

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

Plaintiff, :

-against- :

NEW YORK CITY DEPARTMENT OF  
EDUCATION, *et al.* :

Defendants. :

and JOHN BRENNAN, *et al.*, on behalf of  
themselves and all others similarly  
situated, :

Intervenors, :

and JANET CALDERO, *et al.* :

Intervenors, :

and PEDRO ARROYO, *et al.* :

Intervenors. :

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JOHN BRENNAN, *et al.* :  
on behalf of themselves and others  
similarly situated, :

Plaintiffs, :

-against- :

JOHN ASHCROFT, ALEXANDER  
ACOSTA, *et al.* :

Defendants. :

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96 Civ. 0374 (FB) (RML)

NOTICE TO CLASS

02 Civ. 0256 (FB) (RML)

RUBEN MIRANDA,	:	
	:	
Plaintiff,	:	06 Civ. 2921 (FB)(RML)
	:	
-against-	:	
	:	
NEW YORK CITY DEPARTMENT OF	:	
EDUCATION,	:	
	:	
Defendants.	:	
	:	
-----X	:	

NOTICE TO CLASS

YOU ARE BEING SENT THIS NOTICE BECAUSE YOU MAY BE A MEMBER OF THE CLASS OF OBJECTING CUSTODIANS, DESCRIBED IN PARAGRAPH 2, BELOW. IF YOU BELIEVE THAT YOU MIGHT BE, PLEASE READ THIS NOTICE CAREFULLY, AS YOUR RIGHTS MAY BE AFFECTED.

1. The first of the above-captioned actions, originally-entitled *United States v. New York City Board of Education*, Case No. 96-0374, was commenced on January 30, 1996. The United States alleged that various of defendants’ employment practices with respect to the recruitment and hiring of Custodians and Custodian Engineers (collectively “Custodial Employees”), for buildings operated by the New York City Board of Education, constituted discrimination in violation of Title VII of the Civil Rights Act of 1964. The parties to that action executed a settlement agreement on February 11, 1999. Pursuant to that settlement agreement, various individuals (“Offerees”) received permanent positions as Custodial Employees and/or retroactive seniority in those positions. Generally, seniority may be useful to Custodial Employees when seeking transfers to schools pursuant to the transfer lists published regularly by

the Department of Education (“School Transfers”); when seeking temporary assignments of schools or buildings that are not assigned to any Custodial Employee (“Temporary Care Assignments”); and for protection in the event of layoffs (“Layoff Protection”).

2. Other Custodial Employees (“Objecting Custodians”), who had not received those benefits, were allowed to intervene in the action, and also filed the second of the above-referenced actions, originally-entitled *Brennan v. Ashcroft*, Civ. No. 02-0256, to allege that the provision of those benefits in the settlement agreement itself violated federal anti-discrimination law. Pursuant to an order dated April 20, 2007, the District Court certified a class consisting of all custodial employees whose seniority for purposes of School Transfers, Temporary Care Assignments, and Layoff Protection had been adversely affected by the grant of seniority benefits to the Offerees. John Brennan, James Ahearn, Scott Spring, Dennis Mortensen, John Mitchell, and Eric Schauer are the class representatives of the class of Objecting Custodians.

3. The District Court has held that the grant of seniority benefits to certain of the Offerees for the purposes of School Transfers and Temporary Care Assignments did not violate federal law, regardless of whether those individuals were actual victims of discrimination, but that the grant of seniority benefits for the purposes of Layoff Protection would violate federal law unless those individuals were actual victims of discrimination. With respect to eleven (11) of those Offerees (the “Compromising Offerees”), the parties have reached an agreement resolving their claims that they were actual victims of discrimination by reaching compromise dates for Layoff Protection seniority. Set forth below are the names of the eleven (11) Compromising Offerees, the compromise retroactive seniority date for purposes of Layoff

Protection to which the parties have agreed, and the Layoff Protection seniority date that the Compromising Offerees had been provided initially in the 1999 settlement agreement.

<u>Offeree</u>	<u>Proposed Compromise Layoff Protection Seniority Date</u>	<u>Layoff Protection Seniority Date Under 1999 Settlement Agreement</u>
Pedro Arroyo	October 8, 1992	April 13, 1990
Jose Casado	October 27, 1997	June 16, 1995
Andrew Clement	April 4, 1997	January 30, 1995
Celestino Fernandez	October 27, 1997	May 8, 1995
Kevin LaFaye	October 8, 1992	April 13, 1990
Steven Lopez	February 23, 2000	November 6, 1995
Anibal Maldonado	October 3, 1997	June 16, 1995
James Martinez	October 27, 1997	February 12, 1996
Wilbert McGraw	October 8, 1992	April 13, 1990
Silvia Ortega de Green	October 27, 1997	June 6, 1995
Nicholas Pantelides	October 27, 1997	January 23, 1989

4. As part of the compromise, the Compromising Offerees have agreed to forego an evidentiary hearing on whether each was an “actual victim of discrimination” entitled to the earlier Layoff Protection seniority date provided to him or her in the 1999 settlement agreement. At the same time, the Objecting Custodians may appeal the District Court’s ruling that the provision of those earlier seniority dates for School Transfer and Temporary Care Assignment purposes did not violate federal law. Should an appellate court conclude that it cannot affirm those earlier seniority dates for School Transfer and Temporary Care Assignment purposes based on the current record, the Compromising Offerees may be entitled to an evidentiary hearing of

some kind to show that they were actual victims of discrimination and/or to support those earlier dates. If that occurs, the compromise dates set forth in this notice for Layoff Protection seniority will no longer be effective, and the Objecting Custodians will have the right to submit evidence demonstrating that the Compromising Offerees were not actual victims of discrimination.

5. Counsel for the Objecting Custodians believe that this is an appropriate and fair compromise of the class's claims with respect to the Compromising Offerees. There are several reasons for this. First, as the chart set forth above demonstrates, all Compromising Offerees have accepted a date for Layoff Protection seniority that is later than the date to which they were entitled under the 1999 settlement agreement. Second, had evidentiary hearings for the eleven (11) Compromising Offerees been held, it is possible that some or all of them might have demonstrated that they were actual victims of discrimination entitled to those earlier seniority dates for Layoff Protection purposes. Third, litigating the issue of whether the Compromising Offerees were actual victims of discrimination would have been costly in both time and expenses. Given that *only* Layoff Protection seniority would be affected by any finding with respect to the Compromising Offerees' status as actual victims of discrimination, counsel for the Objecting Custodians believe it would be in the best interests of the class to forego their right to argue that the Compromising Offerees were not actual victims of discrimination for at least the time being, and to focus their resources on a possible appeal in this matter.

6. If you are a member of the class of Objecting Custodians, you have the right to object to this compromise of your claims for any reason. If you wish to object, your objections must be in writing, postmarked no later than Friday, May 23, 2008, and be mailed to each of the

following addresses:

Clerk of the Court

U.S. Courthouse  
225 Cadman Plaza East  
Brooklyn, NY 11201  
In re: Objection to C.A. No. 96-0374 (FB)  
(RL)

Objecting Custodians

Michael E. Rosman  
Center for Individual Rights  
1233 20<sup>th</sup> St. NW, Suite 300  
Washington, DC 20036

Defendants

Lawrence Profeta  
Assistant Corporation Counsel  
Corporation Counsel of the City of  
New York  
100 Church St.  
New York, NY 10007

The United States

Esther Tamburo-Lander  
Department of Justice  
Civil Rights Division  
950 Pennsylvania Ave., NW  
Employment Litigation Section  
Patrick Henry Building  
Room 4036  
Washington, D.C. 20004

The Compromising Offerees

Lenora M. Lapidus  
Emily J. Martin  
Women's Rights Project  
American Civil Liberties Union  
125 Broad St., 18th Floor  
New York, NY 10004

Matthew B. Colangelo  
NAACP Legal Defense & Educational  
Fund, Inc.  
99 Hudson St., 16th Floor  
New York, NY 10013

Your objection should contain the name of the first of the above-referenced actions, *United States v. New York City Department of Education, et al.*, C.A. No. 96-0374 (FB) (RL), your name, your current home address, your current home and work telephone numbers, the reasons for your objection, including any documents to support your objection, the name and address of your attorney (if you have one), and a statement whether you wish to be heard in person. It is not necessary for you to obtain an attorney in order to submit an objection; nor is it necessary to explain the reason for your objection in “legal” terms. Depending on the number

and nature of the written objections, the District Court may hold a hearing, in which those who have submitted objections can elaborate upon them orally.

7. A copy of the agreement related to the Compromising Offerees may be viewed at the following website: <http://www.nyed.uscourts.gov/Notices/notices.cfm>. If you have any questions about this Notice or the underlying compromise of claims, you may contact Michael Rosman, one of the attorneys for the Objecting Custodians, at 1-800-875-8448 x104.

Dated: May 13, 2008