance Plan shall include specific steps and activities to ensure that students who are retained in a given school year are referred to a system of early intervention services designed to timely address the student's academic or behavior issues that resulted in the retention. DPI's Compliance Plan will specify the system's early intervention procedures including the measurable criteria and the methods of measurement by which the student should be suspected of having a disability and should be referred for an evaluation to determine if the student is a student with a disability. Fixed, annual benchmarks shall be an important part of the Compliance Plan, but failure to achieve such benchmarks shall not constitute a breach of this Agreement by DPI unless MPS fails to achieve substantial compliance with the Outcome Standards in paragraph I.A.8.a. and I.A.8.b., below, by the end of the seventh measurement period. The purpose of the retained students provisions of the Compliance Plan shall be to enable DPI to achieve the automatic partial termination of this Agreement as set forth in paragraph I.A.8.
8. Retained Students Who Are Not Identified As Students With Disabilities: Outcome Standards. The provisions of this Agreement applicable to retained students be dismissed with prejudice when the Independent Expert reports to the Court, based on data the Independent Expert finds to be accurate, and on the basis of sound statistical methodologies, that MPS has achieved substantial compliance with the following Outcome Standards:
  - a. As measured during a twelve (12) month period as designated within the Compliance Plan, ninety-five percent (95%) of MPS students who are retained in a grade shall be referred to a system of early intervention services approved by the Independent Expert designed to timely address the students' academic or behavior issues that resulted in retention and which shall include the possibility of referral of the student for an evaluation to determine if the student is a student with a disability; and
  - b. The program or programs for these referred students will be implemented with an eighty percent (80%) degree of integrity for a minimum period of time which will be specified in the Compliance Plan; and
  - c. The levels of performance identified in paragraphs I.A.8.a. and I.A.8.b. are maintained during the subsequent twelve (12) month period.

## **B. Appointment and Authority of Independent Expert**

1. Selection of Independent Expert; Chief of Staff. DRW and DPI hereby agree that Alan Coulter shall be appointed as Settlement Agreement Independent Expert

(“Independent Expert”). The Independent Expert shall appoint a locally available Chief of Staff to assist in the work. The Independent Expert may consider nominations for the Chief of Staff submitted by DRW or DPI.

2. Replacement of Independent Expert. In the event that the Independent Expert resigns or is unable to continue to carry out his/her duties under this Agreement, a replacement Independent Expert shall be selected as follows:
  - a. DRW and DPI shall have thirty (30) days to mutually agree on a replacement Independent Expert, who shall possess the following minimum qualifications:
    - i. Expertise with the relevant federal and Wisconsin statutes concerning the identification, location, and evaluation of students with disabilities; and
    - ii. Substantial practical or field experience and educational experience as a special education expert in designing and implementing programs or systems for the identification, location, and evaluation of students with disabilities.

If DRW and DPI are unable to mutually agree upon a replacement Independent Expert, DRW and DPI shall jointly petition the Court to appoint a replacement Independent Expert from among the nominations of DRW and DPI. DRW and DPI shall each nominate two (2) candidates for the position of Independent Expert who shall meet the qualifications of paragraphs I.B.2.a.(i) and I.B.2.a.(ii). The Court shall select one of the candidates so nominated.

3. Removal of Independent Expert. DRW and DPI agree that the Independent Expert may be removed for any reason upon the mutual written agreement of counsel for DRW and DPI. Absent mutual agreement, DRW or DPI may petition the Court for removal of the Independent Expert. The petitioner must demonstrate (a) a material failure or refusal to perform duties required of the Independent Expert under the terms of and conditions of this Agreement, or (b) misconduct on the part of the Independent Expert. In the event that the Independent Expert is removed pursuant to the provisions of this paragraph, his or her replacement shall be selected pursuant to the replacement provisions set forth in paragraph I.B.2., above.
4. Compensation of Independent Expert. In accordance with a professional service contract, the Expert shall be compensated by DPI for all professional services performed by, and for expenses incurred by, the Independent Expert in performing his duties and expenses under this Agreement.
5. Authority of Independent Expert. The Independent Expert shall have the following authority and responsibilities:
  - a. Policy and procedures compliance review. The Independent Expert shall, within six (6) weeks after the approval of this Agreement by the Court, and after

consultation with DRW and DPI, make a written determination whether MPS' policies and procedures comply with the IDEA and chapter 115 of the Wisconsin Statutes, as amended, with respect to the following areas:

- i. Location of students suspected of having a disability as required by the IDEA and chapter of the 115 Wisconsin Statutes, as amended;
  - ii. Referral for evaluation of students suspected of having a disability;
  - iii. Initial evaluation of students suspected of having a disability; and
  - iv. Parent or guardian participation in initial IEP team meetings.
- b. Needs assessment in Outcome areas. The Independent Expert shall, within three (3) months following the completion of the review of policies and procedures compliance, and after consultation with DRW and DPI, conduct a needs assessment and, if the Independent Expert determines that needs are unmet, to develop a plan to ensure:
- i. That MPS has in place a program or programs designed to timely address:
    - (a) untimely initial evaluations;
    - (b) parent or guardian participation in initial IEP team meetings; and efforts to ensure such participation; and
    - (c) referral of students with high numbers of suspensions and students who are retained in a given school year to a system of early intervention services designed to timely address those issues pursuant to specified and measurable criteria approved by the Independent Expert, and further designed to determine, pursuant to specified and measurable criteria approved by the Independent Expert, whether the student should be referred for an evaluation to determine whether the student is a student with a disability.
  - ii. that MPS has the capacity to produce data to demonstrate the extent to which it addresses the Outcomes identified in section I.A., above, that are relevant to the Class according to outcome based performance indicators developed by the Independent Expert.
- c. SOAP and program changes in Outcome areas. The Independent Expert shall have the authority to require MPS to make changes the Independent Expert determines are necessary to its Special Education Oversight Action Plan (SOAP) or its programs to achieve the Outcomes identified in section I.A., above, that are relevant to the Class.

- d. CIFM changes in Outcome areas. The Independent Expert shall have the authority to require MPS to make changes the Independent Expert determines are necessary to MPS' Continued Improvement Focused Monitoring (CIFM) system needed to address the Outcomes identified in section I.A., above, that are relevant to the Class.
- e. SOAP, CIFM changes: consultation, judicial review. Before issuing the written determinations in paragraphs I.B.5.a. and I.B.5.b., above, and before requiring MPS to make any of the changes in paragraphs I.B.5.c. and I.B.5.d., above, the Independent Expert shall consult with DRW and DPI about the determination(s) and/or change(s). If DRW or DPI disagree on any of the Independent Expert's determination(s) or required change(s), DRW or DPI shall have the right to petition the Court within forty-five (45) days to make a final determination regarding the reasonableness of the Independent Expert's determination or required change. The Independent Expert shall not be authorized to make determinations or require changes outside the scope of the Class. In the event DRW or DPI appeals the reasonableness of any required change or determination, the Court shall determine whether the provisions contained within this paragraph have been satisfied.
- f. Compliance Plan development, judicial review. DPI, with input from DRW and the Independent Expert, shall devise a plan that addresses the implementation of the terms of this Agreement, hereinafter referred to as DPI's "Compliance Plan."
  - i. Within thirty (30) days of the completion of the Needs Assessment, DRW, DPI and the Independent Expert shall meet to discuss the types of steps/activities that will be included in the Compliance Plan, as defined in section I.A., above. Within ninety (90) days after the completion of the Needs Assessment, DPI and the Independent Expert shall circulate a draft of the Compliance Plan to DRW. Within two (2) weeks of receiving the draft Compliance Plan, DRW shall submit written comments to DPI and the Independent Expert. The Compliance Plan shall be completed after review and consideration of DRW's comments within thirty (30) days. If DRW, DPI and the Independent Expert are unable to reach an agreement on the Compliance Plan, the matter shall be submitted to the Court by DRW or DPI for resolution in conformance with this Agreement within twenty (20) days of issuance of the Compliance Plan.
  - ii. Subject to the approval of the Independent Expert, the Compliance Plan shall contain the following information for each of the Outcomes identified in section I.A., above, that are relevant to the Class:
    - (a) Annual benchmarks, as defined in section I.A., above, to be achieved by the conclusion of the plan year when appropriate;

- (b) Action steps to be taken to achieve the annual benchmarks;
  - (c) Responsible staff for implementing the action steps;
  - (d) The evidence that will be maintained to establish that the action step has been completed;
  - (e) The approximate date by which the action step will be completed;
  - (f) The date and method by which the results of each action step will be reported to the Independent Expert;
  - (g) The dates which the measurement periods under section I.A. of this Agreement will include.
- iii. At any time, DRW or DPI may request that the Independent Expert approve a revision to the Compliance Plan using the same procedures for determination of the Compliance Plan. The existing Compliance Plan will remain in effect pending any revision request.
6. Independent contractors. In performing his duties under this Agreement, the Independent Expert or his replacement shall be deemed independent contractors and shall not be considered employees, agents, or officers of DRW or DPI for purposes of carrying out the terms of this Agreement. For purposes of accessing MPS data, facilities, and information, DPI shall name the Independent Expert and the Independent Expert's Chief of Staff as authorized representatives of DPI (*see* 34 C.F.R. § 99.31(3)(iv); Wis. Stat. § 118.125(g)(2)) having a legitimate educational interest so as to comply with the requirements of FERPA, 20 U.S.C. § 1232g; HIPPA Security and Privacy Rule, 45 C.F.R. Part 160, Subparts A-C; and Wis. Stat. § 118.125. The Independent Expert shall carry out his or her duties as set forth in his or her respective professional services contract and shall maintain insurance as routinely required.
7. Access to facilities, data, and employees. DPI shall cooperate with the Independent Expert, and DPI shall order MPS to cooperate with the Independent Expert to gain access to MPS facilities, MPS and DPI employees, and all relevant MPS data and student files relating to Class Members. DPI and the Independent Expert shall comply with the requirements and restrictions of state and federal law for all purposes relating to the enforcement and implementation of this Agreement. The Independent Expert shall maintain the confidentiality of all confidential and privileged materials and shall not disclose their contents to DRW, MPS, DPI, or other parties, except as authorized by law or court order. Notwithstanding the foregoing, the Independent Expert shall not be entitled to access materials protected by the attorney-client privilege or attorney work product from DRW, MPS, and DPI. The Independent

Expert, DRW, or DPI may petition the Court to resolve disputes regarding the Independent Expert's access to data and information.

8. Schedule for consultation with counsel for parties. The Independent Expert shall periodically, and not less than every six (6) months, meet with DRW and DPI to review progress toward achieving the Outcomes identified in section I.A. of this Agreement, to share information, and to avoid disputes.
9. Data verification. In fulfilling his obligations under this Agreement, the Independent Expert shall verify the accuracy of the data MPS uses to measure the annual benchmarks and Outcomes identified in section I.A. of this Agreement; and shall make written reports as to those benchmarks and Outcomes on the basis of sound statistical methodologies and only on data and other information that the Independent Expert finds to be accurate. DPI employees shall cooperate with the Independent Expert in conducting such verification activities as the Independent Expert determines to be necessary.
10. Reports, communications with counsel for parties. DRW will be provided copies of reports issued by the Independent Expert subject to the requirements and restrictions of state and federal laws. The Independent Expert shall provide DRW with copies of proposed reports timely to permit comment and no later than one (1) week prior to final issuance. The Independent Expert shall provide DRW with copies of reports no later than the date they are provided to DPI. DRW legal counsel shall have the right to communicate with the Independent Expert on all subjects related to this Agreement.

### **C. Training of Staff and Parents**

1. Training of MPS staff. DPI will order MPS to provide training to staff including administrators, regular educators, school psychologists and social workers, security staff, and any others deemed necessary by the Independent Expert on indicators of special education needs, referral procedures, and Child Find obligations.
2. Training of parents.
  - a. DPI shall enter into a professional services agreement with FACETS, beginning in the 2008-09 school year, at an annual sum not to exceed \$75,000 and at the level of 1.0 full-time equivalent position for the following services: (i) providing training and information to parents and parent groups of MPS students and to other FACETS staff, with respect to the location, evaluation, and identification of students with disabilities; (ii) providing training and information to parents and parent groups of MPS students and to other FACETS staff, with respect to MPS' general education policies, practices, procedures, and programs for addressing the problems of students with academic difficulties or behavioral issues who may be eligible for special education; (iii) providing support and direction to parents attending IEP team meetings; and (iv) participating in joint trainings with MPS Parent Centers parent liaisons regarding the issues described in clauses (i), (ii), and (iii) of this paragraph.
  - b. Payments under this paragraph will cease at the conclusion of the next subsequent fiscal quarter following the termination of this Agreement as set forth in section II.C. of this Agreement, provided that DPI's total payment obligation to FACETS under this Agreement shall not exceed \$300,000.

## **II. ENFORCEMENT, MODIFICATION, AND TERMINATION**

### **A. Enforcement**

1. If DRW determines based upon its good faith review of available evidence, that MPS or DPI is out of compliance with any provision of this Agreement, DRW will notify DPI in writing accompanied by supporting documentation.
2. DRW and DPI shall engage in a good faith negotiation to reach agreement within forty-five (45) days of the receipt by DPI of any alleged noncompliance and any necessary corrective actions, including a time period for implementation of such corrective actions, and shall make all reasonable efforts to reach agreement. This forty-five (45) day time period can be extended by mutual agreement.
3. If no agreement on the issue of noncompliance or necessary corrective action is reached within the timeframe set in paragraph II.A.2., above, the dispute will be

submitted to the Independent Expert for a determination of MPS's or DPI's compliance or non-compliance and appropriate corrective action. Said determination shall be made in not more than thirty (30) days.

4. DRW or DPI may enforce or challenge the determination or corrective action ordered by the Independent Expert by filing a motion with the Court within thirty (30) days for non-compliance, contempt, remedial actions, or modification or rejection of the Independent Expert's determination or order; provided that contempt shall not be a remedy for enforcing the annual benchmarks contained in the Compliance Plan set forth in paragraph I.B.5.f., above, if the Independent Expert determines that MPS is in substantial compliance with all other provisions of the Compliance Plan.
5. The Court shall retain ultimate jurisdiction to enforce this Agreement.
6. DRW shall not seek any enforcement action with respect to DPI's obligations under this Agreement, until the deadline for performing the obligation has expired.

## **B. Modifications**

1. In the event that DRW or DPI notifies the Independent Expert and other counsel in writing of the amendment or repeal of any law or regulation upon which any outcome or obligation set forth in this Agreement is based, the Independent Expert shall consider the extent to which any outcome or obligation should be modified to ensure MPS's compliance with applicable special education laws and regulations. The Independent Expert shall make such determination within thirty (30) days of receiving notice of such amendment or repeal from any DRW or DPI. In the event that the Independent Expert determines that any outcome or obligation should be modified, the Independent Expert shall notify counsel for DRW and DPI in writing. Upon such modification, the outcome or obligation so affected shall be modified under this Agreement. The Independent Expert's determination shall become effective forty-five (45) days after the date of such notification unless DRW or DPI petitions the Court within the forty-five (45) day time period. If such a petition is filed, no modification shall take place unless the Court so orders a modification to the Agreement.
2. DRW and DPI may mutually agree to modify this Agreement at any time.

## **C. Termination**

1. If after four (4) years from the date the Court approves this Agreement, MPS has not attained the Outcomes set forth in paragraphs I.A.2. and I.A.4. and if after eight (8) years from the date the Court approves this Agreement, MPS has not obtained the Outcomes set forth in paragraphs I.A.6. and I.A.8, above, the Independent Expert shall provide the Court and counsel for DRW and DPI with a written report that identifies the Outcome or Outcomes that have not been attained.

The Court shall conduct a hearing to determine the nature and extent of the failure to attain the Outcome or Outcomes. At said hearing, the Independent Expert and DPI shall present a plan that entails additional steps to be taken to achieve each unattained Outcome. Said plan shall specifically identify the time frame by which said Outcome or Outcomes must be achieved and the penalties, if any, to be incurred by MPS or DPI for failure to achieve such Outcomes within the stated time frame. DRW and DPI shall have an opportunity to propose modifications to said plan, including a completely different plan. The Court shall rule on which plan shall be ordered. DPI is not required to submit a plan if DPI elects to prove at the hearing that MPS has fulfilled the Outcomes set forth in paragraphs I.A.2., I.A.4., I.A.6., and I.A.8. above, or IDEA's requirements with respect to each unattained Outcome.

2. DRW and DPI expressly agree that the failure of MPS and DPI to meet the annual benchmarks set forth in the Compliance Plan shall not be deemed to be a breach of this Agreement, and contempt shall not be a remedy for enforcing the annual benchmarks set forth in the Compliance Plan, if the Independent Expert determines that MPS is in substantial compliance with all other provisions of the Compliance Plan. DRW and DPI also expressly agree that during the first four years after the approval of this Agreement, DPI shall not petition for partial or full termination of this Agreement unless MPS has attained some or all of the Outcomes set forth in paragraphs I.A.2., I.A.4., I.A.6., and I.A.8. above, of this Agreement.

### **III. ADDITIONAL PROVISIONS**

1. Preclusive Effect. This Agreement shall have preclusive effect on any Class Member bringing any class action Claim (or any other representative Claim on behalf of someone other than the plaintiff's or Class Member's child) concerning DPI's compliance with IDEA or Section 504 concerning issues arising from or related to the Class that arose from the time period from September 13, 2000, up to and including the date this Agreement is approved by the Court.
2. Governing Law. This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Wisconsin.
3. Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision unless the effect of the determination that the provision is invalid, illegal, or unenforceable has the effect of depriving any of the Parties of material benefits under this Agreement. In that event, unless the Parties are able to reach a mutual agreement to revise this Agreement satisfactorily to all Parties within sixty (60) days of notice of the declaration of invalidity, illegality, or unenforceability of any provision, then this entire Agreement shall be deemed invalid, unenforceable, and automatically

- rescinded. However, if there is no mutual agreement to revise this Agreement, each party reserves the right to Petition the Court to Modify the Consent Decree.
4. Counterparts. This Agreement may be executed in any number of counterparts and all signatures need not be on the same counterpart. Each of the separate counterparts, when so executed and delivered, shall be an original. After execution of the counterparts by each designated signatory Party, DPI agrees to furnish each Party with a composite conformed copy of this Agreement reflecting all counterpart signatures.
  5. Captions. Paragraph titles or captions contained in this Agreement are inserted as a matter of convenience and for reference only and in no manner define, limit, extend, or describe the scope of this or any provision of this Agreement.
  6. Mutual Interpretation. The Parties agree and stipulate that this Agreement was negotiated on an arm's length basis between Parties of equal bargaining power. This Agreement has been drafted jointly and approved by counsel for the Parties. Accordingly, this Agreement shall be mutually interpreted and not construed in favor or against any of the Parties. No provision in this Agreement is to be interpreted for or against any Party because that Party or its legal representative drafted such provision.
  7. No Admission of Wrongdoing or Liability. The Parties to this Agreement agree that this Agreement represents a good-faith compromise and settlement of disputed Claims. This Agreement is without prejudice or value as precedent and shall not be used in any action, lawsuit, arbitration, mediation, proceeding, or hearing of any kind to create, prove, or interpret the obligation under, or the terms and conditions of, this Agreement by the Defendants. The Parties understand, acknowledge, and agree that the negotiation, execution, and performance of this Agreement shall neither constitute nor be construed as an admission, concession, or waiver of any legal position or defense that any party hereto might otherwise assert.
  8. Entire Agreement: Amendment. This Agreement constitutes the entire agreement between the Parties with respect to the Claims and supersedes all other agreements and understandings among or between any of the Parties hereto relating to the Claims. This Agreement may be amended only by a written agreement executed by the Parties affected by the modification.
  9. Waiver. No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach of any provision shall not be deemed to be a waiver of any other breach of the same or other provisions.
  10. Additional Documents. All Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

11. Warranty of Capacity to Execute Settlement Agreement. Each Party represents and warrants that no other person or entity has any interest in the Claims, demands, obligations, or causes of actions referred to in this Agreement, except as otherwise set forth in this Agreement; that they have the sole right and exclusive authority to execute this Agreement and receive the consideration specified in it; that the Parties executing this Agreement have lawful authority to execute the same; and that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the Claims, demands, obligations, or causes of action referred to in this Agreement.
12. Disputes Before the Court. All disputes under this Agreement which any party brings to the Court shall be governed by the IDEA, State of Wisconsin special education law, and limited by the terms of this Agreement herein.
13. Settlement Agreement is not a Limitation on DPI's Oversight Authority. Nothing in this Settlement Agreement supersedes DPI's oversight authority to ensure MPS's compliance with state or federal special education laws, whether or not related to Child Find, and does not limit DPI's authority to order MPS to take corrective action and/or to impose sanctions against MPS for any compliance issues DPI determines to exist, except to the extent such actions specifically conflict with the terms of this Settlement Agreement.

#### **IV. RELEASE**

As of the day this Agreement is approved by the Court, in full, complete and final compromise and settlement of any and all Claims, the Parties and each of the Class Members release and forever discharge and acquit DPI from any and all Claims. Therefore, upon the approval of this Agreement by the Court, each of the Settlement Class Members shall be deemed to have fully, finally, and forever released, discharged and acquitted DPI from any and all Claims, obligations, liabilities, expenses, costs, attorneys' fees, damages, demands, rights and causes of action, known or unknown, arising at any time, that arise from or are related to or connected with the Claims arising from or related to the Class. However, nothing in this release shall prevent the plaintiffs from seeking to enforce this Agreement against DPI as well as to enforce any Consent Decree which the Court may order, per the terms set forth in this Agreement.

## V. ATTORNEYS FEES AND COSTS

DPI payment. DPI shall make a one-time payment of four hundred seventy five thousand dollars (\$475,000.00) to DRW in attorneys' fees and costs, payable within 45 days after the date the Court approves this Agreement. Plaintiffs reserve the right to seek payment of any attorneys' fees and costs which they may incur in order to enforce this Agreement against DPI.

DISABILITY RIGHTS WISCONSIN, INC.

Dated this \_\_\_\_\_ day of February, 2008.

131 West Wilson Street, Suite 700  
Madison, WI 53703  
(608) 267-0214

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JEFFREY SPITZER-RESNICK  
State Bar # 1009690  
Attorney for plaintiff class

Dated this \_\_\_\_\_ day of February, 2008.

6737 West Washington Street  
Milwaukee, WI 53214  
(414) 773-4646

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MONICA MURPHY  
State Bar # 1005145  
Attorney for plaintiff class

J.B. VAN HOLLEN  
ATTORNEY GENERAL

Dated this \_\_\_\_\_ day of February, 2008.

Wisconsin Department of Justice  
P.O. Box 7857  
Madison, WI 53707-7857  
(608) 266-2580

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BRUCE A. OLSEN  
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State Bar #1009157  
Attorneys for Dept.of Public Instruction and  
Elizabeth Burmaster

## LEGAL NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT HEARING

The case is called Jamie S., et al., v. Milwaukee Public Schools, et al. Magistrate Judge Aaron Goodstein is overseeing this class action in the U.S. District Court, Eastern District of Wisconsin, Civil Case Number 01-C-0928.

A hearing on the proposed partial settlement of the above captioned matter shall be held before United States Magistrate Judge Aaron Goodstein commencing at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 2008

In Room \_\_\_\_ of the United States Court House, 517 E. Wisconsin Ave. , Milwaukee, WI 53202.

All interested class members are invited to attend to address the fairness of this proposed partial settlement. The Plaintiffs are asking for declaratory and injunctive relief. They are **not** seeking money damages.

The court has decided that the class of plaintiffs in this lawsuit consists of:  
*those students eligible for special services who are, have been or will be denied or delayed entry into the special education process which result in a properly constituted initial IEP meeting between the IEP team and the parents or guardians of the student.*

### **Examples may include:**

- **Parents who requested that their children be evaluated for special education services, and MPS either never evaluated their children, or failed to do so within the legally permissible time period (60 or 90 days from the referral depending on when the referral was submitted);**
- **Children who had an IEP meeting to determine whether they should begin receiving special education services, but MPS did not have all the right people at the IEP meeting, in order to make such a decision;**
- **Children, on whose behalf teachers or other professionals, such as doctors or psychologists, suggested to MPS that they should receive special education supports or services, but MPS failed to evaluate those children, or failed to do so within the legally permissible time period (60 or 90 days from the referral depending on when the referral was submitted);**
- **Children who have been suspended more than 10 days in a school year, but MPS failed to hold a special education evaluation in order to determine whether or not those children needed special education services.**
- **Children who were retained for one or more grades in school, but MPS failed to hold a special education evaluation in order to determine whether or not those children needed special education services.**

If you are a member of the class, you are represented by attorneys from Disability Rights Wisconsin (DRW), through the class representatives. If you want to find out whether you

may be a class member, please contact DRW. The defendants are the Milwaukee Public School District and the Wisconsin Department of Public Instruction. They also have attorneys working on their respective sides.

On September 11, 2007, Magistrate Judge Aaron Goodstein issued an order finding that between September 2000 to June 2005, Milwaukee Public Schools systemically violated the Child Find provisions of the Individuals with Disabilities Education Act (IDEA) in the following ways: (1) MPS failed to refer children with a suspected disability in a timely manner for an initial evaluation, *i.e.*, the 90 day requirement; (2) MPS improperly extended the 90 day time requirement; (3) MPS imposed suspensions in a manner that improperly impeded its ability to refer children with suspected disabilities for an initial evaluation; and (4) MPS failed to insure that the child's parents or guardians attend the initial evaluation. The Court also found that between September 2000 and June 2005, the Wisconsin Department of Public Instruction (DPI) violated the IDEA by failing to adequately discharge its oversight and supervisory obligations in regard to the compliance by MPS with the IDEA and related state statutes, as that compliance relates to the systemic violations found by the Court. The Court ordered the matter to proceed to a remedy stage. DRW and the DPI have reached an agreement of resolution of the matter as it pertains to the claims against DPI. No remedy has been agreed upon with Milwaukee Public Schools and that matter is still pending.

In summary the terms of the agreement include the following:

- 1) Appointment of an independent outside expert to monitor the Milwaukee Public Schools' state and federal special education law obligations, and the establishment of measurable standards for MPS's future performance with respect to a) timely initial evaluations of children for special education; b) parental participation in initial IEP meetings; c) referral of students who reach a set number of suspensions in a given school year to a system of building-based early intervention services to address the student's academic or behavior issues that resulted in suspensions; d) referral of students who are retained in a given school year to the system of building-based early intervention services.
- 2) The independent expert shall conduct a review of policy and procedures in Milwaukee Public Schools and conduct a needs assessment regarding Child Find. The expert will oversee the creation of a compliance plan to achieve agreed upon performance standards in the Milwaukee Public Schools District and have the authority to see that those standards are met.
- 3) The creation of a parent trainer position housed at F.A.C.E.T.S. to provide training and support to MPS parents and others. This position will be funded by DPI at an annual cost not to exceed \$75,000, and a total cost not to exceed \$300,000.

- 4) The payment of attorney's fees to plaintiff's counsel in the amount of \$475,000.
- 5) Release by all class members of all claims against DPI that arose out of or were related to the litigation, between September 13, 2000, and the date on which the Court approves the settlement agreement.
- 6) Reservation by plaintiffs' counsel of the rights of all class members to seek relief from MPS with respect to claims that arise out of or are related to the litigation between September 13, 2000, and the date on which the Court approves the settlement agreement, including but not limited to claims for compensatory services for injured class members, and claims for additional attorneys fees and costs.
- 7) Dismissal of DPI as a party defendant in further proceedings in the lawsuit, subject to the Court's retention of jurisdiction to enforce the terms of the agreement.

**For a detailed copy of the settlement agreement, contact the Disability Rights Wisconsin (DRW) at: (414) 773-4646, or see our website [www.disabilityrightswi.org](http://www.disabilityrightswi.org)**