

**IN THE 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,

Civil Action No. 19-cv-12807

v.

NEW JERSEY DEPARTMENT OF
EDUCATION; KEVIN DEHMER,
Interim Commissioner of Education, in
his official capacity,

Defendants.

**DECLARATION OF CATHERINE MERINO REISMAN
IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF
SETTLEMENT AGREEMENT AND ATTORNEYS' FEES**

I, Catherine Merino Reisman, hereby declare:

1. I am an attorney at law, admitted to practice in the Commonwealth of Pennsylvania since 1989, the State of New Jersey since 2001, and the State of New

York since 2018. I am a founding partner of Reisman Carolla Gran & Zuba LLP (RCGZ), in Haddonfield, New Jersey. RCGZ is a member of the current class counsel team.

2. This declaration is based upon my personal knowledge, including my discussion and correspondence with my colleagues, co-counsel, and opposing counsel. If called to testify, I could testify competently to the facts set forth in this declaration.

3. I submit this declaration in support of the Classes' Unopposed Motion for Final Approval of Settlement Agreement and Attorneys' Fees. The final Settlement Agreement and Consent Order (Settlement Agreement) is attached hereto as Exhibit 1.

**THROUGH EXTENSIVE DISCOVERY AND
VIGOROUS LITIGATION, PLAINTIFFS' COUNSEL
ACHIEVED A WELL-DEVELOPED FACTUAL RECORD**

4. In this matter, Plaintiffs were represented by the current class counsel team – Law Office of Denise L. Dwyer (DLD), Law Office of David R. Giles (DRG), Education Law Center (ELC), Reisman Carolla Gran & Zuba LLP (RCGZ), Thurston Law Offices LLC (TLO), and Wasserman Legal LLC (WL). Plaintiffs were also represented by 3 firms that are not members of the class counsel team – Coyle & Morris LLP (Coyle), John Rue & Associates (JRA), and Walsh Pizzi

O'Reilly & Falanga LLP (Walsh). In this Declaration, "Plaintiffs' Counsel" refers to the current class counsel team, as well as Coyle, JRA, and Walsh.

5. Plaintiffs filed the initial Complaint in this matter on May 22, 2019, an amendment of right on August 26, 2019 and, by leave of Court, a Second Amended Complaint, the currently operative pleading, on February 27, 2020. ECF Nos. 1, 21, 78.

6. Plaintiffs subsequently moved for class certification and for two preliminary injunctions. ECF Nos. 30, 31, 69. The Court heard argument on these motions on February 18, 2020 and delayed ruling thereon, but orally granted Plaintiffs leave to file a Second Amended Complaint.

7. Defendants moved to dismiss the Second Amended Complaint, ECF No. 90, but the Court denied the motion, except as to one plaintiff family. ECF No. 98.

8. Plaintiffs renewed their Motion to Certify the Class on June 7, 2020, which Defendants opposed. ECF Nos. 108, 117. On November 24, 2020, the Court announced its intent to advance the full trial on the merits and consolidate it with the hearing on the preliminary injunction motions. ECF No. 140. The Court also denied the motion for class certification, without prejudice, pending further discovery. *Id.*

9. The parties engaged in extensive discovery in connection with this matter. The deadline for pretrial factual discovery was September 3, 2021. ECF No.

179. The Court granted Plaintiffs' request for supplemental discovery on March 16, 2022. ECF No. 350.

10. On November 22, 2021, Plaintiffs filed motions for class certification, seeking certification of a Rule 23(b)(2) injunction class and a Rule 23(b)(3) issues class. ECF Nos. 240, 241.

11. For the Rule 23(b)(2) Class, Plaintiffs sought prospective injunctive relief, asserting that Defendants have acted or refused to act on grounds that are generally applicable to the class, so that final injunctive relief is appropriate regarding the class as a whole. Plaintiffs sought an injunction mandating compliance with the timeline in the Individuals with Disabilities Education Act (IDEA), for adjudication of special education disputes, known as the 45 Day Rule.

12. For the Rule 23(b)(3) Class, Plaintiffs sought certification of an issues class, seeking resolution of certain elements of liability on a classwide basis. This is akin to a declaratory judgment whereby the court can certify particular issues for class treatment, even if those issues do not resolve a defendant's liability.

13. Also on November 22, 2021, the Parties cross-moved for summary judgment. ECF Nos. 234, 247. The Court certified the Classes on August 19, 2022. ECF Nos. 384, 385. The Court denied the cross-motions for summary judgment on September 1, 2022 and then advised the parties to begin preparation for trial. ECF Nos. 391, 393.

14. Plaintiffs' Counsel have vigorously litigated this matter beginning in May 2019.

15. Plaintiffs' Counsel served numerous document requests and received and reviewed thousands of pages produced by Defendants.

16. Plaintiffs' Counsel prepared, served, and responded to interrogatories.

17. Plaintiffs' Counsel have taken and defended numerous depositions.

18. Plaintiffs' Counsel litigated numerous discovery disputes, seeking to ensure access to full information. *See, e.g.*, ECF Nos. 156, 157, 173, 188, 191, 193, 201, 232, 233.

19. The extensive briefing submitted in connection with cross-motions for summary judgment established counsel's familiarity with the underlying facts in the case. *See* ECF Nos. 243, 244, 247, 248, 315, 316, 317, 320.

20. On February 8, 2022, Judge Skahill approved the parties' 168-page Joint Final Pre-Trial Order (PTO), reflecting the development of a full evidentiary record through discovery. ECF No. 326.

21. The PTO attached 261 factual stipulations. ECF No. 326-1.

22. The PTO identified 107 facts that Plaintiffs' Counsel intended to prove at trial based upon the record in the case. ECF No. 326 at 9-26.

23. In the PTO, Plaintiffs' Counsel identified 31 trial witnesses and summarized their testimony. ECF No. 326 at 38-46.

24. The PTO identified 310 Joint Exhibits, 163 Plaintiffs' Exhibits, and 73 Defendants' Exhibits for trial in this matter.

25. On August 30, 2022, Plaintiffs' Counsel submitted a 75-page Proposed Findings of Fact and Conclusions of Law, which included 361 proposed factual findings with citations to record evidence. ECF No. 389.

26. On the same date, Defendants submitted a 70-page Proposed Findings of Fact and Conclusions of Law, which included 373 proposed factual findings with citation to record evidence. ECF No. 390.

**THE PARTIES ENGAGED IN ARM'S LENGTH
NEGOTIATIONS WITH THE ASSISTANCE
OF TWO MAGISTRATE JUDGES AND
REACHED A RESOLUTION ON THE MERITS**

27. In April 2022, the Court urged the parties to participate in mediation to resolve the matter prior to trial. ECF No. 352.

28. The parties jointly requested referral to Magistrate Judge Skahill, ECF No. 355, before whom the parties engaged in settlement discussions during the summer of 2022. ECF Nos. 356, 379, 383.

29. On August 19, 2022, the Court certified both classes. ECF Nos. 384, 385. On September 1, 2022, the Court denied cross-motions for summary judgment. ECF No. 391.

30. During the fall of 2022, the parties engaged in private settlement discussions mediated by the Honorable Joel Schneider, U.S.M.J. (retired). John Rue,

Gregory Little, and I participated in negotiations on behalf of the Plaintiffs. I attended the negotiation sessions and participated in numerous telephone and Zoom calls with Judge Schneider, co-counsel, and/or opposing counsel regarding the settlement.

31. While settlement negotiations were ongoing, Plaintiffs' Counsel had to continue trial preparation, as the Court, to keep the litigation moving, set several trial dates. The parties sought to adjourn the trial several times in the fall of 2022 to facilitate settlement discussions. ECF Nos. 418, 433, 442. Because we could not know for certain the case would settle, trial counsel Thomas O'Leary and Gregory Little had to continue to prepare for trial even while settlement negotiations were ongoing.

32. At the same time, in the fall of 2022, the parties participated in interlocutory proceedings before the United States Court of Appeals for the Third Circuit. Defendants filed a petition for leave to appeal of the class certification order pursuant to Fed. R. Civ. P. 23(f) on September 2, 2022. On September 26, 2022, the Court of Appeals granted the petition as to two issues. ECF No. 416. On December 27, 2022, the parties informed the Court that Plaintiffs conceded on the two issues pending before the Court of Appeals and jointly requested a thirty day trial adjournment to pursue settlement. ECF No. 441.

33. The many sessions of arm's length negotiations before Judge Schneider proved fruitful and the parties reached a resolution on the merits. On February 17, 2023, counsel notified the Court of the settlement on the merits and that the parties still had to negotiate the fees. The Court set a schedule for negotiation of the fees. ECF Nos. 447, 448. The parties jointly requested several extensions to finalize the fee negotiation.

**AFTER RESOLVING THE MERITS, THE
PARTIES, WITH THE ASSISTANCE OF JUDGE
SCHNEIDER, REACHED AN AGREEMENT ON FEES**

34. The Settlement Agreement stipulates that the Classes are prevailing parties for the purposes of an attorneys' fees award pursuant to 20 U.S.C. § 1400, *et seq.* and 42 U.S.C. § 1983. Settlement Agreement ¶ 37.

35. The parties did not negotiate the fees at the same time as the merits. Only after the parties had agreed on the merits settlement, Plaintiffs' Counsel provided Defendants with a fee demand and the complete accompanying proofs. With the assistance of Judge Schneider, the parties negotiated the quantum of fees. Settlement Agreement ¶ 39.

36. As a result of the fee negotiation assisted by Judge Schneider, Defendants will not oppose an application for an award of attorneys' fees and expenses not to exceed \$4,750,000 for all work performed through resolution of the Fairness Hearing. Settlement Agreement ¶ 40.

**PLAINTIFFS' COUNSEL PRESENTED A
CONSENT ORDER AND SETTLEMENT AGREEMENT
FOR THE COURT'S APPROVAL ON JUNE 9, 2023,
AMICI CURIAE PRESENTED CONCERNS, AND
THE PARTIES, AT THE COURT'S INSTRUCTION,
MET TO ADDRESS AMICI'S CONCERNS**

37. The negotiations, initially with Judge Skahill and later with Judge Schneider, resulted in a Consent Order and Settlement Agreement presented to the Court by motion for preliminary approval filed on June 9, 2023. ECF No. 462.

38. On June 23, 2023, counsel for *amici curiae* raised limited concerns with the original Consent Order and Settlement Agreement. ECF No. 464.

39. On July 11, 2023, the Court instructed the Parties to revise the original Consent Order and Settlement Agreement to address the concerns raised by *amici curiae*. ECF No. 474 (Tr. 7.11.2023 at 12-13).

40. On August 31, 2023, the Court appointed RCGZ as interim class counsel. ECF No. 511. By Opinion and Order dated October 27, 2023, the Court approved the current Class Counsel team. ECF No. 530, 531.

41. Beginning in early September 2023, the parties entered into negotiations to revise the original Consent Order and Settlement Agreement to address the concerns raised by *amici curiae*.

42. During the fall of 2023, class counsel, working closely with counsel for *amici curiae* as well as Defendants' counsel, revised the Settlement Agreement and drafted the notice to be sent to class members.

43. *Amici curiae* have not raised objections to the revised Settlement Agreement. *See* ECF No. 546-3 at ¶ 5.

**CLASS COUNSEL PRESENTED
THE SETTLEMENT AGREEMENT TO THE COURT
FOR APPROVAL**

44. Class Counsel sought preliminary approval of the current Settlement Agreement on December 11, 2023. ECF No. 546.

45. As this Court recognized at the hearing on the Motion for Preliminary Approval on December 18, 2023, the Settlement Agreement resulted from significant labor from two Magistrate Judges. Judge Skahill provided initial assistance with settlement negotiations. Thereafter, Judge Schneider, who facilitated multiple in-person mediation conferences and participated in numerous Zoom and telephone conferences, was instrumental in helping the parties to reach an agreement. *See* Tr. (12.18.2023) at 6:14-21 (Transcript attached as Exhibit 2).

46. As set forth in ¶¶ 14-26, *supra*, Class Counsel are well informed of the merits of this case, based on their participation in the extensive discovery in this matter, drafting the motion for summary judgment, responding to Defendants' motion for summary judgment, and preparing for trial, as well as their collective experience in the special education dispute resolution system in New Jersey.

47. Class Counsel, although confident in the merits of the case, are aware that there is risk inherent in taking any case to trial. Class Counsel also had to take

into account the delays accompanying inevitable appeals and other post-trial proceedings. Weighing these factors, Class Counsel reasonably concluded that the Settlement Agreement will lead to much needed and long awaited relief far more quickly than proceeding to trial.

**THE SETTLEMENT AGREEMENT PROVIDES
EVERYTHING THAT WAS SOUGHT FOR THE RULE 23(b)(2) CLASS**

48. For the Rule 23(b)(2) Class, counsel sought prospective injunctive relief requiring compliance with IDEA's 45 Day Rule.

49. The Settlement Agreement provides that, for any due process petition filed pursuant to IDEA, NJDOE shall comply with the timelines in federal law. Settlement Agreement ¶ 10. The Settlement Agreement requires NJDOE to calculate the 45-day timeline exclusively using calendar days, in accordance with 34 C.F.R. § 300.515(a) and (c) excluding specific extensions of time requested by a party and granted by an Administrative Law Judge (ALJ). Settlement Agreement ¶ 9.

50. The Settlement Agreement requires that the documents provided to parents when NJDOE transmits the case to the New Jersey Office of Administrative Law (OAL) for hearing must state the initial 45-day deadline for disposition. Settlement Agreement ¶ 26(a).

51. During the pendency of the Court's jurisdiction of this matter, to ensure that 23(b)(2) class members are aware of the Settlement, the documents transmitting

a case from NJDOE to OAL must include a Class Action Notice, in a centered black box, at one point larger font than the rest of the text, with the following language:

CLASS ACTION NOTICE
Due to the entry of a Consent Order resolving a Class Action, a federal court has appointed a Monitor to oversee the timely resolution of special education due process hearings. If you believe that your due process petition is not being resolved in a timely manner, you can contact the Monitor at [email address]. You can contact Class Counsel at info@NJ45dayclassaction.com with questions or concerns regarding the Consent Order, which is explained here: <https://bit.ly/45daynotice>

Settlement Agreement ¶ 12.

52. To ensure that NJDOE has accurate data regarding compliance with the timeline, the Settlement Agreement requires use of an Adjournment Form to track specific extensions of time requested by the parties and granted by an ALJ. Settlement Agreement ¶ 22 & Ex. A.

53. The Adjournment Form is crucial for monitoring of the timelines and will provide transparency to Rule 23(b)(2) class members while their cases are pending. The form provides instructions as to how to calculate the new final decision due date, specifying that the date is extended only by the number of calendar days of the specific extension request. Settlement Agreement Ex. A at p. 2.

54. To comply with the Settlement Agreement, NJDOE must attain 95% compliance with the timelines in its handling of petitions for due process within 18 months from final approval of the Agreement. Settlement Agreement ¶¶ 8, 35. The

Settlement Agreement explicitly defines the meaning of “95% compliance.” Settlement Agreement ¶ 7. If NJDOE fails to reach 95% compliance after eighteen months, Class Counsel may seek further relief from the Court. Settlement Agreement ¶ 35.

55. The Agreement provides that the Court will appoint a Compliance Monitor with specific duties, powers and, crucially, access to information. Settlement Agreement ¶¶ 14-19. The parties have agreed upon a Monitor and are presenting that candidate to the Court for appointment at the time that the Motion for Final Approval is filed.

56. The Monitor will provide NJDOE with the support, guidance, experience, and expertise needed to comply with the terms of the Agreement. Settlement Agreement ¶ 15. The Monitor has extensive duties related to supporting compliance and full access to data from NJDOE necessary for the Monitor to fulfill her role. Settlement Agreement ¶¶ 16, 17.

57. The Monitor may also conduct individual, confidential interviews as part of the data collection process, as the Monitor deems appropriate. Settlement Agreement ¶ 18.

58. The Monitor shall operate independently of the parties and the Court and shall have the authority to recommend corrective actions to ensure compliance with the settlement. Settlement Agreement ¶ 19.

59. At the end of each monitoring period, the Monitor shall submit a report detailing the status of compliance with the forty-five day timeline. Settlement Agreement ¶ 23. The Settlement Agreement specifies the contents of the report and requires the Monitor to use the data to calculate compliance rates. Settlement Agreement ¶¶ 23 – 33.

60. Within five days of issuance of the final monitoring report for each monitoring period, NJDOE will post a copy of the report so that the public will have access to the report. Settlement Agreement ¶ 33.

61. To ensure that Class Counsel will be able to monitor Defendants’ efforts to achieve compliance, the Settlement Agreement also provides for reasonable fees and expenses for legal services performed related to post-judgment monitoring. Settlement Agreement ¶ 38. Class Counsel must support any request for such fees as to each monitoring period with appropriate billing records. If the Parties cannot agree on the amount of fees for monitoring, they may seek the assistance of a mediator or submit the dispute regarding fees to the Court. Settlement Agreement ¶ 44.

**THE SETTLEMENT AGREEMENT PROVIDES MORE
RELIEF TO THE 23(b)(3) CLASS THAN WAS SOUGHT**

62. Counsel did not seek to certify a liability class under Rule 23(b)(3) because of concerns that they could not meet the “predominance” requirement in Rule 23(b)(3). Recent case law supports class counsel’s determination that it would

be difficult to certify a damages class. *See Huber v. Simon's Agency, Inc.*, 84 F.4th 132 (3d Cir. 2023) (vacating class certification because “predominance concerns can arise when unnamed class members must submit individualized evidence to satisfy standing and recover damages”).

63. Seeking to provide some relief for those injured in the past, Plaintiffs’ Counsel sought declaratory relief on legal issues in order to provide 23(b)(3) class members with the factual basis to seek to toll the statute of limitations as to claims against NJDOE for individual relief under IDEA for a violation arising out of or related to the timeline in 34 C.F.R. § 300.515(a), (c).

64. The Settlement Agreement provides even greater relief to members of the Rule 23(b)(3) Issues Class than was sought, because it extends the statute of limitations without requiring each individual class member to establish the factual basis for tolling.

65. Members of the Rule 23(b)(3) Issues Class have two years from the date of final approval of the Settlement to assert a claim against NJDOE for a violation arising out of, or related to, the timeline set forth in 34 C.F.R. 300.515(a), (c). Settlement Agreement ¶ 13.

66. For class members who can prove that they have standing and have been injured, the removal of the statute of limitations defense for NJDOE provides significant relief and, indeed, greater relief than was sought.

RELEASE PROVISIONS

67. Importantly, the Agreement does not release any individual claims for relief for Rule 23(b)(3) class members. The Settlement sets forth a comprehensive release between the parties only related to the claims asserted in the Second Amended Complaint, excepting any individualized relief. Settlement Agreement ¶¶ 48(a), (b).

68. The Settlement Agreement specifically notes that it does not bar any member of the Rule 23(b)(3) issues class from bringing a future action, in an individual capacity, under IDEA arising out of a past, present, or future violation of the forty-five day timeline. Settlement Agreement ¶ 48(c).

69. The Settlement Agreement withdraws the Second Motion for Preliminary Injunction related to the attempted implementation of procedural guidelines without prejudice, and recognizes that nothing in the Agreement prevents any class member or interested party from challenging implementation of new guidelines or attempted reimplementing of the 2020 proposed procedural guidelines. Settlement Agreement ¶ 48(e).

INCENTIVE AWARDS TO THE NAMED PLAINTIFFS

70. The parties agreed that NJDOE shall make a \$ 5,000 incentive payment to the family of each Named Plaintiff within thirty (30) days of the approval of the Agreement, subject to any liens or child support claims. Settlement Agreement ¶ 36.

Class Counsel sought the incentive payments because the Named Plaintiffs in this case have each absorbed substantial burdens by their participation in the prosecution of this matter, including, without limitation, responding to requests for production and interrogatories, being deposed, and participating in numerous witness preparation sessions for trial.

**COMPLIANCE WITH THE DECEMBER 18, 2023 ORDER
REGARDING DISTRIBUTION OF NOTICE**

71. Pursuant to ¶ 8 of the Court’s December 18, 2023 Order Granting Unopposed Motion for Preliminary Approval of Class Action Settlement, Directing Issuance of Settlement Notice, and scheduling hearing on Final Approval, ECF No. 549, Class Counsel worked to ensure that the Notice approved by the Court in the Order was disseminated to the Class. The Notice sent out to class members and counsel who represented class members in the OAL, is attached hereto as Exhibit 3.

72. Class Counsel created and is maintaining an informational website, www.nj45dayclassaction.com, in both English and Spanish.

73. Class Counsel posted the Full Notice to the class action website, www.nj45dayclassaction.com, as required by the Order, before January 15, 2024. The materials remain posted on the website for public view.

74. The Class Counsel website also has a “Frequently Asked Questions” page, <https://nj45dayclassaction.com/frequently-asked-questions-faq/>, which provides class members with more information about the Settlement.

75. The Class Action Fairness Act (CAFA) requires that a class action defendant provide notification of a proposed settlement to the Attorney General of the United States and to the Attorney General of any state in which a class member resides. 28 U.S.C. § 1715. To assist Defendants, Class Counsel agreed to send out the required CAFA notices. Based upon information from Defendants, Class Counsel sent out notifications to the United States Department of Justice and the Attorney General of the Commonwealth of Pennsylvania on December 26, 2023. On January 10, 2024, Defendants told Class Counsel that class members also live in Connecticut, Maryland, Minnesota, New York, and South Carolina. The Attorneys General of those states received the CAFA notice on January 11, 2024.

76. On February 2, 2024, the Court signed a Consent Order adjusting the deadline for mailing the Notice. Defendants reported that the Notice was mailed to 5,483 class members on February 8, 2024, in advance of the February 13, 2024 deadline (as amended by the Consent Order dated February 2, 2024, ECF No. 559).

77. Defendants sent email notice to attorneys who represented class members in the Office of Administrative Law on February 15, 2024.

78. Class Counsel created a dedicated email address, info@nj45dayclassaction.com, for inquiries related to the Class Notice. Class Counsel monitors the email address and have promptly responded to all inquiries.

79. Since February 8, 2024, Class Counsel have received and responded to forty-five email inquiries.

80. I, and members of the Class Counsel team, spoke on the telephone to fifteen class members, answering questions and explaining the terms of the settlement.

81. As of today's date, Class Counsel have received 4 written objections to the Settlement Agreement. *See* Exhibit 4a (Objection of Jamie Epstein, Esquire), Exhibit 4b (Objection of A. Torres), 4c (Objection of G. Hynes), and 4d (Objection of Y. Deutsch).

82. As of today's date, 19 families have opted out of the Rule 23(b)(3) relief.

THE LODESTAR REFLECTS A REASONABLE NUMBER OF HOURS BILLED AT A REASONABLE HOURLY RATE

83. The Agreement does not include any estate or fund in Court.

84. Determination of the settlement amount of fees was completely bifurcated from resolution of the merits.

85. After a series of arm's length negotiations facilitated by Judge Schneider, Defendants agreed to pay attorney's fees of \$ 4.75 million for all work completed through the date of the settlement Fairness Hearing.

86. Defendants will not use IDEA funds to pay the attorneys' fees. Settlement Agreement ¶ 40.

87. Plaintiffs' Counsel did not charge the Named Plaintiffs for representation. Therefore, we assumed the risk that we would not have been compensated for our efforts if the litigation was not resolved in Plaintiffs' favor. Plaintiffs' Counsel have received no compensation to date in connection with any of the work performed over the past nearly five years on behalf of the Classes.

88. This case required a significant expenditure of attorney time and resources due to the complexity of the legal issues involved, the hard-fought discovery battles, significant amount of motion practice, and investigation (through discovery and otherwise) into numerous factual questions.

89. Defendants have stipulated that the negotiated amount of \$ 4,750,000 is reasonable to be awarded for fees in this matter.

90. My education and experience is set forth more fully in ¶¶ 2–12 (incorporated fully herein by reference) of the Declaration of Catherine Merino Reisman in Support of Motion for Attorneys' Fees for Reisman Carolla Gran & Zuba LLP (*Reisman Fee Decl.*).

91. I have negotiated attorney's fees in scores of special education cases. I have litigated many fee petitions in federal court under federal fee shifting statutes. As part of my preparation of these petitions, I have extensively researched the customary billing rates for attorneys who concentrate their practice in special education law in New Jersey and Pennsylvania.

92. In connection with my representation of families, the various fee petitions that I have filed in federal court, and my extensive involvement with other professionals in the field of special education law through a variety of professional and social contacts, I have contemporary and relevant knowledge of the fees customarily charged by attorneys in this field in New Jersey and Pennsylvania.

93. Additionally, as a partner of RCGZ, I share in the responsibility for setting billing rates for attorneys who work for the firm. In setting those billing rates, I am necessarily familiar with the rates that other firms in our geographic area charge in those practice areas in which my firm concentrates.

94. I am familiar with the fees charged by parents’ counsel in special education civil rights and disability matters in numerous jurisdictions, in particular New Jersey. I am aware that the Third Circuit has approved the use of the entire District of New Jersey as the relevant market for legal rates. *Pub. Interest Research Grp. of N.J., Inc. v. Windall*, 51 F.3d 1179, 1188 (3d Cir. 1995).

95. In 2023, Reisman Carolla Gran & Zuba’s customary billing rates, based on current community market rates, were:

Judith A. Gran (J.D. 1983)	\$ 610
Catherine Merino Reisman (J.D. 1989)	\$ 585
Amelia Carolla (J.D. 1995)	\$ 540
Sarah E. Zuba (J.D. 2002)	\$ 475

96. In 2024, Reisman Carolla Gran & Zuba's customary billing rates, based on current community market rates, are:

Judith A. Gran (J.D. 1983)	\$ 630
Catherine Merino Reisman (J.D. 1989)	\$ 600
Amelia Carolla (J.D. 1995)	\$ 560
Sarah E. Zuba (J.D. 2002)	\$ 500

97. In *K.N. v. Gloucester City Bd. of Educ.*, No. 17-7976, 2022 U.S. Dist. LEXIS 36492 (D.N.J. March 1, 2022), this Court found that my 2021 hourly rate of \$ 545 per hour was a reasonable rate for the relevant legal market, the Philadelphia Metropolitan Area. *Id.* at *6 & n.3. The Court also held that a 4-5% annual increase in rates is appropriate. *Id.* at *8. My 2023 rate of \$ 585 per hour and 2024 rate of \$ 600 per hour is consistent with a 4% annual increase from my 2021 rate approved in *K.N.*

98. In 2022, Judge Kearney of the United States District Court for the Eastern District of Pennsylvania approved an hourly rate of \$ 590 for Ms. Gran and \$ 565 for me for work performed in 2022. (The school district did not contest the reasonableness of those hourly rates.) Judge Kearney approved an hourly rate of \$465 for Ms. Zuba for work performed in 2022. *See Cent. Bucks Sch. Dist. v. Q.M.*, No. 22-1128, 2022 U.S. Dist. LEXIS 215318 (E.D. Pa. 2022). Our current billing

rates are consistent with a 4% annual increase of the rates approved in *Q.M.* The rates for myself, Ms. Gran, and Ms. Carolla are also consistent with a 4% annual increase from 2020 rates approved by the Court in *E.H. v. Wissahickon Sch. Dist.*, No. 2:19-cv-05445, 2020 U.S. Dist. LEXIS 199469, at *11 (E.D. Pa. Oct. 27, 2020): \$ 525 for me, \$ 550 for Ms. Gran, and \$ 480 for Ms. Carolla.

99. For this litigation, class counsel used the following hourly rates to calculate the lodestar. The chart includes the Community Legal Services range, available at <https://clsphila.org/about-community-legal-services/attorney-fees/>, because the Third Circuit has found the CLS chart “to be a fair reflection of the prevailing market rates.” *K.N.*, 2022 U.S. Dist. LEXIS 36492, at *6; *see also Americans for Prosperity v. Grewal*, No. 19-cv-14228, 2021 U.S. Dist. LEXIS 57979, at *38 (D.N.J. March 26, 2021) (adopting CLS schedule with an upward adjustment); *Rayna P. v. Campus Cmty. Sch.*, 390 F. Supp. 3d 556, 565-66 (D. Del. 2019).

FIRM	TIMEKEEPER	GRADUATION YEAR OR ROLE IN FIRM	CLS RANGE	HOURLY RATE
Coyle	Donald Soutar	1999	630-715	700
DLD	Denise L. Dwyer	1984	735-850	610
DRG	David R. Giles	1989	735-850	585
ELC	Gregory G. Little	1982	735-850	650

FIRM	TIMEKEEPER	GRADUATION YEAR OR ROLE IN FIRM	CLS RANGE	HOURLY RATE
RCGZ	Judith A. Gran	1983	735-850	610
RCGZ	Catherine Merino Reisman	1989	735-850	585
RCGZ	Connie Tracey	Paralegal	190-240	125
RCGZ	Tina Tilton	Paralegal	190-240	125
TLO	Robert C. Thurston	1987	735-580	585
Walsh	Thomas J. O'Leary [Lead Discovery Counsel]	1998	630-715	630
Walsh	Hector D. Ruiz	2001	630-715	500
Walsh	David D. Cramer	2011	420-525	450
Walsh	Zahire D. Estrella- Chambers	2011	420-525	450
Walsh	Gerhard W. Buehning	2015	320-415	415
Walsh	Andrew T. Friusoli	Law Clerk	140-190	290
Walsh	Christine Clark	Law Clerk	140-190	290
Walsh	Carmen I. Abrazado	Law Clerk	140-190	290
Walsh	Nicole M. Travostino	Paralegal	190-240	235
Walsh	Mary Hogan	Paralegal	190-240	235
Walsh	Barbara Troyan	Paralegal	190-240	235
WL	Jeffrey I. Wasserman	1999	630-715	550
JRA	Lisa Quartarolo (L.Q.)	1998	630-715	500
JRA	Donald Soutar (D.S.)	1999	630-715	550
JRA	Krista H. Rue (K.H. or K.H.R.)	2002	630-715	550
JRA	Travis Ellison (T.E.E.)	2005	535-625	400
JRA	Frank Geier (F.X.G.)	2005	535-625	400
JRA	John D. Rue (J.D.R.)	2005	535-625	695
JRA	Wayne Pollock (W.I.P.)	2009	420-525	500
JRA	Dylan Fleming (D.M.F.)	2010	420-525	300

FIRM	TIMEKEEPER	GRADUATION YEAR OR ROLE IN FIRM	CLS RANGE	HOURLY RATE
JRA	Saran Edwards (S.Q.E.)	2011	420-525	500
JRA	Michelle Cummins (M.C.)	2015	320-415	300
JRA	Eric Storjohann (E.S.)	2016	320-415	250
JRA	Matthew Crimmel (M.P.C.)	2017	320-415	300
JRA	Kenneth Walk (K.W.)	2019	265-315	250
JRA	Latiah Griffin (L.G.)	2020	265-315	200
JRA	Anna Edwards (A.E.)	Law Clerk	140-190	200
JRA	Al Ford (A.E.F.)	Law Clerk	140-190	200
JRA	Clinton Glass (C.G.)	Law Clerk	140-190	200
JRA	Sara Tarabocchia (S.T.)	Law Clerk	140-190	200
JRA	Megan Atkinson (M.A.)	Paralegal	190-240	82.50
JRA	Sean Dalrymple (S.D.)	Paralegal	190-240	150
JRA	Tara Nutter (T.M.N.)	Paralegal	190-240	150
JRA	Anne Roque (A.R.)	Paralegal	190-240	150
JRA	Saraya Sikora (S.S.)	Paralegal	190-240	150
JRA	Claire Walsh (C.W.)	Paralegal	190-240	150
JRA	Megan Atkinson (M.A.)	Paralegal	190-240	82.50

100. Based upon my experience, the hourly rates set forth above are almost all reasonable, well below the CLS range, and consistent with hourly rates set by courts within the Third Circuit in the cases cited in ¶¶ 97 – 99, *supra*, as well as the following cases:

- a. In *R.B.A. v. Jersey City Bd. of Educ.*, No. 15-cv-8269, 2023 U.S. Dist. LEXIS 72797 (D.N.J. April 26, 2023), this Court approved the following 2023 hourly rates: David J. Berney (1992) - \$580; Nina Russakoff (2002) - \$525.

b. In *Ida D. v. Rivera*, No. 17-5272, 2019 U.S. Dist. LEXIS 106715 (E.D. Pa. June 26, 2019), the court approved the following 2018 hourly rates: David J. Berney (1992) - \$495 (an increase of 4% annually yields an hourly rate of \$602 per hour for 2023).

**BASED UPON BILLING RECORDS
ADEQUATELY DOCUMENTING THE HOURS CLAIMED,
THE TOTAL NON-DISCOUNTED
LODESTAR IS \$6,747,078.74
FOR 11,973 HOURS OF WORK**

101. The total lodestar for Reisman Carolla Gran & Zuba is \$845,391.88 for 1445.8 hours, calculated at an hourly rate of \$610 per hour for Judith Gran and \$585 per hour for Catherine Reisman. This lodestar includes time through February 29, 2024. *See Reisman Fee Declaration* ¶ 28 and accompanying exhibits.

102. The total lodestar for Law Office of David R. Giles is \$ 83,889.00, calculated at an hourly rate of \$585 per hour for 143.4 hours. This lodestar includes time through January 31, 2023. *See Certification of David R. Giles* and accompanying exhibit.

103. The total lodestar for Education Law Center is \$ 402,255.00, calculated at an hourly rate of \$700 per hour for 574.65 hours. This lodestar includes time billed through February 3, 2023. *See Declaration of Gregory G. Little* and accompanying exhibit.

104. The total lodestar for Thurston Law Offices, LLC is \$466,537.50, calculated at an hourly rate of \$585 per hour for 798 hours. This lodestar includes time billed through February 29, 2024. *See Certification of Robert C. Thurston* and accompanying exhibit.

105. The total lodestar for Law Office of Denise Lanchantin Dwyer is \$202,276.00, calculated at an hourly rate of \$610 per hour for 331.6 hours. This lodestar includes time billed through February 2, 2023. *See Declaration of Denise Lanchantin Dwyer* and accompanying exhibit.

106. The total lodestar for Wasserman Legal LLC is \$101,365.00, calculated at an hourly rate of \$550 per hour for 184.3 hours. This lodestar includes time billed through January 31, 2023. *See Declaration of Jeffrey I. Wasserman* and accompanying exhibit.

107. The total lodestar for Walsh Pizzi O'Reilly & Falanga LLC is \$1,544,695.23. This lodestar includes time billed through February 9, 2023. *See Certification of Thomas J. O'Leary* and accompanying exhibit.

108. The billing report for Coyle & Morris LLP reflects 422.1 hours of work through August 22, 2023. The Coyle bill reflects an hourly rate of \$700 per hour for Donald A. Soutar, resulting in a lodestar of \$295,470.00. *See Certification of Donald A. Soutar* and accompanying exhibit.

109. The total fees for JRA through February 18, 2023, 5,388.25 hours amount to \$ 2,777,567.54. *See Affirmation of Krista Rue* ¶ 20 and accompanying exhibit.

110. Because JRA attorneys did not track their time after February 2023, the billing reports do not reflect any time entries subsequent to February 18, 2023. Although JRA has provided an estimate of the hours worked subsequent to February 18, 2023, *see Affirmation of Krista Rue* ¶¶ 22-26, JRA is not seeking compensation for this work.

111. JRA indicated that it incurred expenses of \$27,631.50. The total lodestar for JRA, including expenses, is \$2,805,199.13. *See Affirmation of Krista Rue*, Exhibit A.

112. Only TLO, RCGZ, and Coyle tracked time after February 18, 2023. *Giles Cert.* ¶ 30; *Little Decl.* ¶ 11; *Dwyer Decl.* ¶ 10; *O'Leary Cert.* ¶¶ 18-28; *Rue Affirmation* ¶¶ 22-26. Therefore, the lodestar calculation does not reflect time billed after February 2023 for six of the nine Plaintiffs' Counsel firms.

113. Based upon the documentation referenced above, the total lodestar for the work done in this matter is \$6,747,078.74, calculated as follows:

Firm	Hours	Amount
RCGZ	1445.8	845,391.88
David R. Giles	143.4	83,889.00
Education Law Center	574.65	402,255.00
Denise Lanchantin Dwyer	331.6	202,276.00
Thurston Law Offices	798	466,537.50
Wasserman Legal	184.3	101,365.00
Coyle	422.1	295,470.00
JRA	5,388.35	2,805,199.13
Walsh	2,698.70	1,544,695.23
	11,986.9	6,747,078.74

114. The \$4.75 million fee settlement is 70.4% of the total lodestar. The actual percentage of the lodestar recovered is lower, because six of the nine firms did not track their time after February 18, 2023.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 11, 2024 /s/ Catherine Merino Reisman
Catherine Merino Reisman

Exhibit 1

**IN THE 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.

**CONSENT ORDER AND
SETTLEMENT AGREEMENT**

THIS AGREEMENT is entered into by Plaintiffs 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., individually and on behalf of themselves and a class of persons similarly situated (the “C.P. Class” or “C.P. Plaintiffs”) and Defendants New Jersey Department of Education (“NJDOE”) and Angelica Allen-McMillan (collectively, “Defendants”). C.P. Plaintiffs and Defendants shall be referred to individually as a “Party” and jointly as the “Parties.”

WITNESSETH THAT:

WHEREAS, on May 22, 2019, the C.P. Class filed a class action lawsuit in the Court against Defendants, *C.P., et al. v. N.J. Dept. of Educ., et al.*, No. 19-cv-12807 (the “C.P. Lawsuit”), alleging violations of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* (“IDEA”) and 42 U.S.C. § 1983 and seeking wide-ranging declaratory and injunctive relief, as well as the recovery of attorney’s fees and costs;

WHEREAS, on October 27, 2023, the Court appointed as Class Counsel Reisman Carolla Gran & Zuba LLP, Law Office of David R. Giles, Education Law Center, Law Office of Denise Lanchantin Dwyer LLC, Thurston Law Offices LLC, and Wasserman Legal LLC;

WHEREAS, this Settlement Agreement concerns New Jersey’s special education dispute resolution system;

WHEREAS, on February 27, 2020, the C.P. Class filed the Second Amended Complaint;

WHEREAS, on June 19, 2020, Defendant filed an Answer to the Second Amended Complaint in the C.P. Class matter;

WHEREAS, since June 2022, the Parties have exchanged written settlement proposals and counter-proposals and have engaged in in-person settlement conferences to negotiate the terms of this Settlement Agreement;

WHEREAS, through these settlement negotiations, the Parties have negotiated and agreed to the specific details of this Agreement;

WHEREAS, the Parties acknowledge that, to the extent possible, it is in their best interests to resolve the issues raised in this Settlement Agreement by means other than litigation and, to this end, have on this day agreed to enter into this federally enforceable Settlement Agreement;

WHEREAS, the Parties recognize, and the Court by entering this Consent Order finds, that this Consent Order has been negotiated by the Parties in good faith and will avoid further litigation between the Parties and that this Consent Order is fair, reasonable, and in the public interest;

NOW THEREFORE, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.
2. Venue is proper pursuant to 28 U.S.C. § 1391.

II. REVISED CLASS DEFINITIONS

3. The definition of the class certified pursuant to Fed. R. Civ. P. 23(b)(2) is amended as follows: All persons who, pursuant to the IDEA, have filed or will file during the period of time that the Court retains jurisdiction, a due process petition with NJDOE, and whose cases are pending in the New Jersey Office of Administrative Law (“NJOAL”).
4. The definition of the Issues Class certified pursuant to Fed. R. Civ. P. 23(b)(3) is amended as follows: All persons who, pursuant to IDEA, filed due process petitions with NJDOE on or after May 23, 2016, who, after their due process petition was transmitted 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.

III. DEFINITIONS OF TERMS AS USED IN THIS AGREEMENT

5. “**Pending Cases**” shall be defined as any and all due process petitions for which the resolution period or the agreed upon adjusted resolution period has ended, in accordance with 34 C.F.R. §300.510(b) or (c), but the petition remains unresolved in NJOAL, regardless of whether the case is within or has surpassed the 45-day timeline.

6. “**Final Decision Cases**” shall be defined as any and all due process petitions that have been resolved in full, and shall include two distinct groups of due process petitions:

- a. **Final Decisions Post-Full Hearing**, which shall include any and all due process petitions that are resolved, in full, through the issuance of a final decision by NJOAL following the completion of a due process hearing; and
- b. **Final Decisions-No Full Hearing**, which shall include any and all due process petitions that are resolved, in full, through the issuance of a final decision by NJOAL without the completion of a due process hearing, including summary decision, dismissal of a petition with or without prejudice, and NJOAL-approved settlement agreements.

7. “**95% Compliance**” shall be defined as the timely resolution of due process petitions, in accordance with 34 C.F.R. § 300.515(a), (c), in 95% of all special education due process matters at the NJOAL during a four month period, provided that, when examining each month of the four month period, there is no decrease below 95% in the compliance rate from the prior month. The Compliance Monitor shall determine the percentage of compliance achieved in each of three

areas—**Pending Cases, Final Decisions Post-Full Hearing, and Final Decisions-No Full Hearing:**

- a. For **Pending Cases**, the total number of Pending Cases that remain at the end of each four month period that are still within the 45-Day timeline, excluding specific extensions of time requested by a party and granted by an ALJ, shall be divided by the total number of Pending Cases that remain at the end of the four month period.
- b. For **Final Decisions Post-Full Hearing**, the total number of Final Decisions Post-Full Hearing at the end of each four month period that were resolved within the 45-Day Timeline, excluding specific extensions of time requested by a party and granted by an ALJ, shall be divided by the total number of Final Decisions Post- Full Hearing that were resolved during the four month period.
- c. For **Final Decisions-No Full Hearing**, the total number of Final Decisions-No Full Hearing at the end of each four month period that were resolved within the 45-Day Timeline, excluding specific extensions of time requested by a party and granted by an ALJ, shall be divided by the total number of Final Decisions-No Full Hearing that were resolved during the four month period.

For purposes of determining NJDOE’s compliance with the Settlement, NJDOE must attain 95% compliance separately for each of the three areas above.

8. “**Day 1**” of the 45-Day timeline shall be defined as the first day following the end of the 30-day resolution period, in accordance with 34 C.F.R. §300.510(b), the end of the parties’ agreed-upon adjusted resolution period, in accordance with 34 C.F.R. §300.510(c) or in the event of a district filing, consistent with the process outlined in N.J.A.C. 6A:14-2.7(h)(11), Day 1 is the day after filing, unless the parties agree to voluntary mediation, in which case Day 1

shall be the first day after completion of the 30-day mediation period or the end of the parties' agreed-upon adjusted mediation period.

9. "45 Days or 45-Day Timeline" shall be defined as 45 calendar days from Day 1, as defined at Paragraph 8, and shall be calculated exclusively using calendar days, in accordance with 34 C.F.R. § 300.515(a), (c), excluding specific extensions of time requested by a party and granted by an ALJ as provided in 34 C.F.R. § 300.515(c). Defendants shall immediately cease counting 45 Days or the 45-Day Timeline in any manner other than calendar days, and shall revoke any and all policies, practices, guidelines, and/or procedures that permit the counting of 45 Days or the 45-Day Timeline in any manner other than calendar days.

IV. RELIEF FOR THE RULE 23(b)(2) CLASS

10. For any due process petition filed pursuant to IDEA, NJDOE shall ensure, pursuant to 34 C.F.R. § 300.515, that not later than 45 days after the expiration of the 30-day resolution period under 34 C.F.R. § 300.510(b), or the agreed-upon adjusted resolution periods described in 34 C.F.R. § 300.510(c), and accounting for the specific extensions of time requested by a party and granted by an Administrative Law Judge as provided in 34 C.F.R. § 300.515(c):

- a. A Final Decision, as defined *supra* at Paragraph 6, is reached by NJOAL; and
- b. NJOAL has mailed a copy of the decision to each of the parties.

11. For purposes of compliance with this Agreement, for all Pending Cases that exist on the date of this Agreement's approval by the Court, the 45-Day Timeline as set forth in 34 C.F.R. § 300.515 (a), (c) will reset and begin to run on the calendar day immediately following the date of final approval of this Agreement.

12. To ensure that future Rule 23(b)(2) Class Members know about the Settlement, the transmittal documents from NJDOE to NJOAL arising from a due

process petition shall, for the duration of the Court's jurisdiction over this matter, include a black box placed at the centered, at 1 point larger font than the rest of the text, with the following language:

CLASS ACTION NOTICE

Due to the entry of a Consent Order resolving a Class Action, a federal court has appointed a Compliance Monitor to oversee the timely resolution of special education due process hearings. If you believe that your due process petition is not being resolved in a timely manner, you can contact the Compliance Monitor at [email address]. You can contact Class Counsel at info@NJ45dayclassaction.com with questions or concerns regarding the Consent Order, which is explained here [notice link].

V. RELIEF FOR THE RULE 23(b)(3) ISSUES CLASS

13. Any member of the Rule 23(b)(3) Issues Class shall have two (2) years from the date of entry of this Order to file a claim in this court for individual relief under the IDEA for a violation arising out of or related to the timeline in 34 C.F.R. § 300.515(a), (c). This agreed extension is in lieu of class action tolling.

VI. APPOINTMENT OF COMPLIANCE MONITOR

14. The Court will appoint a Compliance Monitor using the following process.
- a. The parties will attempt to agree upon a candidate to serve as a Compliance Monitor. The Compliance Monitor may consist of a single person, a team of individuals, or one or more organizations. If successful, the parties jointly will present a candidate to the Court for appointment by no later than 30 days after final approval of this Agreement. If the parties cannot agree on a candidate, they shall each propose three candidates to the Court by no later than 30

days after final approval of this Agreement and the Court will select the person to serve as Compliance Monitor.

- b. If, in the future, the Compliance Monitor becomes permanently unavailable for any reason or is unable to fulfill the duties of the Compliance Monitor, the parties will meet and confer to determine whether a mutually acceptable replacement can be recommended to the Court for appointment. If there is no mutually agreed upon candidate, the Parties may make separate recommendations to the Court.
- c. NJDOE is responsible for compensating the Compliance Monitor and will establish a reasonable rate of pay consistent with market rates for the services being performed.

VII. ROLE, DUTIES, AND AUTHORITY OF COMPLIANCE MONITOR

15. The general role of the Compliance Monitor is to provide the NJDOE with the support, guidance, experience, and expertise needed to comply with the terms of this Agreement.

16. The Compliance Monitor's duties include, but are not limited to, the following: To develop a compliance plan; to oversee and monitor the implementation of the compliance plan; to amend the plan, as necessary and appropriate to address non-compliance; to review and analyze data related to non-compliance with the 45-Day rule; to identify and address barriers to non-compliance, through the development and implementation of targeted interventions; to make recommendations regarding the development, implementation, and assessment of all initiatives, interventions, and corrective actions designed to rectify non-compliance with the 45-Day Rule; and to oversee, monitor, measure, assess, and report upon the effectiveness of the compliance plan and implementation of interventions to improve compliance. The Compliance

Monitor will meet and discuss revisions and issues related to the plan with NJDOE and Class Counsel, as the Monitor deems appropriate or when requested by one of the parties.

17. The Compliance Monitor shall have full access to any and all information and data the Monitor needs from NJDOE to fulfill the Monitor's role and duties. Data includes, but is not limited to, data needed to determine, measure, and analyze the presence and causes of non-compliance, and barriers to compliance, with the 45-Day timeline; and data needed to measure, assess, and report upon the effects of interventions developed to address non-compliance. NJDOE shall make all reasonable efforts to obtain and provide any and all information and data the Monitor requests, including information and data in the custody and control of Office of Administrative Law. Once the information is provided to NJDOE, NJDOE will provide that information to the Monitor in a timely manner.

18. The Monitor may conduct individual, confidential interviews as part of the data collection process, as the Monitor deems appropriate. The Monitor shall ensure that the confidentiality of persons interviewed and of identifying information shared is protected unless the interviewee permits disclosure.

19. The Compliance Monitor shall operate independently of the parties and the Court, and shall have the authority to recommend corrective actions to ensure compliance with the settlement.

VIII. PLAN FOR COMPLIANCE

20. By no later than 90 days after the Monitor's appointment, the Monitor shall develop a Compliance Plan as stated in Paragraph 16 above. The Compliance Plan shall be a working document. As part of the plan, NJDOE shall collect data, including through the Adjournment Form referenced in Paragraph 22, as well as the electronic survey at the end of the Adjournment Form and/or through NJOAL's

electronic case management system. The Compliance Plan shall identify the data to be collected monthly in accordance with this Agreement, as well as any additional information and data to be collected as deemed appropriate by the Monitor, and shall identify the format in which the data shall be provided. Where the Monitor requires additional information or data not captured by the electronic survey or NJOAL's electronic case management system, the parties shall mutually agree upon another mechanism for collecting such information and data.

21. Upon the hiring of the Compliance Monitor, NJDOE shall provide the Monitor with a list of the unresolved due process petitions that have been transmitted to the NJOAL up to the date of approval of the Settlement, including the date of transmittal, and shall make all reasonable efforts to provide the Monitor with full access to the case files for all unresolved due process petitions that exceeded the 45-Day Timeline as of the date of final approval of this Agreement. This initial data, which pre-dates approval of this Agreement, shall not be considered evidence of non-compliance but rather shall serve as a starting point for the Monitor to begin the process of identifying the presence and causes of non-compliance and barriers to compliance, and may be included in the Compliance Plan as the Monitor deems appropriate.

22. An Adjournment Form (attached here as Exhibit A) will be used to track specific extensions of time requested by the parties and granted by the ALJ. Each Adjournment Form will be maintained in the electronic case file for each matter.

IX. COMPLIANCE REPORTING

23. The Monitor shall, at the end of each monitoring period according to the schedule set forth at Paragraphs 28 and 32 below, submit a report detailing the status of compliance with the timeline set forth in 34 C.F.R. § 300.515(a), (c).

24. On a monthly basis, starting sixty (60) days after the date of final approval of this Agreement by the Court, NJDOE will provide to the Compliance Monitor (i) the number of due process petitions received by NJDOE for that month and (ii) the number of due process petitions transmitted to the NJOAL.

25. On a monthly basis, starting thirty (30) days after the date of final approval of this Agreement by the Court, NJDOE will provide to the Compliance Monitor the data needed to assess compliance as set forth at Paragraph 7 above.

26. To assess compliance, the Compliance Monitor may review the following documents for each **Pending Case**:

- a. The Transmittal Notice and accompanying transmittal documents, which shall state the initial 45-Day deadline for disposition, calculated in accordance with Paragraph 9 above; and
- b. Any and all completed and signed Adjournment Forms showing a party's request for a specific adjournment; and
- c. All scheduling orders (including the initial scheduling order).

27. To assess compliance, the Compliance Monitor may review the following documents for each and every **Final Decision Case**, disaggregated into the two distinct **Final Decision Case** groups set forth in Paragraphs 6(a) and (b) above:

- a. The Transmittal Notice and accompanying transmittal documents, which shall state the initial 45-Day deadline for disposition, calculated in accordance with Paragraph 9 above; and
- b. Any and all completed and signed Adjournment Forms showing a party's request for a specific adjournment and the ALJ's disposition;
- c. All scheduling orders (including the initial scheduling order); and

- d. The dated and signed order of dismissal or notice of withdrawal, the final decision approving a settlement, the final decision in the case issued after a hearing, and/or any other decisions disposing of the case.

28. The Monitor will issue a report every four months, or at a shorter regular interval should the Monitor so choose, in accordance with the process and timelines set forth at Paragraph 32 below. Beyond the 18 months after approval of the Agreement, the Monitor will issue reports on a semiannual basis for as long as the Court retains jurisdiction.

29. The first report issued after the hiring of the Compliance Monitor may include, but not be limited to, a baseline of relevant data, including data available prior to the approval of the Settlement; a summary of the initiatives, interventions, and corrective actions put in place prior to the first monitoring reporting period to address the problem and the results of same; data collected during the first monitoring reporting period; a hypothesis of the causes of non-compliance and barriers to compliance; a summary of the steps taken by NJDOE during the first monitoring period to identify and address the causes of non-compliance; a summary of the actions NJDOE will take in the second monitoring period to rectify noncompliance; and how said actions will be measured and assessed.

30. The remaining reports within the 18-month time period and the subsequent semiannual reports shall include, but not be limited to, a summary of the initiatives, interventions, and corrective actions put in place during that monitoring reporting period to address the problem and the results of same; data collected during that monitoring reporting period; a discussion of the causes of non-compliance and barriers to compliance; a summary of the steps taken by NJDOE during that monitoring period to identify and address the causes of non-compliance; a summary of the actions NJDOE will take in the next monitoring

period to rectify noncompliance; and how said actions will be measured and assessed. The report shall also specifically address, among other data points, in both matched and aggregate (where appropriate and in accordance with this Agreement) format on a monthly basis and monitoring period basis, the following: (i) how many due process petitions NJDOE received each month; (ii) how many due process petitions were transmitted to NJOAL; (iii) of the petitions transmitted, how many days did it take for transmittal to occur; (iv) how many due process petitions were **Pending Cases** at the end of the month; (v) of the **Pending Cases**, how many were beyond the 45-Day Timeline, excluding specific requests for extension of time as allowed pursuant to 34 C.F.R. §300.515(c); (vi) how many due process petitions were **Final Decisions Post-Full Hearing** at the end of the month; (vii) of the **Final Decisions Post-Full Hearing**, how many were beyond the 45-Day Timeline, excluding specific requests for extension of time as allowed pursuant to 34 C.F.R. §300.515(c); (viii) how many due process petitions were **Final Decisions-No Full Hearing** at the end of the month; (ix) of the **Final Decisions-No Full Hearing**, how many were beyond the 45-Day Timeline, excluding specific requests for extension of time as allowed pursuant to 34 C.F.R. §300.515(c).

31. The Compliance Monitor shall use the information set forth in Paragraphs 26 and 27 to calculate the percentages of compliance with the timelines in 34 C.F.R. §300.515(a), (c) of due process petitions that have been transmitted to the NJOAL in **Pending Cases, Final Decisions-Post Full Hearing, and Final Decisions – No Full Hearing**.

32. When issuing a Monitoring Report, the Monitor shall follow the timeline and process listed below:

- a. The Monitoring Report shall be issued by no later than forty-five (45) days following the last day of the monitoring period.

- b. The Monitor will issue a draft of the report to the parties within twenty (20) days of the last day of the monitoring period.
- c. The parties will have ten (10) days after receipt of the draft report to submit any comments/objections to the Monitor.
- d. The Monitor will release the final report fifteen (15) days after receiving the parties' comments/objections.
- e. Within 30 days of receiving the finalized report, the parties may meet with the Monitor separately or together to discuss how to address any issues or concerns raised in the report ("post-report meeting").
- f. Each report after the first report should reflect a positive trend toward achieving or maintaining 95 percent compliance with 34 C.F.R. § 300.515(a), (c), as defined at Paragraph 7. In the event a report does not reflect a positive trend toward meeting 95 percent compliance with the timelines as defined in 34 C.F.R. § 300.515(a), (c), the Monitor shall hold a post-report meeting to discuss and address compliance barriers and/or issues with meeting the 95 percent benchmark at the post-report meeting.

33. Upon issuance of the final report, NJDOE shall, within five (5) business days, post a copy of the report, with redaction of any personally identifiable information, on its website in a clearly marked location.

X. OPPORTUNITY FOR INPUT TO MONITOR

34. Within fifteen (15) calendar days of final approval of this Agreement by the Court, NJDOE will provide an opportunity for individuals to provide input, anonymously or otherwise, regarding experiences with the NJDOE and NJOAL in having due process petitions processed, heard, and/or resolved by establishing an

email account accessible by the Monitor. The Monitor shall regularly check the email account and may choose to disclose this input within the monitoring reports.

XI. ENFORCEMENT AFTER EIGHTEEN MONTHS

35. The Class will not seek an order of contempt for eighteen (18) months after the effective date of the final approval of this Agreement by the Court. After eighteen (18) months from the date this Agreement is approved by the Court, if Class Counsel believes that Defendants have not complied materially with any provision of this Agreement, Class Counsel shall provide the Department of Education, with a notice containing (i) the act of non-compliance, (ii) a reference to the specific provision(s) of the Agreement that the Class alleges Defendants have violated, and (iii) a statement of the remedial action sought. Defendants shall have an opportunity to respond to Class Counsel's claims within 30 days. The parties shall then meet and confer within 30 days to discuss a resolution of the issues. If the parties do not resolve the issues after meeting, the Class may file a formal application with the Court alleging its claim of material non-compliance and seeking all appropriate relief. For purposes of this provision, material non-compliance is defined as any material failure by NJDOE to comply with any terms of this Agreement, including but not limited to, failing to achieve a sustained compliance rate of 95%, as defined in Paragraph 7, *supra*, for either of the **Final Decision** groups or the **Pending Cases** Group, within 18 months of final approval of this Agreement by this Court.

XII. INCENTIVE PAYMENTS

36. NJDOE shall make incentive payments to the family of each named plaintiff in the amount of \$5,000, for an aggregate amount of \$50,000. This award is subject to any child support and/or State liens against the individual Named Plaintiffs. After final approval, payment will be made upon receipt of completed child support certifications for each Named Plaintiff and New Jersey W-9(s) for

the Named Plaintiffs. Upon receipt of the above-mentioned documentation, payment will be made within thirty (30) days. Should payment not be made within 90 days, the Parties may seek assistance of the Court. Payments to the Named Plaintiffs should be made via check payable to each individual Named Plaintiff.

XIII. ATTORNEY'S FEES

37. Defendants agree that the Class is the prevailing party for the purposes of an award of attorney's fees pursuant to 20 U.S.C. § 1400 et seq. and 42 U.S.C. § 1983 and is entitled to an award of reasonable and necessary fees.

38. The parties further agree that Class Counsel is entitled to reasonable fees and expenses for legal services performed related to the post-judgment monitoring as stated in Section IX of this Agreement.

39. Class Counsel provided Defendants' counsel with a fee demand for the reasonable and necessary fees incurred during this matter, as well as, the anticipated fees for the post-judgment monitoring mentioned in Section IX of this Agreement. The fee demand for the reasonable and necessary fees already incurred included any and all proofs supporting the demand, including billing records demonstrating the date of service, the hourly rate, the time spent on the work, and a description of the nature of the work performed. After Class Counsel provided Defendants with its fee demand and the complete accompanying proofs, the parties negotiated the fees with the assistance of the Honorable Joel Schneider, former U.S.M.J. at NJDOE's expense.

40. As a result of the negotiation assisted by the Honorable Joel Schneider, Defendants will not oppose an application for an award of attorneys' fees and expenses of \$4,750,000.00 for all work performed through resolution of the Fairness Hearing scheduled as a result of the Motion for Preliminary Approval

of the Settlement. Defendants will not pay this amount from funds received by them pursuant to the Individuals with Disabilities Education Act.

41. All payments of attorney's fees and costs will be made after Defendants' Counsel receive the legally required paperwork, which may include, but is not limited to, a completed State of New Jersey W-9; State of New Jersey Vendor Invoices and/or signed vouchers, to the extent necessary; and Registration through the New Jersey Treasury to the extent necessary for the Treasury to process the payment.

42. Any payment of attorneys' fees awarded for work through final approval will be distributed as follows: Defendants will pay 41.5488% of any attorney's fees awarded for work performed through approval of the settlement to John Rue & Associates, LLC and issue a 1099 for that amount to John Rue & Associates, LLC. Defendants will pay 58.4512% of any attorney's fees awarded for work performed through approval of the settlement to the trust account of Reisman Carolla Gran & Zuba LLP (RCGZ) and issue a 1099 for that amount, which will be distributed by RCGZ to counsel other than John Rue & Associates LLC in accordance with a private agreement between those firms. After final approval, Defendants will make the payment of attorney's fees and costs within 60 days after receipt of the respective legally-required paperwork.

43. The parties agree and recognize that Defendants will not be a party to the agreement between Plaintiffs' Counsel for the allocation of the payment of fees and costs. If a dispute should arise between Plaintiffs' Counsel regarding the allocation of the awarded fees and costs, Defendants shall not be named as a party or deemed responsible for any payment arising out of the dispute.

44. For fees sought for work performed during the period of compliance monitoring pursuant to Section IX above, the Parties agree to use the procedure set forth in Paragraph 39 to determine the amount of fees to be paid by Defendants as

to each monitoring period, except that the Parties may choose whether to retain a mediator to assist in the negotiation of the fees.

XIV. PROCEDURE FOR APPROVAL OF SETTLEMENT

45. The parties are ordered to meet and confer on the form of notice to the class, the means of dissemination, the objection period, and any other issues related to notice. If the parties cannot reach agreement, they shall separately state their positions to the Court.

46. The Court will Order notice to the Class, including an opportunity to object, and schedule a fairness hearing in due course.

47. NJDOE will disseminate the Notice to the Class and bear the cost of the dissemination. For the Fed. R. Civ. P 23(b)(3) class members and current Fed. R. Civ. P. 23(b)(2) class members, the NJDOE will provide the class notice to both the class members and the class members' listed attorneys in NJDOE's special education database. The notice to the class members will be sent via U.S. mail. The notice to the attorneys will be sent via electronic mail.

XV. RELEASE OF CLAIMS

48. Effective upon the entry of this Order and Agreement by the Court, in consideration of the relief set forth herein:

- a. It is expressly understood and agreed by the Parties that this Agreement constitutes a complete and final release between the parties with respect to any and all past and present (but not future) liabilities, claims, demands, rights and causes of action, guarantees, claims for damages or other relief, settlements, costs, and compensation of any kind or nature whatsoever, arising out of the C.P. Class's claims, excluding claims concerning Plaintiffs' Second Motion for Preliminary Injunction (see Paragraph 48(e), *infra*). The Second Amended Complaint did not request any

individualized relief, so this Agreement does not release any past, present, or future individual claims.

- b. In return for the consideration of this Agreement, the C.P. Class knowingly and voluntarily, completely, and forever, releases and discharges Defendants and each of Defendants' officers, from any and all claims, causes of action, judgments, obligations or liabilities of whatever kind and character raised in the Second Amended Complaint filed on February 27, 2020, excepting any individualized relief.
- c. Notwithstanding the foregoing subparagraphs 48(a) and 48(b), nothing in this Agreement shall bar any member of the C.P. Issues Class as defined in Paragraph 4 of this Agreement from bringing a future action in an individual capacity under the IDEA arising out of a past, present, or future violation of the timeline as defined in 34 C.F.R. § 300.515(a), (c) for any form of relief, including requests for individualized relief, not pled in the Second Amended Complaint nor does this bar them from seeking relief, including individualized relief, related to the implementation of procedural guidelines as set forth in subparagraph (e) below. The parties acknowledge and agree that Defendants reserve any and all defenses and arguments related to those claims (subject to the tolling agreed to herein).
- d. The Parties acknowledge that two named plaintiffs, (i) C.P. o/b/o F.P. and (ii) M.S. o/b/o H.S., have asserted individual claims in separate actions, *inter alia*, against defendant NJDOE. The release in this Agreement does not affect any claims or defenses that have been or may be alleged in those actions.

- e. Plaintiffs hereby withdraw the Second Motion for Preliminary Injunction without prejudice. The Second Motion for Preliminary Injunction related to claims in the Second Amended Complaint regarding the attempt to adopt “Procedural Guidelines” in 2020. NJDOE has withdrawn the 2020 proposed guidelines. The parties expressly understand and agree that, because the Second Motion for Preliminary Injunction is being withdrawn without prejudice, the request for injunctive relief can be renewed. Nothing in this Agreement prevents any Class Member, parent of a student with a disability, or interested party from separately challenging any attempt to implement new guidelines or the implementation or attempted reimplementations of any or all of the 2020 proposed guidelines.

XVI. EFFECTIVE DATE

49. The Effective Date of this Consent Order shall be the date upon which this Consent Order is entered by the Court or a motion to enter the Consent Order is granted, whichever occurs first, as recorded on the Court’s docket.

XVII. RETENTION OF JURISDICTION AND TERMINATION DATE

50. The Court shall retain jurisdiction over this case until termination of this Consent Order, for the purpose of resolving disputes arising under this Order or entering orders modifying this Order, or effectuating or enforcing compliance with the terms of this Order.

51. When the Compliance Monitor finds that NJDOE has reached 95% compliance with the timeline as defined in 34 C.F.R. §300.515(a), (c), as defined in Paragraph 7, *supra*, Defendants may move to terminate this Consent Order. The Class may object, and the Court will resolve the matter.

XVIII. OTHER MATTERS

52. *No admission of liability.* Nothing in this agreement shall be construed to be an admission of liability under any theory asserted in the Second Amended Complaint.

53. *Entire Agreement.* This Agreement, including exhibits, contains all the agreements, conditions, promises, and covenants between Plaintiffs and Defendants regarding matters set forth in it, and supersedes all prior or contemporaneous agreements, drafts, representations, or understandings, either written or oral, with respect to the subject matter of the present Agreement.

54. *Modification.* The terms and conditions of this Agreement can be amended, changed, or altered only by written agreement of the Parties through their respective counsel or by order of the Court upon motion.

55. *Drafting of this Agreement.* This Agreement is deemed to have been drafted by all Parties hereto, as a result of arm's length negotiations among the Parties. Whereas all Parties have contributed to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.

56. *Execution by Facsimile and in Counterparts.* This Agreement may be executed by the Parties hereto by facsimile and in separate counterparts, and all such counterparts taken together will be deemed to constitute one and the same agreement.

57. *Interpretation.* The language of this Agreement will be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties. The headings in this Agreement are solely for convenience and will not be considered in its interpretation. Where required by context, the plural includes the singular and the singular includes the plural, and the terms "and" and "or" will mean "and/or." This Agreement is the product of negotiations and joint drafting so that any ambiguity will not be construed against any Party. If any provision or provisions of this Agreement are found to be contrary to law, the Parties agree that

the remaining provisions will not be affected and will remain in full force and effect.

58. *Computation of Time.* Computation of time or periods of time referenced in any document related to this Settlement Agreement shall be computed pursuant to Federal Rule of Civil Procedure 65.

59. *Additional Documents.* To the extent any documents are required to be executed by any of the Parties to effectuate this Agreement, each Party hereto agrees to execute and deliver such and further documents as may be required to carry out the terms of this Agreement.

60. *Authority to Bind.* The undersigned each represent and warrant that they are authorized to sign on behalf of, and to bind, the respective Parties of this Agreement.

61. *Changes in Law.* The parties acknowledge that during the term of this Agreement, there may be revisions to the IDEA and its implementing regulations and/or state law. The parties agree that should changes in these laws impact the terms of this Agreement, they will confer and determine whether it is necessary to modify the terms of this Agreement. The parties will submit any proposed modifications to the Agreement to the Court for approval. Should the parties dispute the need for a change in the terms because of a change in law, the Court shall resolve such dispute.

XIX. FINAL JUDGMENT

62. Upon approval and entry of this Consent Order by the Court, this Consent Order shall constitute a final judgment of the Court. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

**SETTLEMENT AGREEMENT, INCLUDING RETENTION OF
JURISDICTION FOR ENFORCEMENT, APPROVED BY THE COURT:**

Dated and entered this _____ day of _____, 2023

Noel L. Hillman
United States District Judge

FOR THE CLASS



Catherine Merino Reisman
Reisman Carolla Gran & Zuba LLP



David R. Giles
Law Office of David Giles



Robert Kim
Education Law Center



Denise Lanchantin Dwyer
Law Office of Denise Lanchantin Dwyer LLC



Robert C. Thurston
Thurston Law Offices LLC



Jeffrey I. Wasserman
Wasserman Legal LLC

FOR THE DEFENDANTS



Daniel Dryzga
Assistant Attorney General

EXHIBIT A TO AGREEMENT



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

**SPECIAL EDUCATION DUE PROCESS HEARING
EXTENSION / ADJOURNMENT FORM**

Under 34 C.F.R. § 300.515(a) of the Individuals with Disabilities Education Act, a final decision must be issued not later than 45 days after the expiration of the resolution period under 34 C.F.R. § 300.510(b), or the adjusted time periods described in 34 C.F.R. § 300.510(c), excluding specific extensions of time requested by a party and granted by an ALJ under 34 C.F.R. § 300.515(c).

PART ONE

I. Case Information

- (A) Case Name:
- (B) OAL Docket No.:
- (C) Agency Ref. No.:
- (D) Transmittal Date:

II. Time Period

- (A) Date Resolution Period Expired:
- (B) Original Final Decision Due Date (Original 45-calendar-day time period, if no prior extension had been granted):
- (C) Extended Final Decision Due Date (Current 45-calendar-day time period, if a prior extension had been granted):

III. Extension Request

- (A) The hearing date for which the party requested the specific extension:
- (B) The reason for the extension:
- (C) The length of the extension (in calendar days):

IV. Signatures and Dates

(A) The Parties

- (1) The Requesting Party (required):
- (2) The Requesting Party (if joint):
- (3) The Consenting Party (if consenting):
- (4) The Objecting Party (if objecting):

(B) The ALJ

Granted Denied , ALJ

(C) All Hearing Dates and New Final Decision Due Date

- (1) All Hearing Dates:
- (2) New Final Decision Due Date:

(A) **WHEN NO PRIOR EXTENSION HAS BEEN GRANTED:** To calculate the new Final Decision Due Date, take the Original Final Decision Due Date in **(II)(B)** and add the number of calendar days for which the party requested the specific extension in **(III)(C)**:

(B) **WHEN A PRIOR EXTENSION HAS BEEN GRANTED:** To calculate the new Final Decision Due Date, take the Extended Final Decision Due Date in **(II)(C)** and add the number of calendar days for which the party requested the specific extension in **(III)(C)**:

PART TWO

NJDOE Required Extension Survey

Exhibit 2

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

C.P., Individually and on behalf	:	CIVIL ACTION NUMBER:
of F.P., a minor, et al.,	:	19-cv-12807
Plaintiffs,	:	
	:	
v.	:	
	:	
NEW JERSEY DEPARTMENT OF	:	
EDUCATIONS, et al.,	:	MOTION HEARING
Defendants.	:	
	:	

Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101
December 18, 2023
Commencing at 11:12 a.m.

B E F O R E: **THE HONORABLE NOEL L. HILLMAN,**
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

JOHN RUE & ASSOCIATES
BY: KRISTA HALEY RUE, ESQUIRE
100 Overlook Center, 2nd Floor, #9211
Princeton, New Jersey 08540
For the Plaintiffs
(via telephone)

REISMAN CAROLLA GRAN & ZUBA, LLP
BY: CATHERINE M. REISMAN, ESQUIRE
19 Chestnut Street
Haddonfield, New Jersey 08033
For the Plaintiffs

Ann Marie Mitchell, CRR, RDR, CCR, Official Court Reporter
AnnMarie_Mitchell@njdcourts.gov
(856) 576-7018

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

1 A P P E A R A N C E S (Cont.'d):

2

THURSTON LAW OFFICES LLC
3 BY: ROBERT C. THURSTON, ESQUIRE
433 River Road
4 Suite 1315
Highland Park, New Jersey 08904
5 For the Plaintiffs

6

OFFICE OF THE NEW JERSEY ATTORNEY GENERAL
7 DIVISION OF LAW
BY: MATTHEW LYNCH, ESQUIRE
8 RJ Hughes Justice Complex
25 Market Street
9 PO Box 112
Trenton, New Jersey 08625
10 For the Defendants

11

A L S O P R E S E N T:

12

GLADYS NOVOA, Courtroom Deputy

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1 (PROCEEDINGS held in open court before The Honorable
2 NOEL L. HILLMAN at 11:12 a.m.)

3 THE COURT: All right. Good morning.

4 RESPONSE: Good morning, Judge.

5 THE COURT: The crowd is shrinking.

6 Let me announce the caption here and I'll take
7 appearances.

8 I know Ms. Rue is on the phone.

9 This is the day set aside on an unopposed motion for
10 preliminary approval of a class action settlement in CP v. New
11 Jersey Department of Education, et al., 19-12087.

12 For the plaintiffs.

13 MR. REISMAN: For the plaintiffs, Your Honor,
14 Catherine Marina Reisman from Reisman Carolla Gran & Zuba.
15 Good morning.

16 THE COURT: Ms. Reisman, welcome.

17 MR. THURSTON: And Robert Thurston also behalf of
18 plaintiffs' class.

19 THE COURT: Mr. Thurston, welcome to you as well.
20 And please be seated.

21 Ms. Rue, you are with us. Do you want to enter an
22 appearance?

23 MS. RUE: Yes. Good morning, Your Honor. Krista Rue
24 from John Rue & Associates on behalf of plaintiffs CP, DO, MS,
25 YHS, SBC, AS and LG. Good morning.

1 THE COURT: Welcome to you as well. Good morning.
2 And for the defense?

3 MR. LYNCH: Deputy Attorney General Matthew Lynch,
4 Your Honor.

5 THE COURT: Mr. Lynch, welcome to you.
6 And you may be seated.

7 MR. LYNCH: Thank you.

8 THE COURT: Ms. Reisman, I'm not going to make you
9 repeat everything in your motion. I've reviewed it, including
10 the notice.

11 I really don't have any questions. I'll be prepared
12 to make findings, but if you could just kind of summarize your
13 application and I'll make the requisite findings when you've
14 concluded.

15 MR. REISMAN: Yes, Your Honor.

16 Our application today is obviously unopposed. We
17 have spent a great deal of time negotiating with the State
18 with the assistance of retired Magistrate Judge Schneider as
19 well as Judge Skahill over the summer of 2022.

20 We believe that the relief in the order, in the
21 settlement, will bring much needed speed to the due process
22 hearing process in New Jersey.

23 This case was commenced in 2019. We obviously had
24 the pandemic in there, which delayed things a little. And
25 the -- there were some concerns raised by Amici over the

1 summer. I believe those concerns have been addressed. And
2 we've provided a declaration from Ms. Valverde stating the
3 Amici support for the settlement.

4 We think that this settlement is fair and reasonable.
5 It has objection and opt-out provisions required for the
6 class.

7 And I don't know if there's anything else you want me
8 to repeat or --

9 THE COURT: No.

10 MR. REISMAN: And I believe --

11 THE COURT: Only to give you an opportunity to
12 demonstrate a justifiable pride for all your hard work.

13 MR. REISMAN: Thank you, Your Honor. We all have
14 worked very hard on it.

15 And I want to thank the Attorney General's office for
16 working with us. They have really worked very hard as well,
17 and I feel like they in good faith do want to fix this
18 problem.

19 THE COURT: Yes. And I've had the same impression.

20 All right. Very good. As Ms. Reisman has noted,
21 this case does have a long procedural history. The Court has
22 issued several opinions.

23 There had been an initial attempt at a class
24 certification, a reorientation of the class counsel under the
25 supervision of the Court.

1 The Court now has before it a proposed preliminary
2 order of approval and has been presented with a comprehensive
3 consent order and settlement agreement that would be signed by
4 the Court upon the Court's final approval on a schedule to be
5 set forth in the proposed order.

6 This settlement comes about after extensive discovery
7 on the issues presented by both class certifications, that is,
8 the (b) (2) class as well as the (b) (3) class.

9 The case benefitted from good faith efforts on both
10 sides to address the potential for systemic reform in the
11 system in which due process petitions are adjudicated by the
12 Office of Administrative Law and the Department of Education
13 and the State.

14 Judge Skahill had a role early on in helping to form
15 the settlement discussions. The Court thanks Judge Skahill
16 for those efforts.

17 And no doubt considerable credit is given to former
18 Judge Joel Schneider, a magistrate judge of our court now
19 retired, who participated extensively in this matter and was
20 no doubt instrumental in assisting the parties in reaching
21 this agreement.

22 The Court also expresses its gratitude to the Amici
23 in this case, the Rutgers clinic, Ms. Valverde, whose comments
24 the parties took under consideration. And I believe her
25 concerns -- the concerns of her clients -- or her -- the

1 entities she spoke on behalf of have been addressed and
2 incorporated into this proposed settlement.

3 The reshuffling of the class counsel notwithstanding,
4 the Court also expresses its gratitude to John Rue &
5 Associates, the firm, and Mr. Rue and his associated counsel
6 for their efforts in advancing the discussions and the
7 settlement in this matter, that groundwork ultimately becoming
8 a foundation for the settlement ultimately reached; and
9 equally grateful to Ms. Reisman and her team, Mr. Thurston and
10 the others represented here who were able to, it's clear to
11 the Court, place this ball over the goal line.

12 There are proposed -- the two classes. There is
13 first the 23(b)(2) class. This is defined as, quote, all
14 persons who pursuant to the IDEA have filed or will file
15 during the period of time that the Court may retain
16 jurisdiction a due process petition with NJDOE and whose cases
17 are pending in the New Jersey Office of Administrative Law.

18 The settlement agreement requires the Department of
19 Education to comply with 34 C.F.R. 300.515 by ensuring that no
20 later than 45 days after the expiration of the 30-day period,
21 also contemplated under the C.F.R., or the adjusted time
22 periods as allowed by the regulations and accounting for
23 specific extensions of time requested by the party and granted
24 by the judge that the following must occur: A final decision
25 is reached and a copy of the decision mailed to the parties.

1 Settlement importantly requires NJDOE to calculate
2 the 45-day timeline exclusively using calendar days, which is
3 the definition found in the C.F.R., and excluding those
4 periods by which the parties agree. And I think it's very
5 helpful and important in this settlement that the parties have
6 agreed upon a specific form to be used in documenting
7 extensions.

8 One of the things that I learned during the course of
9 this and related cases was the lack of what I would call case
10 administration or docketing control so that requests for
11 adjournment, reasonable adjournment sought by the parties,
12 which had always been contemplated under the C.F.R., were not
13 well documented, creating disputes of fact that should not
14 have been -- that were not helpful and could have easily been
15 resolved by a better recordkeeping, frankly. And this
16 settlement contemplates that, understands the importance of
17 that, and implements that.

18 The settlement agreement further provides that within
19 18 months after final approval of the settlement agreement,
20 that the Department of Education will come into 95 percent
21 compliance with the C.F.R., and that's explicitly defined.
22 This compliance rate will be determined by a compliance
23 monitor.

24 The parties have thoughtfully contemplated that the
25 devil will be in the details here. And while the parties are

1 acting in good faith, the addition of a compliance monitor
2 appointed by the Court and compensated by the State will
3 ensure that the consent order is implemented on the timeline
4 contemplated by the agreement with options available to both
5 sides if for whatever reason the compliance rate is not
6 achieved.

7 Again, the parties have thoughtfully contemplated
8 what remedies would be available and the role of the monitor
9 in ensuring compliance. For example, there are remedial
10 actions that may be taken, leaving some room for unanticipated
11 events. There's also the option of plaintiffs seeking
12 contempt if any violation is willful.

13 There is also the (b) (3) issues class, which is
14 defined as all persons who pursuant to the IDEA file due
15 process petitions with NJDOE on or after May 23, 2016 who
16 after their due process petitions were transmitted to the New
17 Jersey Department of Administrative Law did not receive a
18 decision within the timeline as defined by the federal
19 regulations and the violation occurred prior to the approval
20 of this settlement agreement.

21 For members of the issues class, the settlement
22 agreement tolls the statute of limitations as to claims
23 against NJDOE. Those members will have two years from final
24 approval of the settlement agreement to assert a claim for
25 individual relief under the IDEA for violation arising out of

1 or related to the timeline set forth in the settlement
2 agreement and the C.F.R. And the settlement agreement
3 expressly preserves and does not release the claims of those
4 class members under IDEA arising out of or related to a
5 violation of the timeline set forth in the C.F.R.

6 There is, of course, a release of systemic claims,
7 which is appropriate given the nature of the settlement.

8 The class notice is detailed, sets forth in my view
9 the rights and the extent of any release, the opt-out
10 provisions that apply in a comprehensive fashion but at the
11 same time being understandable and readable. The class has
12 set up a separate website and is available under the terms of
13 this settlement -- the class counsel is available under the
14 terms of this settlement to answer any questions that class
15 members may have.

16 I'm satisfied that the notice program fairly apprises
17 the class members of the terms of the settlement agreement.

18 Now, the notice -- the service of the notice is
19 contemplated at two levels, each of them, in my view,
20 reasonably calculated to reach the members of the class.

21 A copy of the class notice will be mailed to all
22 class members who can be identified with reasonable effort.
23 And the Department of Education will also serve the class
24 notice by email on any attorneys who represent or represented
25 class members.

1 And I would say the bar that provides services to
2 plaintiffs in this matter is a fairly close-knit group, and
3 I'm sure this notice will be widely disseminated and available
4 to those who have reason to care.

5 The notice also sets forth the -- importantly, the
6 award of attorneys' fees, and I'll have some more comments to
7 say about that, and expense reimbursements. It also sets
8 forth the modest but important incentive awards, which the
9 Court will approve.

10 There is the -- as I indicated, a procedure laid out
11 for the parties to object to the settlement and the procedure
12 for the (b) (3) issue class to opt out, the (b) (2) class not
13 subject to opt-out provisions, as well as the date and place
14 of the settlement fairness provision.

15 The procedure for objecting is set forth and allows
16 for discovery on any objecting class member in accordance with
17 the Rules of Civil Procedure.

18 The release provisions are set forth with clarity.
19 Importantly, for purposes of the Court's preliminary *Girsh*
20 analysis, as contemplated by the Manual for Complex Litigation
21 and then the approving case law, the attorneys' fees were
22 negotiated separate and apart from the relief for the two
23 classes and only after that agreement was reached.

24 There will be reasonable fees and expenses for
25 post-judgment monitoring. That is, once the Court, if final

1 approval is given, enters into -- signs and enters the final
2 order adjudicating the matter as a matter of judgment, that
3 the parties have thoughtfully contemplated that there will be
4 an additional role for class counsel as the settlement
5 agreement calls for prospective relief over at least an
6 18-month period. And there's provisions set forth for the
7 parties to meet and confer and if necessary seek relief.

8 In terms of the *Girsh* factors, which I have alluded
9 to, and the related concepts of preliminary approval, the law
10 encourages and favors settlement of class actions.

11 The Court, as indicated, will grant preliminary
12 approval and set a later fairness hearing, where the Court
13 will consider any objections if any are filed and determine
14 whether or not final approval is appropriate.

15 The Court does have an obligation at the preliminary
16 stage to determine whether or not the settlement is within the
17 range of fairness, reasonableness and adequacy as set forth in
18 Rule 23(e). The standard is whether there is a conceivable
19 basis for presuming that the standard applied for final
20 approval will be satisfied, and I'm satisfied that that is the
21 case here.

22 Courts consider whether the settlement appears to be
23 the product of serious, informed, noncollusive negotiations,
24 has no obvious deficiencies, and does not improperly grant
25 preferential treatment to class representatives or segments of

1 the class. Clearly there were arm's length negotiations by
2 experienced, capable counsel on both sides of this action.
3 Ms. Labin and Mr. Lynch are obviously well versed in the
4 system that the State has used over the years. Class counsel
5 was appointed based at least in part on their extensive
6 experience in cases of this kind.

7 We had two levels of settlement negotiations with a
8 sitting magistrate judge and a distinguished member of our --
9 a former member of our bench who played an important role in
10 helping to settle this matter.

11 It's clear to me that both the class counsel and
12 defense counsel understood and appreciated the risks and
13 rewards of litigation. The State, as indicated, should be
14 commended for understanding and recognizing that reform here
15 is beneficial to everyone and compliance with federal law
16 being an overriding concern for both sides.

17 The benefits to the class are substantial and
18 meaningful here, over a reasonable period of time. It's
19 contemplated with the assistance of the compliance monitor
20 that the State will come into 95 percent compliance with the
21 federal law regarding the adjudication of due process
22 petitions, the State being a substantial recipient of federal
23 Department of Education funds.

24 Ensuring compliance of the 45-day rule on pain of
25 contempt within 18 months is certainly a better option for the

1 class counsel with all the risks attendant to a trial and
2 subsequent appeals, which would not be resolved within the
3 same time period or unlikely to be.

4 Again, there has been extensive discovery, and at
5 this stage of the proceedings, both parties have been well
6 informed of the nature of the claims, the risks inherent in
7 litigation, and have entered into the settlement agreement
8 voluntarily with both eyes open wide.

9 The other factors, *Girsh* factors, are not relevant in
10 this case as there is no damage reward, individualized -- the
11 preservation of individual claims. Damage cases will proceed
12 independent of this. And the Court need not consider those
13 factors at this stage or even really at the final stage.

14 The *Girsh* factors that are relevant show that the
15 settlement agreement falls well within the range of possible
16 approval. And the Court will grant that preliminary approval.

17 As I indicated, I reviewed the notice. In a case
18 that is as nuanced as this is, there is some requirement that
19 it lay out in detail in my view the nature of the two classes,
20 the different opt-out provisions that apply, the importance of
21 what is released and not released. It clearly sets out the
22 mechanism for objecting, and where opt-out is available, the
23 process for that, and provides both a website and class
24 counsel's availability in the circumstances in which
25 additional information may be sought by class members who

1 might have questions.

2 And the notice provision through mailing and email to
3 parties who have cases pending before they're known to both
4 sides and have expressed through legal process their claims --
5 related claims will receive direct notice within 28 days of
6 the Court's entry of preliminary approval.

7 I reviewed the proposed timeline here. It is
8 consistent with Rule 23, the Class Action Fairness Act. The
9 defendants will serve the appropriate state and federal
10 officials within 10 calendar days. In 28 calendars days,
11 notice will be mailed to the class and emailed to attorneys
12 representing or who have represented class members.

13 Opt-outs of the class that -- the issues class which
14 has the option of opting out have 49 calendar days from
15 preliminary approval to do so. The same timeline will apply
16 to any objections to the settlement.

17 Within 63 days the Court will -- rather, the
18 plaintiffs will seek final approval, including attorneys'
19 fees -- the attorneys' fees and costs award and the incentive
20 awards, which the Court gives its preliminary approval to.

21 Any opposition will be filed within 77 days and any
22 reply within 90 calendar days of preliminary approval. And
23 the Court will set down a fairness hearing 100 calendar days
24 after today and hope that that doesn't fall on a Sunday.

25 So, Ms. Reisman, is there anything else you would

1 have me find?

2 I've reviewed your proposed form of order, and I
3 would sign it as it is.

4 MR. REISMAN: No, Your Honor.

5 THE COURT: I will fill in the dates. Let me see.
6 All right.

7 Mr. Lynch, in my experience in these situations,
8 defense counsel will stand up and say, Your Honor,
9 respectfully, I have nothing to add.

10 That is not meant to chill your speech, sir.

11 Is there anything you wish me to consider or
12 highlight or address?

13 MR. LYNCH: No, I don't think so. I think the
14 defendants still have -- we wanted to come to some sort of
15 agreement or -- about the -- in relation to the ongoing
16 monitoring fees.

17 I've had discussions with Ms. Reisman about there
18 being a negotiated rate sheet and us working together on those
19 and my hope that that is -- our concerns about the
20 possibilities of that becoming outsized or disproportionate
21 won't come to fruition and that we can work together and
22 maintain the collegiality that we've had with each other over
23 the last few months since the new class counsel structure has
24 come into place. But we still have concerns with that aspect
25 of it.

1 But in terms of everything else that both you and she
2 has both put on the record today, we concur, and we consent to
3 the entry of this settlement and this order by the Court.

4 THE COURT: All right. What does the settlement
5 agreement have in it in terms of compensation for the monitor?

6 MR. LYNCH: Nothing specific. Just -- I believe it
7 just says reasonable attorneys' fees that can be
8 made either -- will either be negotiated or agreed to or if
9 needed be approved by the Court.

10 MR. REISMAN: Compensation for the monitor will be by
11 the State at market rates.

12 MR. LYNCH: Oh, yeah.

13 THE COURT: At market rates?

14 MR. REISMAN: Right.

15 THE COURT: And that's still the subject of
16 negotiation?

17 MR. REISMAN: That's the negotiation between the
18 State and the monitor.

19 MR. LYNCH: Yes, yes. I was more referring to the
20 attorneys' fees related to the monitoring process. I don't
21 foresee -- we know who we're going to select as the monitor.
22 I don't foresee any issue in relation to the cost at all.

23 THE COURT: I misunderstood you.

24 But the settlement agreement contemplates a mechanism
25 for the parties to work through the issue of post-judgment

1 monitoring fees and where necessary to come to the Court.

2 Correct?

3 MR. LYNCH: Correct.

4 THE COURT: And both sides are satisfied with that
5 provision?

6 MR. REISMAN: We are, Your Honor.

7 THE COURT: And that's kind of hard to predict, the
8 future. We're certainly in a much better world than we were
9 before. The Court stands ready to assist in that process.
10 But I share your optimism in terms of the parties being able
11 to work that out. The Court of course is available to either
12 broker a resolution or determine a resolution as to what might
13 be appropriate, given the competing interests at stake,
14 effective compliance, but understanding there is also a public
15 entity involved, so there are a number of factors that would
16 go into the Court's adjudication of such issues. But I think
17 the parties in my view have done the best they can under the
18 circumstances to anticipate both resolving it on your own and
19 only where necessary seeking the Court approval.

20 Is that what you would -- is that an accurate
21 description in your mind?

22 MR. REISMAN: That is an absolutely accurate
23 description. We hope to not be bothering the Court with
24 disputes about attorneys' fees.

25 THE COURT: Well, I don't see any need for that.

1 I understand why you would want to make sure that was
2 clear on the record, Mr. Lynch. Thank you for that.

3 But, again, we can't predict the future. We don't
4 have a crystal ball. But it seems to be well within the range
5 of reasonableness in a settlement of this kind. Given that
6 uncertainty, I'm comforted by the good faith efforts that have
7 been made in the past and remain confident that that will
8 prevail if such disputes arise in the future.

9 MR. LYNCH: Thank you, Your Honor.

10 MR. REISMAN: Thank you, Your Honor.

11 THE COURT: All right. Anything else, Mr. Lynch?

12 MR. LYNCH: No, Your Honor.

13 THE COURT: Anything else, Ms. Reisman?

14 MR. REISMAN: No, Your Honor.

15 THE COURT: Mr. Thurston?

16 MR. THURSTON: No, Your Honor. Thank you.

17 THE COURT: Thank you for your efforts.

18 Ms. Rue, anything you wish to add before I conclude
19 for the day?

20 MS. RUE: No, Your Honor. Thank you.

21 THE COURT: All right. Thank you.

22 I will fill in the dates, sign the order, and there
23 are a couple of other sealing motions which I have approved
24 today. The first motion for preliminary approval is now moot,
25 and I will enter a text order in that regard. That should

1 take care of the docket.

2 Thank you for being here. Thank you for your
3 efforts.

4 I think I've said this several times now, but I
5 believe this is a settlement that both sides should be very
6 proud of. I commend the State for its efforts in embracing
7 reform in a system that needed reform. I applaud the
8 plaintiffs and their counsel who were dogged in their pursuit
9 of a resolution. It balances the competing interests in a
10 manner that's ultimately fair and reasonable under the
11 circumstances.

12 Thank you for your substantial efforts on both sides.

13 I'm very happy to approve this settlement
14 preliminarily and look forward to the day that the Court
15 approves it finally at the appointed date.

16 I wish you all a good rest of the day and safe
17 travels home.

18 THE DEPUTY CLERK: All rise.

19 (Proceedings concluded at 11:42 a.m.)

20

- - -

21

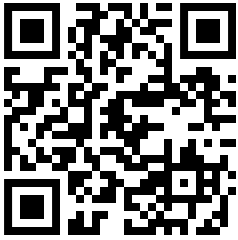
22 I certify that the foregoing is a correct transcript
23 from the record of proceedings in the above-entitled matter.

24

/S/ Ann Marie Mitchell 27th day of December, 2023
24 Court Reporter/Transcriber Date

25

Exhibit 3



NOTICE OF CLASS ACTION SETTLEMENT
C.P., et al. v. New Jersey Department of Education, et al.
Case No. 1:19-cv-12807-NLH-MJS
United States District Court for the District of New Jersey
Judge Noel L. Hillman

**IMPORTANT NOTICE ABOUT THE SETTLEMENT OF A CLASS ACTION LAWSUIT
AGAINST THE NEW JERSEY DEPARTMENT OF EDUCATION (NJDOE) AND ITS
ACTING COMMISSIONER OF EDUCATION**

The New Jersey Department of Education (NJDOE) has settled a lawsuit concerning the Individuals with Disabilities Education Act (IDEA). Under the law, when a parent files a due process petition, the parties have 30 days to try to resolve the case without a hearing (the “30-day resolution period”). If a case is not resolved during that period, federal rules require that an Administrative Law Judge (ALJ) must decide these cases within 45 days from the end of the 30-day resolution period. The ALJ can extend the timeline only when a party requests a specific extension of time. The lawsuit argued that NJDOE did not ensure that these cases were decided within this timeframe. For more details on the Settlement, visit NJ45DayClassAction.com. NJDOE denies wrongdoing. The court will have a Fairness Hearing to determine the Settlement’s fairness, reasonableness, and sufficiency.

Who is Included? The court identified two Classes: The 23(b)(2) Class includes anyone with a current due process petition under IDEA in the New Jersey Office of Administrative Law (NJOAL) and those filing in the future under the court’s oversight. The court will oversee the case for at least 18 months. The 23(b)(3) Issues Class includes anyone who filed a due process petition on or after May 23, 2016, and before the Settlement’s approval, and did not receive a decision within the 45-day timeline (after subtracting ALJ-approved time extensions requested by a party). This notice is for members of either or both Classes and attorneys who represent or represented them.

Settlement Terms

NJDOE has agreed to the following Settlement terms for the **Rule 23(b)(2) Class**:

- The court will issue a Consent Order directing NJDOE to ensure due process petitions are decided within the 45-day timeline (after subtracting ALJ-approved time extensions requested by a party).
- The court will appoint a Compliance Monitor to oversee NJDOE’s efforts to comply with the Settlement. The Compliance Monitor will provide monitoring reports to the public every four months.
- Within 18 months of final Settlement approval, NJDOE must demonstrate for a four-month period, a 95% compliance rate for hearing and deciding due process petitions within the 45-day timeline. If achieved, NJDOE may move to terminate the Consent Order; if the Class objects, the court will decide whether to terminate the Order.
- The Class may file a motion for contempt if, at the end of the 18 months, the Compliance Monitor finds a less than 95% compliance rate. The Class may seek relief like the appointment of a Special Master or an Order for NJDOE to develop a remediation plan, subject to court approval. If the NJDOE objects, the court will resolve the issue.

For more information: www.NJ45DayClassAction.com

NJDOE has agreed to the following Settlement terms for the **Rule 23(b)(3) Issues Class**:

- For violations that happened between May 23, 2016 and the date the Agreement is approved, Class members will have two (2) years from the date of the court's approval of the Settlement to file claims against NJDOE for individual relief under IDEA related to past violations of the 45-calendar day timeline. Claims should be filed in United States District Court for the District of New Jersey. NJDOE maintains all defenses and arguments against these claims and will defend itself in those actions.

NJDOE has agreed to the following Settlement terms for **both Classes**:

- NJDOE will pay the costs associated with distributing this notice.
- NJDOE will pay court-ordered awards of attorneys' fees and costs, capped at \$4,750,000, to law firms representing the Classes. This covers work performed without payment and expenses advanced up to the date of the Fairness Hearing. Class Counsel will submit a fee petition for the court to assess the reasonableness of the request. The Settlement also covers reasonable attorneys' fees and expenses for future monitoring of Rule 23(b)(2) Class claims. Importantly, NJDOE cannot use IDEA funds to pay these fees.
- Class Counsel will request court approval for payments of \$5,000 by NJDOE to the family of each of the Named Plaintiffs who initiated this lawsuit on behalf of the Classes.

Reasons for the Settlement: The law firms representing the Classes have conducted thorough investigations through extensive discovery in this case. Class Counsel carefully considered the time, cost, uncertainties, and potential benefits associated with going to trial and handling any subsequent appeals. After careful evaluation and good-faith negotiations with the help of a former United States Magistrate Judge, Class Counsel has determined that resolving the claims against NJDOE through this settlement is in the best interests of the Classes.

Effect on Class Members' Rights: The lawsuit did not seek relief for any individual claims. Therefore, the Settlement does not release any past, present, or future individual claims. If the court approves the settlement terms described above and in the Settlement for the Rule 23(b)(2) Class (systemic relief), Class Members will release any and all past and present (but not future) systemic claims.

Ability to Opt Out of the Settlement:

- *Rule 23(b)(2) Class:* People filing a due process petition with NJDOE during the court's oversight are members of this class. The relief for this class is the court order requiring NJDOE to enforce the 45-calendar day timeline. Individual members of the Class cannot opt out of the systemic relief. Those who have filed or will file due process petitions still have the right to assert individual claims.
- *Rule 23(b)(3) Class:* Members can ask to be excluded from the Settlement until the Opt-Out Deadline: **February 27, 2024**. To opt out, complete and sign the "Request for Exclusion" form, attached to this Notice and available at NJ45DayClassAction.com/optout, and mail it, postmarked on or before **February 27, 2024**. A valid and timely exclusion request means the individual will not receive relief from the Settlement and will not be affected by it. The parties can challenge the validity of exclusion requests, and the court will decide the validity. Any Class Member not requesting exclusion is bound by the Settlement, and the release of claims described above will apply to them. A Class Member may revoke the Request for Exclusion at any time up to **April 6, 2024** by emailing info@NJ45DayClassAction.com.

- Some people are members of both the Rule 23(b)(2) and Rule 23(b)(3) Classes. Those people may opt out of the Rule 23(b)(3) Class relief but will still be bound by the Rule 23(b)(2) settlement.

Right to Object or Support the Settlement: Class Members can object to the Settlement by **February 27, 2024**. A Fairness Hearing on **April 11, 2024** will determine if the Settlement is fair, reasonable, and adequate for approval. Attendance at the hearing or hiring an attorney is optional. To support or oppose any part of the proposed Settlement, including Class Counsel's request for attorneys' fees and expenses and incentive awards for Named Plaintiffs, Class Members may file written comments or objections with the Court. Submissions must be sent by U.S. Mail or email to NJ 45 Day Class Action, 19 Chestnut Street, Haddonfield, New Jersey 08033, or info@NJ45DayClassAction.com, and C.P. Settlement, Education and Higher Education Section, R.J. Hughes Justice Complex, 25 Market Street, P.O. Box 112, Trenton, New Jersey 08625, postmarked or delivered on or before **February 27, 2024**. The letter or email should include the Class Member's name and current address, a statement of being a Class Member, and the case caption for this case. Providing specific reasons for objecting to or supporting the proposed Settlement will be helpful.

IMPORTANT DATES

Opt-Out Deadline: February 27, 2024

Objection Deadline: February 27, 2024

Fairness Hearing: April 11, 2024 at 11 a.m.

United States Courthouse, 4th & Cooper Streets, Camden, NJ 08101

This Notice only provides a summary of the proposed Consent Order and Settlement. You can review the entire Consent Order and Settlement Agreement, as well as the documents filed with the Court about this case by:

- Going in person during regular business hours at the Clerk's office of the United States District Court for the District of New Jersey, Mitchell H. Cohen Building & United States Courthouse, 4th and Cooper Streets, Camden, New Jersey 08101; or
- Visiting www.NJ45DayClassAction.com.

Class Counsel. The Court has appointed the following firms as Class Counsel:

Reisman Carolla Gran & Zuba LLP
Law Office of David Giles
Education Law Center
Law Office of Denise Lanchantin Dwyer LLC
Thurston Law Offices LLC
Wasserman Legal LLC

If you need further information, contact Class Counsel at info@NJ45DayClassAction.com.

PLEASE DO NOT CONTACT THE COURT WITH QUESTIONS

For more information: www.NJ45DayClassAction.com

REQUEST FOR EXCLUSION FORM

THIS REQUEST MAY AFFECT YOUR LEGAL RIGHTS

C.P., et al. v. New Jersey Department of Education, et al.,
No. 1:19-cv-12807-NLH-MJS
United States District Court for the District of New Jersey

If you filed a Due Process Petition with NJDOE on or after May 23, 2016, and your petition, after being sent to the New Jersey Office of Administrative Law, did not receive a decision within 45 calendar days (excluding any extensions requested and granted by the ALJ), then you are considered part of the Rule 23(b)(3) Issues Class in this matter. If you choose not to participate in the settlement and wish to exclude yourself from the Class, known as "OPT-OUT," a you must complete and sign the provided Request for Exclusion. Include the date and mail the form to the address provided. This form must be postmarked no later than February 27, 2024.

By opting out of the settlement, (i) you will not receive any benefits from the settlement, (ii) you will not be bound by any further orders or judgments in favor of or against the Class, and (iii) you retain the ability to independently pursue any claims you asserted in this case against the Defendants by initiating your own lawsuit at your own expense.

I request to exclude myself from the Rule 23(b)(3) Issues Class in <i>C.P., et al. v. New Jersey Department of Education, et al.</i> No. 1:19-cv-12807-NLH-MJS (D.N.J.)	
Name: _____	
Address: _____	
City _____	State _____ Zip _____
I declare under penalty of perjury under the laws of the State of _____ that the information above is true and correct.	
_____ Signature of the Claimant	_____ Date

Mail completed and signed Request for Exclusion to:
Reisman Carolla Gran & Zuba LLP
19 Chestnut Street
Haddonfield, New Jersey 08033

YOU MAY REVOKE THIS REQUEST FOR EXCLUSION
BY EMAILING info@NJ45DayClassAction.com
AT ANY TIME BEFORE April 6, 2024

Exhibit 4a

JAMIE EPSTEIN

ATTORNEY AT LAW

17 Fleetwood Drive, Hamilton, NJ. 08690*
1818 Cuthbert Rd., Suite 310, Cherry Hill, NJ. 08034**

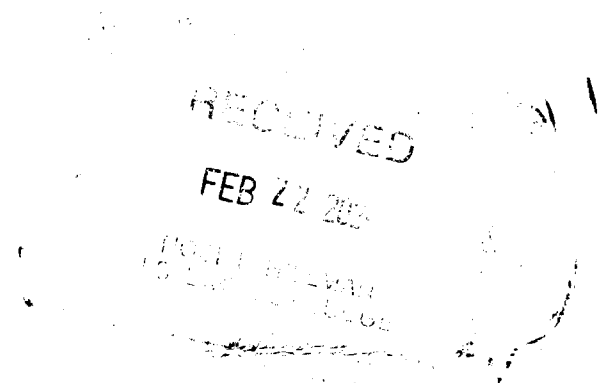
Tel: (856) 979-9925

Web: JamieEpsteinLaw.com

E-MAIL: JE@JamieEpsteinLaw.com

2/20/24

Hon. Noel L. Hillman, USDJ
Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, NJ 08101



RE: 19-cv-12807-NLH-MJS

Dear Judge Hillman:

Please be advised of my representation, at minimum, of the disabled students in the following cases: EDS 09213-16, EDS 08554-2017, EDS 13585-17, EDS-6956-2017, EDS 00046-2018, EDS 04149-18, EDS 03121-17, EDS 15501-2016, EDS 7613-16, EDS 10497-2018, EDS 10046-2018, EDS 10843-2018, EDS 05402-20, EDS 09948-20, EDS 10193-2020, EDS 03932-2020, EDS-00311-2020, EDS 02404-23, EDS 04715-23, EDS 05258-22, EDS 05882-22, EDS 05402-20, EDS 01881-22, EDS 03372-22, EDS 00267-22 and EDS-00311-20. On behalf said students, and others whose cases were filed in 2019, 2021 and 2023, who also qualify as class members, I submit the following objection/proposed changes to the Settlement Agreement for Your Honor's consideration.

1. The class members receive nothing under this settlement. They each have to start all over and find/retain/pay counsel to litigate a new lawsuit against DOE in federal court (under the assumption they do not have to exhaust). The complaint was filed 4 years ago and DOE is given another 18 months to comply with the law – DOE should comply within 30 days after the final judgment is entered. The Monitor should be given a Class Comp Ed Trust Fund. Eligible parties should submit claims based on a formula of the days of the delay of their final decision times \$? = the award. (i.e., 100 days X \$10 = \$1,000). Even the most ridiculous class action settlements give the class members something!

Otherwise, what does this class action settlement accomplish for my clients and those similarly situated students? Nothing. Nothing for the 1000s of students who received a final decision in over 45 days. Does it eliminate the need for a new class action? No. Does it resolve the entire controversy? No. Does it conserve judicial resources? No – in fact, the settlement requires thousands of new individual lawsuits or a new class action be filed. Does it waive the IDEA exhaustion requirement for the individual lawsuits under *Perez v. Sturgis Public Schools*? No, maybe, yes. Does the settlement even disclose the number of cases that took over 45 days? No – how can Your Honor find this settlement on behalf of disabled minors meets the *parens patriae* fairness requirements when the number of students are in the class is not disclosed in the notice.

2. The public cannot understand the agreement terms in general and specifically what constitutes a 45 day violation. In the IDEA, Congress emphasized LEAs and SEAs have a duty to make

* Central New Jersey Office and mailing address

** Southern New Jersey Office

the provisions of the law understandable to parents and adult disabled students. **There should be some hypothetical examples attached to the agreement:**

a. due process is transmitted Jan 1. Initial hearing is held Jan 10 as scheduled. On Jan 10, parties advise ALJ they need 3 days to try their case. However, no additional hearing dates were scheduled. The next hearing is scheduled only for Feb 10 and is held. On Feb 10, the next hearing is scheduled for March 10 and is held. Final Decision is issued on April 10 (100 days after the Jan 1 transmittal) There were no requests for postponement as these were the next days the ALJ had available. Violation of Agreement?

b. due process is transmitted Jan 1. Initial hearing is held Jan 10 as scheduled. ALJ states next hearing date is scheduled for Jan 20. On Jan 10, over the parent's objection, ALJ grants BOE request to not to schedule the hearing on Jan 20 without the BOE giving any reason. Instead next hearing is scheduled for Feb 10 and hearing is held. On Feb 10, ALJ states next hearing date is scheduled for Feb 20. On Feb 10, over the parent's objection, ALJ grants BOE request to not to schedule on next hearing to March 10 and hearing is held. ALJ denies parent request for BOE to show good cause and states "I will not question an officer of the Court." Final Decision is issued on April 10 (100 days after the Jan 1 transmittal) Violation of Agreement?

3. the agreement should require DOE to provide sufficient judicial resources to OAL so OAL is likely to comply with the increased workload caused by the settlement.

4. the agreement glaringly omits a provision requiring the DOE/OAL/parties in the petition and transmittal and hearing notice and management order to state the number of days of hearings needed and schedule them.

5. the agreement should state the priority is for the hearings to be scheduled on consecutive days or as close as possible to consecutive days as is the common practice in our courts. (Ever hear of a DNJ/NJ judge granting a trial postponement request after the first day of trial? I haven't. Ever hear of a ALJ denying a trial postponement request after the first day of trial? I haven't) Hearings days scheduled weeks or months apart also unnecessarily delay the final decision because the ALJ and counsel cannot remember everything that occurred weeks/months ago at the prior hearings. **The agreement should state the ALJ shall apply strict scrutiny to a BOE request for a 300.515c hearing postponement and require DOE to amend N.J.A.C. § 1:6A-18.1 Deadline for decision.**

6. the final decisions are unnecessarily delayed by requiring written summations after the parties receive the transcripts of the hearings. the transcript take a minimum of 30 days to complete. As a result requiring written summations after the transcript is received after the last day of trial ITSELF delays the final decision 45 days. It is also a waste of public funds for BOEs to pay their attorneys exorbitant fees for unnecessary ordered written summations. **The agreement should require summations be oral just like they are in a jury trial and most bench trials.**

7. In fairness to the class don't they have a right to access class counsel's attorney fee demand that was submitted on their behalf by their counsel (referred to in the agreement at ¶39) to DOE. The affidavit of services should be filed on the docket.

In conclusion, I know Your Honor¹ will seriously consider all the above objections in fairness to the 1000s of disabled minors effected by this proposed settlement. I ask, if Your Honor wishes me to prioritize one objection above the rest, it would be as per Objection #1, to have the parties go back and try to come up with a formula to settle the compensatory education claims for all class member. For example (# days > 45 days) X (\$?). Of course, any class member who objected could opt out, but the vast majority would not.

Very truly yours,



JAMIE EPSTEIN

JE; 1.6hr, review docket, draft ltr, etc.

cc: info@NJ45DayClassAction.com,

C.P. Settlement, 25 Market Street, P.O. Box 112, Trenton, New Jersey 08625

¹ From my experience of Your Honor overseeing and approving the *LR v NJDOE* settlement.

Exhibit 4b

From: NJ 45 Day Class Action Settlement info@nj45dayclassaction.com
Subject: C.P. Class Action: Objection from Class Member
Date: February 27, 2024 at 3:19 PM
To: info@nj45dayclassaction.com



Name

AnnMarie Torres

Email

annmariepigna@gmail.com

Phone Number

9084999622

Address Line 1

10 Cedar St Fl 2

City / Town / Village

Garwood

Name of School District

Garwood and Clark School Districts

County

Union County, NJ

State

New Jersey

Zip Code

07027

Do you currently have a due process case pending?

No

Do you have your own attorney?

No

Why do you or your attorney object to the Settlement?

Because the violations in these cases are a lot bigger then just the time limit I have evidence of corruption, bias, discrimination, Lying about the law and and straight out criminal activity for both federal and state laws including making a medical decision for a child resulting in harm and altering transcripts.

Who filled out this form?

Me (Class Member)

Sent from

Exhibit 4c

From: george hynes geohynes@yahoo.com
Subject: Object C.P., et al. v. New Jersey Department of Education, et al.
Date: February 27, 2024 at 12:56 PM
To: info@NJ45DayClassAction.com
Cc: George geohynes@yahoo.com



George Hynes
340 Alps Road
Wayne, NJ 07470

C.P., et al. v. New Jersey Department of Education, et al.

To Whom It May Concern,

I object to this settlement because it is not strict enough. I had an 11-year Eminent Domain case with the state of NJ and the Wayne Valley High School district employed many of the same hardball tactics which made the case drag on for over a year and a half with my kid still not back in the public school where he belongs and in a therapy school. Moreover, the stress caused my wife's cancer to come back and she passed away on 8/25/23. A year into this unpleasantness.

Furthermore, I read a Time Magazine article entitled "How Schools Cherry Pick Who They Educate." It stated that 70 years after Brown vs. Board of Ed schools still discriminate often against special needs students. If the public schools ignore the Supreme Court they will find a workaround to this. They love the power and don't have the will to do their jobs. Thank you.

George Hynes
(82)297-3230

Exhibit 4d

2/23/24

This letter pertains to a notice I received in the mail regarding:

Notice of Class Action Settlement

C.P., et al. v. New Jersey Department of Education, et al.

Case No. 1:19-CV-12807-NLH MJS

United States District Court for the District of New Jersey

Judge Noel L. Hillman

My name is Yoel Deutsch. My current address is:

7 James Hollow Court

Howell N.J. 07731

(My previous address (where I received the above mentioned notice) was 2 L'chaim Way

Lakewood N.J. 08701

I am a class member of the above mentioned case, C.P., et al v.

New Jersey Department of Education, et al. Case No. 1:19-CV-12807-NLH MJS.

I object the proposed settlement. The reason for my objection is because the settlement terms include that the "class counsel will request court approval for payments of \$5,000 by NJDOE to the family of each of the named plaintiffs who initiated this lawsuit on behalf of the classes". This, I feel is unfair, and I'll explain why: My daughter, Shairdel Ahuvah Deutsch, and my family, suffered tremendously from the incompetence of the NJDOE ^{regarding the 45 day rule}. We suffered so, so much and who knows if because of their incompetence, it ultimately caused the untimely death of my beloved daughter. Therefore I strongly believe that my family as well should receive at least \$5,000 from the NJDOE, and not just the family of each named plaintiff. Justice must prevail! Sincerely, Yoel Deutsch

Exhibit 5

**IN THE 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,

Civil Action No. 19-cv-12807

v.

NEW JERSEY DEPARTMENT OF EDUCATION; KEVIN DEHMER, Interim Commissioner of Education, in his official capacity,

Defendants. **STIPULATION**

WHEREAS, the parties, with the assistance of the Honorable Joel Schneider, U.S.M.J. (retired), have reached a settlement in the above-captioned action, including for payment of attorneys' fees to attorneys representing Plaintiffs in this matter; and

WHEREAS, the amount of attorneys' fees was determined in arms' length negotiations facilitated by Judge Schneider after the parties reached agreement on the merits; and

WHEREAS, this litigation spanned five years, involved complex issues, and required significant discovery and motion practice,

Defendants stipulate that the negotiated amount of \$ 4,750,000 is reasonable to be awarded for fees in this matter.

REISMAN CAROLLA GRAN & ZUBA LLP

/s/ Catherine Merino Reisman

Catherine Merino Reisman
On Behalf of Class Counsel

Dated: March 11, 2024

NEW JERSEY OFFICE OF THE ATTORNEY GENERAL

/s/ Matthew Lynch

Matthew Lynch
Deputy Attorney General

Dated: March 11, 2024