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JUL 05 2005

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

LUTHER D. THOMAS, Clerk
By: *J. Reed* Deputy Clerk

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KENNY A., by his next friend,)
Linda Winn; et al.,)
)
Plaintiffs,)
)
vs.) Civil Action No. 1: 02-CV- 1686-MHS
)
SONNY PERDUE, in his official)
capacity as Governor of the)
State of Georgia; et al.)
)
Defendants.)
-----X

ORDER

This matter came before the Court on the Joint Motion for Preliminary Approval of Settlement Agreement, Class Notice, and Fairness Hearing. The Court has preliminarily reviewed and evaluated the proposed settlement between the Plaintiff Class and the State Defendants and finds that it appears to be within the range of reasonableness. Accordingly, the Joint Motion is, for good cause, **GRANTED**. The Court rules, orders, and directs as follows:

1. ***Proposed Settlement.*** The terms of the settlement at issue are embodied in the proposed Consent Decree filed in conjunction with the Joint Motion. It is a

partial settlement; class claims remain pending against Fulton and DeKalb Counties. Nevertheless, based on the Court's familiarity with this case, which has been pending for three years, the Court believes that this proposed settlement is worthy of the class' consideration, that notice of this proposed settlement should be directed to class members, and that a hearing should be conducted to ascertain whether this settlement meets the standards required for final approval pursuant to Fed. R. Civ. P. 23(e).

2. **Hearing.** A hearing shall be held in Courtroom 1707, Richard B. Russell Federal Building and United States Courthouse, 75 Spring Street, Atlanta, Georgia, at 1:30 p.m. on Wednesday, September 21, 2005, to consider whether the proposed settlement is fair, reasonable and adequate and should receive the Court's final approval pursuant to Fed. R. Civ. P. 23(e).

(a) Objections by class members to the proposed settlement will be considered if filed in writing with the Clerk of the United States District Court for the Northern District of Georgia, Atlanta Division, on or before Thursday, September 1, 2005.

(b) At the hearing, class members may be heard orally in support of or in opposition to the proposed settlement, provided such persons file with the Clerk on or before Friday, September 9,

2005 a written notification of their desire to appear personally, indicating (if in opposition to the settlement) briefly the nature of the objection.

- (c) Counsel for the Class and for State Defendants should be prepared at the hearing to respond to objections filed by class members and to provide other information, as appropriate, bearing on whether or not the settlement should be approved.

3. **Notice.** On or before Monday, July 25, 2005, State Defendants shall, at their sole expense, take the following steps to notify class members of the proposed settlement:

- (a) State Defendants shall prepare and mail true and correct copies of the Notice of Proposed Settlement in *Kenny A., et al. v. Perdue, et al.*, attached hereto (“Notice to Class Members”), postage prepaid, by first class mail to all of the following persons/locations, with an accompanying letter signed by Commissioner Walker, giving notice of the settlement and directing that the Notice to Class Members be prominently and immediately posted in the location(s) in which it is most likely to be seen by foster children and their legal representatives, and

that the notice remain posted until Thursday, September 1, 2005:

- i.) All DFCS county offices in each county where any class member resides as of the date class notice issues;
- ii) All DFCS-operated institutions and facilities in which any class member is placed as of the date class notice issues;
- iii) Each person or agency with whom DFCS or DHR contracts for the provision of foster care services and/or services for any class member as of the date class notice issues;
- iv) All group homes and congregate living facilities in which any class member is placed as of the date class notice issues;
- v) The judges and clerks of each Superior Court with jurisdiction over custody or parental rights with respect to any class member as of the date class notice issues;

- vi) The judges and clerks of each Juvenile Court with jurisdiction over any class member as of the date class notice issues;
 - vii) The County Commissioners, County DFCS Boards, Judicial Citizen Review Panels ("JCRP"), and all Child Advocate Attorneys for Fulton County and DeKalb County;
 - viii) Each person who serves as a child advocate attorney, Court Appointed Special Advocate, guardian ad litem, or member of a JCRP with respect to any class member as of the date class notice issues; and
 - ix) Each person who has been approved as of the date class notice issues to serve as a foster parent, putative adoptive parent, legal guardian, or to otherwise act *in loco parentis* for any class member.
- (b) State Defendants shall also mail true and correct copies of the Notice to Class Members by first class mail, postage prepaid, with an accompanying letter signed by Commissioner Walker, to each class member who has attained or will attain the age of


fourteen (14) years on or before the date notice issues, and to the foster parents or other person acting *in loco parentis* for each class member.

- (c) State Defendants shall send copies of this Order, the Notice to Class Members, and the proposed Consent Decree to any member of the Georgia public who requests it by first class mail within five (5) business days of receiving the request.
- (d) State Defendants shall post this Order, the Notice to Class Members and the proposed Consent Decree on the Department of Human Resources website and shall maintain that posting until further order from the Court.
- (e) State Defendants will file with the Clerk on or before Friday, July 29, 2005, an affidavit certifying compliance with the notice requirements of this Order.
- (f) On or before Monday, August 1, 2005, State Defendants will supply Class Counsel with an alphabetical list (including name and all available contact information) of: (i) all persons who, according to State Defendants' records, appear to be class

members; and (ii) all persons to whom Notice to Class

Members has been mailed pursuant to this Order.

So **ORDERED** this 5th day of July, 2005.



Marvin H. Shoob, Senior Judge
United States District Court
Northern District of Georgia

**FORM OF ORDER JOINTLY
PROPOSED BY:**

Jeffrey O. Bramlett
BONDURANT MIXSON & ELMORE, LLP
3900 One Atlantic Center
1201 West Peachtree St. NW
Atlanta GA 30309
(404) 881-4100
Co-Lead Counsel for Plaintiff Class

AND

Mark H. Cohen
Special Assistant Attorney General
TROUTMAN SANDERS LLP
5200 Bank of America Plaza
600 Peachtree Street, N.E.
Atlanta, GA 30308
(404) 885-3597
Lead Counsel for State Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

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KENNY A., by his next friend,)	
Linda Winn; et al.,)	
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Plaintiffs,)	
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vs.)	Civil Action No. 1: 02-CV- 1686-MHS
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SONNY PERDUE, in his official)	
capacity as Governor of the)	
State of Georgia; et al.)	
)	
Defendants.)	
-----X	X	

NOTICE OF PROPOSED SETTLEMENT

PLEASE TAKE NOTICE:

**TO ALL CHILDREN WHO HAVE BEEN, ARE, OR WILL BE ALLEGED OR
ADJUDICATED DEPRIVED WHO (1) ARE OR WILL BE IN THE CUSTODY OF
GEORGIA'S DEPARTMENT OF HUMAN RESOURCES' DIVISION OF FAMILY AND
CHILDREN SERVICES ("DFCS"); AND (2) HAVE OR WILL HAVE AN OPEN CASE
IN FULTON COUNTY DFCS OR DEKALB COUNTY DFCS:**

I. Background of the Case

This notice concerns a proposed settlement of the lawsuit known as *Kenny A. et al., v. Perdue*. **If you are one of the children described above, or if you are the legal representative of one or more of these children, then you should read this notice.**

Kenny A. was filed in June 2002 in the Superior Court of Fulton County against the Governor of Georgia, the Commissioner of the Department of Human Resources, the Fulton County Department of Family and Childrens Services and its Director ("Fulton DFCS"), the DeKalb County Department of Family and Children Services and its Director ("DeKalb DFCS") all in their official capacities ("State Defendants"), as well as Fulton and DeKalb Counties ("County Defendants"). This case alleged that Georgia's foster care system as operated in Fulton and DeKalb Counties did not adequately protect children in its custody from harm. The defendants at all times denied these allegations. This lawsuit sought only court-ordered changes in the system; money damages were never at issue.

All defendants joined in removing the case to the United States District Court for the Northern District of Georgia (Atlanta Division)("the Court").

Plaintiffs and State Defendants have negotiated a proposed settlement and have asked the federal district judge assigned to the case to approve this settlement. The terms of this settlement agreement are described below. **You have the right to review the entire settlement agreement if you choose. You also have the right to tell the judge what you think before the judge decides whether to approve the settlement.**

II. Notice of Hearing

PLEASE NOTE THAT THERE WILL BE A HEARING BEFORE UNITED STATES SENIOR DISTRICT JUDGE MARVIN H. SHOOB ON WEDNESDAY, SEPTEMBER 21, 2005, AT 1:30 P.M., AT THE RICHARD B. RUSSELL UNITED STATES COURTHOUSE, 75 SPRING STREET, NW, ATLANTA GEORGIA, IN COURTROOM 1707 TO CONSIDER WHETHER THIS SETTLEMENT SHOULD BE APPROVED, AS PROVIDED BY RULE 23 OF THE FEDERAL RULES OF CIVIL PROCEDURE.

YOU ARE WELCOME TO ATTEND THE HEARING TO PRESENT ANY FAVORABLE COMMENTS OR OBJECTIONS REGARDING THE SETTLEMENT TO THE JUDGE. YOU ARE NOT, HOWEVER, REQUIRED TO ATTEND THE HEARING OR TO CONVEY ANY COMMENTS TO THE COURT.

PLEASE ALSO NOTE THAT THIS CASE AND THIS HEARING DO NOT CONCERN ANY INDIVIDUAL CHILD'S CASE, OR ANY CASE INVOLVING THE PARENTS OF CHILDREN IN DFCS CUSTODY. THIS CASE AND THE SEPTEMBER 21, 2005 HEARING CONCERN ONLY THE GEORGIA FOSTER CARE SYSTEM AS IT OPERATES IN FULTON AND DEKALB COUNTIES.

III. How to Obtain Copies of the *Kenny A.* Settlement Agreement Or More Information About the Case

If you would like a copy of the settlement agreement, it is available on the Georgia Department of Human Resources website at www.dhr.state.ga.us. If you do not own a computer, you can access one at many local libraries. If a computer is not available, a copy of the settlement agreement may be obtained by contacting plaintiffs' counsel at Children's Rights, Inc. toll-free at (888) 283-2210 or the Georgia Department of Human Resources at (404) 656-4937.

Any class member or legal representative of a class member who has questions about the settlement agreement or would like more information about the lawsuit may contact attorneys Ira Lustbader or Erik Pitchal. These attorneys work for Children's Rights, Inc. and represent the plaintiff class. They can be reached toll free at (888) 283-2210.

You may also review the materials that have been filed with the Court in this case, except

those filed under seal, by going to the Office of the Clerk of the United States District Court for the Northern District of Georgia (Atlanta Division) at the Richard B. Russell United States Courthouse, 75 Spring Street, Atlanta, Georgia. The Clerk's Office is open on business days from 9:00 a.m. to 4:00 p.m. To review materials in the public record in the *Kenny A.* case, refer to Civil Action Number 1:02-CV-1686-MHS.

Please DO NOT call or write to Judge Shoob directly concerning this proposed settlement.

**IV. How to Submit Objections or Comments to the Court, or
Request the Opportunity to Speak at the Hearing**

If you would like to submit any written objections or comments regarding the proposed *Kenny A.* settlement for the Judge's consideration, you must send a letter to the Clerk of Court at the following address:

Luther D. Thomas, Clerk
United States District Court for the
Northern District of Georgia
Richard B. Russell United States Courthouse
75 Spring Street
Atlanta, Georgia 30303

In order to be considered by the Court, your letter must be received by no later than 5:00 p.m. on Thursday, September 1, 2005. You must sign your letter, and must also print your name, address and telephone number on the letter. Please indicate at the top of your letter that the letter relates to *Kenny A. v. Perdue*, Civil Action. No. 1:02 – CV – 1686 – MHS.

Please also send copies of your letter to the following lawyers:

Ira Lustbader
Children's Rights, Inc.
404 Park Avenue South, 11th Floor
New York, New York, 10016

Mark H. Cohen
Special Assistant Attorney General
Troutman Sanders LLP
5200 Bank of America Plaza
600 Peachtree Street, N.E.
Atlanta, Georgia 30308

Corey F. Hirokawa
Bondurant Mixson & Elmore, LLP
1201 West Peachtree St. #3900
Atlanta, Georgia 30309

Shalen S. Nelson
Senior Assistant Attorney General
Georgia Department of Law
40 Capitol Square, S.W.
Atlanta, Georgia 30334

If, in addition to writing your concerns to the Court, you would also like to speak at the hearing, please add this request to your letter and briefly describe what you want to speak about.

V. The *Kenny A.* Settlement

This settlement, if approved by the Court, will bring about certain changes in the operation of the foster care system in Fulton and DeKalb Counties. The settlement contemplates the Court's entry of a judicially-enforceable Consent Decree itemizing the State Defendants' duties, responsibilities for and commitments to improve the quality of care and treatment received by children who enter DFCS custody in Fulton and DeKalb Counties. The major terms of the settlement agreement are summarized below:

(1) OUTCOME MEASURES

The settlement requires State Defendants to meet a series of thirty-one (31) outcome measures designed to improve the care and services provided to foster children. Some of these outcome measures must be achieved within the first six months following final court approval of settlement; others would be phased in over time. These outcome measures include:

- A. Improving response times for commencing and completing thorough investigations into reports of abuse or neglect.
- B. Reducing the rate at which foster children discharged from custody re-enter the child welfare system.
- C. Reducing the incidence of abuse and neglect of children in foster care.
- D. Accelerating the search for parents and relatives of children who come into care.
- E. Accelerating permanency outcomes for children who come into care.
- F. Accelerating permanency outcomes for children who have been in DFCS custody for an extended time period leading up to the settlement.
- G. Accelerating adoptions or guardianships for children whose parental rights have been terminated or released.
- H. Reducing the rate of adoption disruptions.
- I. Accelerating efforts to achieve permanency for children who remain in DFCS custody for 15 of the prior 22 months.
- J. Increasing the proportion of siblings in foster care who are placed together and, for those not placed together, increasing the level of sibling visitation.
- K. Enhancing the stability of children in care by reducing the proportion of children who experience multiple moves within DFCS custody.
- L. Increasing the proportion of children in foster care who are placed in their home

neighborhoods.

- M. Improving the continuity of relationships between children in care and the caseworkers responsible for them.
- N. Increasing direct contact between children and their assigned caseworkers.
- O. Increasing the percentage of older children in foster care who achieve high school diplomas or GEDs.
- P. Reducing the incidence of placing children in settings that are not fully approved or licensed.
- Q. Reducing delays or barriers to achieving permanent placements for children in care.
- R. Improving access to medical, dental, mental health, education and other service needs for children in DFCS custody.
- S. Reducing the incidence of overcrowding in foster homes.
- T. Reducing the incidence of situations in which DFCS continues to maintain children in out-of-home care after its legal custody has lapsed.

(2) IMPROVED SERVICES TO FOSTER CHILDREN AND THEIR FAMILIES

The settlement requires State Defendants to provide enhanced access to health services, including medical, mental health, and dental services, designed to meet the special needs of children in foster care. It compels corrective action for any children who have gone twelve (12) months or more without a medical examination. It further requires DFCS to comply with an advanced planning process for children entering foster care that will routinely incorporate the input of school representatives, therapists, mental health professionals, and medical professionals into a comprehensive and ongoing assessment of each child's needs. It also creates improved mechanisms for identifying the individual needs of children coming into the system and developing additional foster homes and other placement resources necessary to meet those needs. It creates a mechanism for establishing reimbursement rates that adequately compensate foster families and other caregivers for the costs of caring for these children. These requirements and standards apply to all class members, including those who live in private contract child-caring institutions and child-placing agencies, and State Defendants bear an enhanced responsibility for properly monitoring such independent agencies to ensure compliance. The settlement addresses improved screening, licensing, training and reimbursement necessary to support foster families and other caregivers in their efforts to meet the needs of these children.

(3) PROTECTING FOSTER CHILDREN FROM ABUSE AND NEGLECT

The settlement requires DFCS to conduct more timely and thorough investigations of reports of suspected abuse or neglect. Reports of suspected abuse or neglect in institutional, group, residential or foster family homes supervised by private providers must be referred to the Office of Regulatory Services and to the Social Services Treatment Services Unit, to ensure the safety and well-being of children. Corporal punishment in child-caring institutions is forbidden and shall be punishable by fine, probation, revocation of license, or other appropriate sanction.

(4) EXPANDED CHILD WELFARE SYSTEM RESOURCES

The settlement requires State Defendants to devote resources necessary to achieve the performance improvements contemplated in the outcome measures and to support the enhanced services and detailed planning and placement commitments contemplated in the settlement. These resources include a phased reduction in caseworker and casework supervisor caseloads to bring them into compliance with Child Welfare League of America standards, additional casework experience and training requirements for new hires and ongoing training for all casework personnel, maximization of available federal funding with a restriction on supplanting the State's contribution to the expense of foster care, enhanced quality assurance standards, and final implementation of an automated child welfare information system requiring collection and maintenance of complete and accurate data required to properly serve each child, including a Single Statewide Automated Child Welfare Information System ("SACWIS") compliant with applicable federal regulations.

(5) ACCOUNTABILITY AND ENFORCEMENT

The settlement contemplates that the Court will appoint a team of two independent and neutral Accountability Agents recruited by the parties for their expertise in child welfare administration and supported by Chapin Hall Center for Children at the University of Chicago and by Georgia State University. The Accountability Agents will conduct factual investigation and verification of data and documentation necessary to compile and issue public record reports on State Defendants' performance under the Consent Decree at six month intervals. State Defendants will be responsible for providing the Accountability Agents with the resources they require to perform their task. Class Counsel will receive and review the public reports of the Accountability Agents and continue to represent the interests of the Plaintiff Class in the event that State Defendants fail to comply with the terms of the settlement.

(6) DURATION OF THE AGREEMENT

The Consent Decree shall remain in effect until State Defendants achieve and maintain compliance with the terms of the Decree for three successive six-month reporting periods and the Court approves a motion to terminate jurisdiction.

(7) ATTORNEYS' FEES

Claims such as those brought in this lawsuit may entitle a party, under certain

circumstances, to apply to the Court for its reasonable attorneys' fees and costs. In this case, State Defendants acknowledge that Class Counsel are entitled to recover their reasonable attorneys' fees and expenses they have advanced on behalf of the Class, but no agreement has been negotiated as to the amount of fees and expenses to be paid and received. If the parties reach any agreement on the amount of fees and costs before the fairness hearing, amended notice disclosing the agreement will be distributed to class members as the Court may direct. If the parties cannot agree on an amount, it will be set by the Court if and when the settlement receives final approval. In any event, the Court will review and approve the fairness of any payment of fees and expenses to Class Counsel in accordance with the requirements of Federal Rule of Civil Procedure 23(h).

(8) COVENANT NOT TO SUE

Upon approval of this settlement, Plaintiffs will be barred from bringing additional legal actions for systemic injunctive relief against the State Defendants based on events that occurred prior to the Court's final approval of the proposed Consent Decree. Plaintiffs are also barred from bringing any class-action lawsuits seeking system-wide injunctive relief based on alleged actions or omissions by State Defendants occurring between the Court's final approval of the proposed Consent Decree and its final termination. This settlement does not bar individual class members who allege individual wrongs from seeking legal redress appropriate to their individual case, including money damages or individual equitable relief.

(9) CLAIMS IN THE KENNY A. LAWSUIT NOT SETTLED

The proposed settlement, if approved by the Court, will settle all of the claims in the *Kenny A.* lawsuit against the State Defendants. It does not settle or resolve the right-to-counsel claims in the *Kenny A.* lawsuit against Fulton and DeKalb Counties. Court-ordered mediation between Class Counsel and the County Defendants is ongoing, and may result in a settlement with one or both County Defendants. If settlements cannot be reached, a trial in the federal district court may be necessary for the Court to determine: (a) whether one or both Counties have violated the rights of class members to adequate and effective legal representation for children; and, if so, (b) what remedies the Court should impose.

This Notice Has Been Approved For Distribution By:

The Honorable Marvin H. Shoob
Senior Judge
United States District Court
Northern District of Georgia

Dated: June 5, 2005, 2005