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**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.,)	
)	
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.)	

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**NOTICE OF PROPOSED SETTLEMENT
REGARDING THE RIGHT OF CHILDREN TO HAVE LAWYERS IN
DEPRIVATION CASES**

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 ; AND (2) HAVE OR
WILL HAVE AN OPEN CASE IN THE FULTON COUNTY
DEPARTMENT OF FAMILY AND CHILDREN SERVICES.**

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 Children Services and its Administrator (“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. As it relates to Defendant Fulton County, this case alleged that Fulton County failed to provide children with open cases in Fulton County DFCS with adequate and effective assistance of legal counsel. Fulton County at all times denied this allegation. 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 Fulton County 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 in Section V. This is only a summary of the settlement. **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 MAY 16, 2006 AT 2:00 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.

IF YOU WISH TO SPEAK AT THE HEARING, YOU MUST SEND A WRITTEN LETTER TO THE COURT BY APRIL 12, 2006. TO DO THIS, FOLLOW THE DIRECTIONS IN SECTION IV BELOW.

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 MAY 16 HEARING CONCERN ONLY FULTON COUNTY'S PROVISION OF LEGAL COUNSEL TO CLASS MEMBER CHILDREN.

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

If you would like a copy of the settlement agreement, it is available on Fulton County's website at www.co.fulton.ga.us. If you do not own a computer, you can use 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 Defendant Fulton County's counsel, Willie J. Lovett or Rolesia Butler Dancy, at (404) 730-7750.

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 Corey Hirokawa. These attorneys represent the plaintiff class. Mr. Lustbader can be reached toll-free at (888) 283-2210; Ms. Hirokawa can be reached at (404) 881-4100.

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 April 12, 2006. 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 the Fulton County Settlement in *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

Willie Lovett
Rolesia Butler Dancy
Fulton County Attorneys' Office
141 Pryor Street, N.W.
Suite 4038
Atlanta, Georgia 30303

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

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 relating to the provision of legal counsel to children in DFCS custody who have open deprivation cases before the Fulton County Juvenile Court. The settlement contemplates the Court's entry of a judicially-enforceable Consent Decree itemizing Fulton County's responsibility for and commitment to providing adequate and effective legal counsel to children in DFCS custody at all stages of deprivation and termination of parental rights proceedings before the Fulton County Juvenile Court. The major terms of the settlement agreement are summarized below:

(1) CREATION OF THE FULTON COUNTY CHILD ADVOCATE'S OFFICE

The settlement requires Fulton County to establish a Fulton County Child Advocate's Office as a division of the Fulton County government. The Child Advocate's Office will employ Fulton County's Child Advocate Attorneys and their support staff. The substantive operations of the Child Advocate's Office will be independent from the Fulton County Juvenile Court.

(2) PERFORMANCE STANDARDS

The settlement agreement requires Fulton County to adopt performance guidelines to be followed by all Child Advocate Attorneys who represent children in the Fulton County Juvenile Court. These guidelines include:

- Minimum qualification and training standards;
- A recognition that the role of the Child Advocate Attorney is to represent the best interests of the child, while at the same time representing the child's expressed preferences;
- Provisions regarding the steps to be taken in the event a conflict of interest arises;

- A description of the Child Advocate Attorney's initial responsibilities when assigned to a case, including responsibilities for establishing and maintaining a relationship with the child client; investigating the case and determining its facts; and contacting individuals involved in the case;
- Provisions detailing the Child Advocate Attorneys' duties relating to representing child clients at hearings, including duties to participate as an attorney in all hearings, file all necessary pleadings and papers, make informed recommendations to the court, ensure that relevant evidence is admitted, monitor the implementation of court orders, promote cooperative resolutions of cases where appropriate, inform the court of the child's wishes, and explain the disposition of the case to the child; and
- Provisions regarding the Child Advocate Attorneys' responsibilities after disposition of the case, including informing the child of his or her right to appeal and participating in appeals as necessary, and discussing the end of the representation with the child.

(3) PROVISIONS TO MEASURE AND ENSURE MANAGEABLE WORKLOADS

The settlement agreement requires Fulton County to employ at least twelve full-time Child Advocate Attorneys, 2 full-time investigators, and 3 full-time support staff for the Child Advocate Office by January 31, 2006. It also requires Fulton County to pay for an independent study of the workloads of Fulton County Child Advocate Attorneys, which the parties propose be conducted by the Carl Vinson Institute of Government at the University of Georgia under the direction of Karen Baynes, an attorney experienced in representing children. The workload study will make recommendations concerning appropriate workload standards to be adopted by the Fulton County Child Advocate Office. Unless plaintiffs or Fulton County formally object in court to the conclusions of the workload study, Fulton County will adopt the recommendations of the workload study. If Plaintiffs or Fulton County object, the Court will decide the issue.

(4) ACCOUNTABILITY AND ENFORCEMENT

The settlement contemplates that the Court will appoint an independent and neutral Accountability Agent recruited by the parties for his expertise in issues relating to representation of children. The parties have proposed that retired North Carolina Juvenile Court Judge William Jones serve as the Accountability Agent. The Accountability Agent will conduct factual investigation and verification of data and documentation necessary to compile and issue public record reports on Fulton County's performance under the Consent Decree at six month intervals. Fulton County will be responsible for providing the Accountability Agent with the resources he requires to perform his task. Class Counsel will receive and review the public reports of the Accountability Agent and continue to represent the interests of the Plaintiff Class in the event that Fulton County fails to comply with the terms of the settlement.

(5) DURATION OF THE AGREEMENT

The Consent Decree shall remain in effect until Fulton County achieves and maintains compliance with the terms of the Decree for eighteen months and the Court approves a motion to terminate jurisdiction.

(6) ATTORNEYS' FEES

Claims such as those brought in this lawsuit may entitle Plaintiffs, under certain circumstances, to apply to the Court for their reasonable attorneys' fees and costs. In this case, the parties have agreed that Fulton County will pay \$153,000 to Class Counsel in attorneys' fees for work performed and to be performed through the date of anticipated final approval of settlement, and expenses of litigation, including a reserve for anticipated expenses, not to exceed \$21,000, for a total payment not to exceed \$174,000 solely as those fees, expenses and costs relate to work done in class counsel's prosecution of the claims against Fulton County.

(7) 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 Fulton County. Plaintiffs' claims against the State Defendants were the subject of an earlier settlement and Consent Decree, which was entered by the Court on October 27, 2005. This settlement with Fulton

County does not settle or resolve the right-to-counsel claims in the *Kenny A.* lawsuit against DeKalb County. Court-ordered mediation between Class Counsel and DeKalb County is ongoing, and may result in a settlement. If a settlement cannot be reached, a trial in the federal district court may be necessary for the Court to determine: (a) whether DeKalb County has violated the rights of class members to adequate and effective legal representation; 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: February ____, 2006