

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

C.P., individually and on behalf of F.P., a minor child; D.O. individually and on behalf of M.O., a minor child; S.B.C., individually and on behalf of C.C., a minor child; A.S., individually and on behalf of A.A.S., a minor child; M.S., individually and on behalf of her minor child, H.S.; Y.H.S., individually and on behalf of his minor child, C.H.S.; E.M. on behalf of her minor child, C.M.; M.M., individually and on behalf of K.M.; L.G., individually and on behalf of her minor child, T.M.; E.P., individually and on behalf of her minor child, Ea.P.; and on behalf of ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

NEW JERSEY DEPARTMENT OF EDUCATION; ANGELICA ALLEN-McMILLAN, Acting Commissioner of Education, in her official capacity,

Defendants.

Civil Action No. 19-cv-12807-NLH-MJS

Noel L. Hillman, U.S.D.J.

Matthew J. Skahill, U.S.M.J.

**ORDER GRANTING UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, DIRECTING
ISSUANCE OF SETTLEMENT
NOTICE, AND SCHEDULING
HEARING ON FINAL APPROVAL**

WHEREAS, the above-captioned action, *C.P. v. New Jersey Dep't of Educ.*, Case No. 19-cv-12807-NLJ-MJS (the "Action"), is pending before this Court alleging systemic violations of timelines for due process hearings under the Individuals with Disabilities Education Act ("IDEA");

WHEREAS, on August 19, 2022, this Court certified a Class pursuant to Fed. R. Civ. P. 23(b)(2), and an Issues Class pursuant to Fed. R. Civ. P. 23(b)(3);

WHEREAS, the Classes seek relief against the New Jersey Department of Education ("NJDOE") and Angelica Allen-McMillan, in her official capacity as Acting Commissioner for NJDOE;

WHEREAS, the Classes and Defendants (the “Parties”), through their respective counsel, entered into a Consent Order and Settlement Agreement on December 11, 2023 (the “Settlement Agreement”), which, if approved by the Court, resolves the claims raised in this Action;

WHEREAS, the Classes have filed a motion, pursuant to Fed. R. Civ. P. 23(e), for preliminary approval of the settlement of this Action in accordance with the Agreement attached as Exhibit 1 to the Declaration of Catherine Merino Reisman, executed on December 11, 2023 (“Reisman Decl.”), which has been submitted to the Court for its review and consideration;

WHEREAS, Defendants do not oppose the Motion; and

WHEREAS, the Court has presided over the proceedings in the above-captioned action, has reviewed the pleadings and papers on file, read and considered the Agreement and the instant Motion, and finds good cause appearing,

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Unless otherwise defined, all capitalized terms used herein shall have the same meanings as set forth in the Settlement Agreement (Reisman Decl., Exhibit 1).
2. The Court has jurisdiction over the subject matter of this action and personal jurisdiction over the Named Plaintiffs, the certified classes, and the Defendants.
3. The Court has reviewed the Settlement Agreement, and hereby preliminarily approves the terms and conditions of the settlement set forth therein, subject to further consideration at the Settlement Fairness Hearing (described in paragraph 10 below).
4. The Court preliminarily finds that the terms of the Settlement Agreement appear to be within the range appropriate for possible approval, pursuant to Rule 23(c) of the Federal Rules of Civil Procedure and applicable law.

5. Pursuant to Fed. R. Civ. P. 23, and in accordance with paragraph 3 of the Settlement Agreement, the Court amends the definition of the Class that was certified pursuant to Rule 23(b)(2), to read as follows: “All persons who, pursuant to the IDEA, have filed or will file during the period of time that the Court may retain jurisdiction, a due process petition with NJDOE, and whose cases are pending in the New Jersey Office of Administrative Law (NJOAL).”

6. Pursuant to Fed. R. Civ. P. 23, and in accordance with paragraph 4 of the Agreement, the Court amends the definition of the Class that was certified pursuant to Rule 23(b)(3), to read as follows: “All persons who pursuant to IDEA, filed due process petitions to the NJOAL, did not receive a decision within the timeline as defined in 34 C.F.R. §300.515(a), (c) and the violation occurred prior to approval of this Agreement.”

7. The Court hereby approves, as to form and content, the Notice of Class Action Settlement (“Class Notice”) substantially in the form attached as Exhibit 2 to the Reisman Decl.

8. Within ten (10) days of this Order, Defendants shall serve appropriate State and Federal officials with all documents required by the Class Action Fairness Act, 28 U.S.C. § 1715. Within twenty-eight (28) days of this Order, the Class Notice shall be disseminated to the Classes, substantially in the form attached as Exhibit 2 to the Reisman Decl. by the following means:

- a. NJDOE shall cause a copy of the Class Notice to be mailed by First-Class Mail to all Class Members who can be identified with reasonable effort;
- b. NJDOE shall cause a copy of the Class Notice to be emailed to all attorneys who represent or represented Class Members;
- c. Class Counsel shall post the Class Notice and full Settlement Agreement at www.NJ45DayClassAction.com; and

- d. At or before the Settlement Fairness Hearing (described in paragraph 10 below), NJDOE shall file with the Court proof of compliance with paragraph 8(a), (b), and Class Counsel shall file with the Court proof of compliance with ¶ 8(c).

9. The form and content of the foregoing notice program, and the methods set forth for notifying the Class Members of the terms and conditions of the Consent Order and Settlement Agreement:

- a. Apprise Class Members in a fair and neutral way of the existence of the Settlement Agreement, and their rights with respect to the Settlement Agreement;
- b. Meet the requirements of Fed. R. Civ. P. 23, the United States Constitution (including the Due Process Clause), the Rules of Court, and any other applicable law;
- c. Constitute valid, due, and sufficient notice to the Class Members, and is the best notice practicable to Class Members under the circumstances of this Action;
- d. Are reasonably calculated, under the circumstances, to apprise Class Members of (i) the proposed Settlement of this Action; (ii) the right of Rule 23(b)(3) Class Members to exclude themselves from the Rule 23(b)(3) Class; (iii) the right of Rule 23(b)(2) and Rule 23(b)(3) Class Members to object to any aspect of the proposed Settlement; (iv) the Class Members' right to appear at the Settlement Fairness Hearing, either through their own or through counsel hired at their own expense, if they

did not exclude themselves from the Class; and (v) the binding effect of the proceedings, rulings, orders, and judgments in this Action, whether favorable or unfavorable, on all persons not excluded from the Class; and

- e. Are reasonable and constitute due, adequate and sufficient notice to all Persons entitled thereto.

10. The Settlement Fairness Hearing shall be held before this Court on March 28, 2024 at 11 a.m., at the Mitchell H. Cohen Building & United States Courthouse, 4th & Cooper Streets, Court Room 3A, Camden, New Jersey 08101, to hear and determine:

- a. Whether the proposed settlement of the Action is fair, reasonable, and adequate to the Classes and should be approved by the Court;
- b. The amount of fees, costs, and expenses that should be awarded as attorney's fees and any incentive awards to the Named Plaintiffs;
- c. Any objections by members of the Classes defined in the foregoing paragraphs 5 and 6 of this Order regarding the merits of the Settlement Agreement, or any award of attorney's fees and expenses or incentive awards;
- d. Whether Judgment should be entered approving the Settlement Agreement; and
- e. Such other matters as the Court may deem appropriate.

11. All Class Members (except persons who request exclusion pursuant to paragraph 13 below) shall be bound by all determinations and judgments in the Action concerning the Settlement Agreement, including, but not limited to, the releases provided for therein, whether favorable or unfavorable, to the Classes.

12. Any Class Member may enter an appearance in the Action, at his or her own expense, individually or through counsel of their own choice. If they do not enter an appearance, they will be represented by Class Counsel.

13. Any 23(b)(3) Class Member may, upon request, be excluded or “opt out” from the Class. Any such person must submit to Class Counsel a Request for Exclusion, which complies with the requirements set forth in the Class Notice and is received no later than 49 calendar days after the date of this Order. All Persons who submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall have none of the rights afforded to 23(b)(3) Class Members under the Settlement Agreement. A 23(b)(3) Class Member may submit a written revocation of a Request for Exclusion up until five (5) days prior to the date of the Settlement Fairness Hearing.

14. Any Class Member, and any other interested Person, may appear at the Settlement Fairness Hearing in person or by counsel and be heard, to the extent allowed by the Court, either in support of, or in opposition to, the matters to be considered at the hearing, *provided, however*, that no Person shall be heard, and no papers, briefs, or other submissions shall be considered by the Court in connection with such matters, unless, no later than 49 calendar days after the date of this Order, such Person files with the Court a statement of objection setting forth: (i) whether the Person is a Class Member; (ii) the part(s) of the Settlement Agreement to which the Class Member or interested Person objects; and (iii) the specific reason(s), if any, for such objection, including any legal support the Class Member or interested Person wishes to introduce in support of such objection. Objection materials must be sent to the following:

CLASS COUNSEL:

Catherine Merino Reisman, Esquire
Reisman Carolla Gran & Zuba LLP

19 Chestnut Street
Haddonfield, New Jersey 08033
Info@NJ45DayClassAction.com

DEFENDANTS' COUNSEL:

C.P. SETTLEMENT
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, New Jersey 08625

15. Any member of the Class who does not make his or her objection in the manner, and within the time, provided in paragraph 14 shall be deemed to have waived such objection, and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement Agreement, unless otherwise ordered by the Court.

16. After any timely objections are made, Class Counsel or Counsel for Defendants may serve expedited discovery on the objector(s), consistent with the Federal Rules of Civil Procedure. *See, e.g., Granillo v. FCA US LLC*, 2018 U.S. Dist. LEXIS 167693, at *16 (D.N.J. Sept. 28, 2018).

17. Attendance at the Settlement Fairness Hearing is not necessary. Persons wishing to be heard orally in opposition to approval of the Settlement and/or the Motion for Attorneys' Fees and Expenses submitted by Class Counsel are required to indicate in their timely written objection their intention to appear at the Settlement Fairness Hearing. Class Members do not need to appear at the Settlement Fairness Hearing or take any action if they do not oppose any aspect of the Settlement.

18. The Court reserves the right to alter the time or the date of the Settlement Fairness Hearing without further notice to Class Members, provided that the time or the date of the Settlement Fairness Hearing shall not be set at a time or date earlier than the time and date set forth in ¶ 10 above and any new date/time will be promptly posted on

www.NJ45DayClassAction.com upon being ordered, and the Court retains jurisdiction to consider all further applications arising out of, or connected with, the proposed Settlement Agreement.

19. The Court may approve the Settlement Agreement, with such modifications as may be agreed by the Parties, if appropriate, without further notice to the Class.

20. The Motion for Final Approval and Motion for Attorneys' Fees and Costs shall be filed and served no later than 63 calendar days after the date of this Order; any opposition papers no later than 77 calendar days after the date of this Order; and any reply papers in support of the Motion for Final Approval and Motion for Attorneys' Fees and Costs shall be filed and served no later than 90 calendar days after the date of this Order.

21. At or after the Settlement Fairness Hearing, and concurrent with approval or denial of approval of the Settlement Agreement, the Court shall determine whether the Motion for Attorneys' Fees and Expenses submitted by Class Counsel, and any incentive awards sought by Plaintiffs, should be approved, and to what extent.

22. In accordance with the foregoing, the deadlines established by this Preliminary Approval Order are summarized as follows:

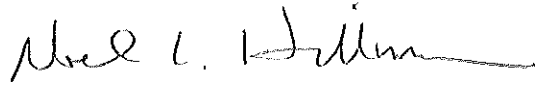
| Event | Timing | Date |
|--|--|-----------------------------|
| Preliminary Approval | Date of this Order | Monday, December 18, 2023 |
| Defendants Serve Federal and State Officials Pursuant to the Class Action Fair Act, 28 U.S.C. § 1715 | Within 10 calendar days of Preliminary Approval | Thursday, December 28, 2023 |
| Notice Mailed to Class Members and Emailed to Counsel for Class Members ¶ 8(a), (b) | Within 28 calendar days after Preliminary Approval | Monday, January 15, 2024 |
| Notice and Settlement Posted on Class Action Website | Within 28 calendar days after Preliminary Approval | Monday, January 15, 2024 |

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| ¶ 8(c) | | |
| Opt-Outs of 23(b)(3) Class ¶ 13 | Within 49 calendar days after Preliminary Approval | Monday, February 5, 2024 |
| Objections to Settlement ¶ 14 | Within 49 calendar days after Preliminary Approval | Monday, February 5, 2024 |
| Motion for Final Approval (including informing the Court of any objections), Attorneys' Fees and Costs, and Incentive Awards ¶ 20 | Within 63 calendar days after Preliminary Approval | Monday, February 19, 2024 |
| Opposition to Motion for Final Approval, Attorneys' Fees and Costs, and Incentive Awards ¶ 20 | Within 77 calendar days after Preliminary Approval | Monday, March 4, 2024 |
| Reply in support of Motion for Final Approval ¶ 20 | Within 90 calendar days after Preliminary Approval | Friday, March 15, 2024 |
| Settlement Fairness Hearing ¶ 10 | More than 100 calendar days after Motion for Preliminary Approval | Thursday, March 28, 2024 |

23. In the event that the Settlement Agreement does not become final and effective, this Order shall be rendered null and void and shall be vacated, and in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Settlement Agreement, and without prejudice to the rights of the parties to the Settlement Agreement before it was executed.

IT IS SO ORDERED.

DATED: December 18, 2023
At Camden, New Jersey


THE HONORABLE NOEL L. HILLMAN
UNITED STATES DISTRICT JUDGE