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; DR. LILY LAUX, Commissioner of Education, in her official capacity, Defendants.	Civil Action No. 19-cv-12807-ESK-MJS Edward S. Kiel, U.S.D.J. Matthew J. Skahill, U.S.M.J.

MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION TO AMEND CONSENT ORDER AND SETTLEMENT AGREEMENT AND REQUEST APPOINTMENT OF A SPECIAL MASTER

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PRELIMINARY STATEMENT

Class Counsel and Defendants New Jersey Department of Education (NJDOE) and Commissioner Dr. Lily Laux (collectively "the Parties") submit this Memorandum of Law in support of their Joint Motion to Approve the Amended Consent Order and Settlement Agreement (Amended Consent Order), attached as Exhibit 1 to the accompanying *Reisman Decl.*, and request for appointment of the Honorable Jaynee LaVecchia (Ret.) as Special Master. The Amended Consent Order replaces the advisory Compliance Monitor established in the Consent Order and Settlement Agreement, ECF No. 564-3 at 31-56 (Original Consent Order)[1] with a Special Master appointed pursuant to Fed. R. Civ. P. 53 who will seek to have her Compliance Plan entered as an enforceable order, can request remedial and coercive orders from the Court, and may exercise other powers appropriate to federal court oversight of a complex consent decree.

The Amended Consent Order reaffirms the core injunctive relief for the Rule 23(b)(2) Class requiring NJDOE's compliance with the 45-Day Rule, *see* Amended Consent Order ¶ 10 (identical to Original Consent Order ¶ 10). It then goes further, replacing an advisory Compliance Monitor with a Special Master vested with the full coercive authority of this Court.

[1] The Original Consent Order is attached as Exhibit A to the Amended Consent Order.

The progression from the original litigation through this amendment tells a coherent story. The Second Amended Complaint sought two things: an injunction compelling compliance with 34 C.F.R. § 300.515(a) and (c), and the appointment of a federal monitor. The Original Consent Order delivered the injunction but provided only an advisory monitor, a structural limitation that has proven insufficient. The Amended Consent Order corrects that insufficiency by seeking a Special Master pursuant to Fed. R. Civ. P. 53, which is the type of enforcement mechanism the Class originally sought and a mechanism this Court has authority to impose.

The relief secured through the Amended Consent Order equals or exceeds what the Rule 23(b)(2) Class could have obtained through contested contempt proceedings, and delivers it without the delay, expense, and uncertainty that litigation would entail.

Approval of the Amended Consent Order is unambiguously in the best interests of the Rule 23(b)(2) Class.[2]

[2] The Amended Consent Order does not in any way impact the rights of the members of the Rule 23(b)(3) Issues Class, who received, in the Original Consent Order, a two-year extension of the statute of limitations for filing their claims. *See* Original Consent Order ¶ 13; Amended Consent Order at p.2 and ¶ 13.

STATEMENT OF FACTS

A. Background and Procedural History

On April 11, 2024, this Court approved the Original Consent Order, resolving the claims of the Rule 23(b)(2) Class and the Rule 23(b)(3) Issues Class after notice to the Classes, an opportunity to object, and a fairness hearing. The Court issued its decision on the record, in order not to delay relief to the students with disabilities impacted by violations of the 45-Day Rule.

The Rule 23(b)(2) Class is defined as all persons who, pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.* (IDEA), have filed or will file during the period of the Court's jurisdiction a due process petition with NJDOE whose cases are pending in the New Jersey Office of Administrative Law (NJOAL). Original Consent Order ¶ 3. Membership in this Class changes continuously as petitions are filed and resolved. The Rule 23(b)(3) Issues Class is defined as all persons who, pursuant to IDEA, filed due process petitions with NJDOE on or after May 23, 2016, who did not receive a timely decision prior to April 11, 2024. This class has a fixed membership comprising persons whose petitions were filed and resolved *before* the Original Consent Order was entered. No person becomes a new member of the Rule 23(b)(3) Issues Class as a result of events occurring after April 11, 2024.

The Original Consent Order established an advisory Compliance Monitor authorized to develop a compliance plan, gather and analyze data, issue reports, and make recommendations. Original Consent Order ¶¶ 15-19. The Compliance Monitor lacked authority to obtain court orders or compel specific action by NJDOE.

The Original Consent Order expressly retained this Court's jurisdiction "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." Original Consent Order ¶ 50. It further provided that its terms "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." *Id*. ¶ 54.

The Original Consent Order precluded the Class from seeking an order of contempt for eighteen months after the date of final approval. *Id.* ¶ 35. This eighteen-month moratorium was a deliberate structural feature of the decree, designed to give NJDOE and the Compliance Monitor time to develop and implement a compliance plan before enforcement litigation was pursued. The eighteen-month moratorium ran from April 11, 2024 through October 11, 2025.

B. Activities During the Monitoring Period

Throughout the eighteen-month monitoring period, Class Counsel actively monitored NJDOE's compliance with the Original Consent Order, working within the structure of the Order. Class Counsel's work included:

- Reviewing and analyzing the Compliance Monitor reports;

- Providing information to the members of the Rule 23(b)(2) Class through the website, www.nj45dayclassaction.com, including posting the Compliance Monitor reports as they were issued;

- Providing information to and responding to inquiries from members of the Rule 23(b)(3) Class regarding steps necessary to file individual claims for relief during the extended statute of limitations period by providing information as well as directing them to the website;

- Responding to every inquiry that has come through the email, info@nj45dayclassaction.com;

- Responding to every inquiry that has come by telephone to Class Counsel;

- Posting on the class action website a copy of the Adjournment Form that should be used to request adjournments and encouraging 23(b)(2) Class members to use the Compliance Monitor address to report violations of the Original Consent Order;

- Drafting instructions for the use of the Adjournment Form and providing proposed instructions to Defendants;

- Following up with the Compliance Monitor when informed that Class members have contacted her;

- Communicating and meeting with the Compliance Monitor regarding review of monitoring reports and ongoing concerns and issues related to compliance, for example, a material technical issue with the rollout of case monitoring software;

- Communicating and meeting with counsel for Defendants regarding, among other things, (1) the delayed receipt of incentive payments for the named plaintiffs; (2) ongoing issues with use and misuse of the adjournment form and training issues related to those forms; (3) concerns regarding implementation of initiatives without notice to or input from Class Counsel; (4) Class member concerns related to

continued delays in the Office of Administrative Law; and (5) obligations of the New Jersey Department of Education (NJDOE) under the Original Consent Order to post the monitoring reports;

- Communicating and meeting with representatives of the *Amici Curiae* to address ongoing issues in the special education due process system;

- Providing notice to the Rule 23(b)(2) Class of the steps taken to pursue enforcement after October 11, 2025 by summarizing the continuing violations, explaining the steps we were proposing to remediate the situation through enhanced protections, and posting the October 20, 2025 correspondence on the website, www.nj45dayclassaction.com; and

- Taking steps, as detailed in ¶ 8 of the *Reisman Decl.*, to address NJDOE's non-compliance with the Original Consent Order in the most efficient and effective manner for the Class.

Reisman Decl. ¶ 5.

Paragraph 35 of the Original Consent Order prohibited Class Counsel from seeking an order of contempt during the eighteen-month moratorium period. Class Counsel actively monitored NJDOE's compliance and moved promptly once the contractual moratorium expired. Because Class Counsel lacked the authority under Paragraph 35 of the Original Consent Order to seek contempt during the moratorium regardless of the compliance data, Class Counsel sent the required notice of material non-compliance under Paragraph 35 on October 20, 2025 – nine days after the first permissible date.

The Amended Consent Order is the direct result of Class Counsel's October 20, 2025 notice of material non-compliance. Following that notice, the

parties engaged in arm's length negotiations under the threat of a contemplated contempt motion. Those negotiations produced the Amended Consent Order. Class Counsel used the enforcement mechanism provided in the Original Consent Order, in a timely manner, to obtain relief that benefits the Class without requiring the delay, expenditures, and judicial and other resources that would have been involved in pursuing a contempt proceeding, without the uncertainty of such a proceeding, while procuring for the Class the federal monitor sought in the Second Amended Complaint.

C. NJDOE'S Non-Compliance

The Original Consent Order required NJDOE to achieve 95% Compliance with 34 C.F.R. § 300.515(a), (c) across three separate compliance categories: Pending Cases; Final Decisions Post-Full Hearing; and Final Decisions-No Full Hearing. The fourth compliance report, submitted by Compliance Monitor Lenore Knudtson and dated November 7, 2025 (Fourth Report) (attached to the Amended Consent Order as Exhibit B) covers the monitoring period of May through August 2025 and documents NJDOE's failure to show the required 95% Compliance rate in all three categories.

Replacing the advisory Compliance Monitor with a Special Master possessing court-enforced authority to compel specific corrective actions is therefore necessary and appropriate under these circumstances.

D. The Amended Consent Order

The Parties jointly negotiated the Amended Consent Order as an alternative to contempt litigation, which would have necessarily delayed relief to the Rule 23(b)(2) Class. This Court has recognized that a permanent injunction of the type sought here in a contempt proceeding is a "significant exercise of this Court's considerable powers." *C.P. v. New Jersey Dep't of Educ.*, No. 19-cv-12807, 2022 U.S. Dist. LEXIS 158147, at *35 (D.N.J. Sept. 1, 2022).

The Amended Consent Order does not materially alter the substantive rights of any class member in any negative way. Rather, it increases the Rule 23(b)(2) Class's rights by modifying the enforcement mechanism of the Original Consent Order to replace *advisory* oversight with court-supervised enforcement.

This distinction is legally significant: a modification that improves the remedial mechanism without altering substantive class rights does not trigger Rule 23(e) notice requirements. *Cf. In re Diet Drugs Prods. Liab. Litig.*, 93 F. App'x 338, 345 n.7 (3d Cir. 2004) (non-precedential) (amendment that "corrected an unexpected prejudice to some class members that arose after the Settlement Agreement was approved" did not materially alter the settlement).

The relief available to the class under the Amended Consent Order is at least as beneficial as, and in important respects superior to, the relief that the Rule 23(b)(2)

Class would likely obtain through a contempt motion, if even successful, for the following reasons:

- The Amended Consent Order provides this relief immediately, without the delay or costs that contested contempt litigation would impose, during which time current class members would continue to be harmed.

- The Amended Consent Order replaces the advisory Compliance Monitor with a Special Master whose Compliance Plan will be submitted to and entered by this Court as an order, creating judicially enforceable obligations.

- The Amended Consent Order indicates that the role of the Special Master shall be to develop a Compliance Plan designed to achieve 95% Compliance with 34 C.F.R. § 300.515. Amended Consent Order ¶ 15. The Original Consent Order only required that the Compliance Monitor's reports reflect a positive trend toward achieving 95% Compliance. Original Consent Order ¶ 32(f).

- The Amended Consent Order makes no adverse change to any substantive rights of any class member. The 95% Compliance standard, the 45-Day Timeline, and the reporting obligations are all preserved, and the enforcement mechanism is vastly improved. The Rule 23(b)(3) Issues Class's rights are entirely unaffected.

- The modification to the payment schedule for attorney's fees does not enhance Class Counsel's right to attorney's fees. Except for timing, the procedure remains the same. Class Counsel still must submit a fee request to NJDOE and meet and confer in an attempt to achieve agreement on the amount of the payment. If the parties cannot reach agreement, Class Counsel retains the right to file a fee petition with the Court. This provision merely changes the timing of the submission of fee requests. Rather than being requested at the time the Special Master issues a report, the fees will be requested on a quarterly basis. This is a ministerial, administrative change.

E. The Proposed Special Master

In connection with the Amended Consent Order, the Parties jointly request that the Court appoint the Honorable Jaynee LaVecchia (Ret.) as Special Master pursuant to Federal Rule of Civil Procedure 53. Justice LaVecchia has agreed to serve in that capacity, and the Parties are in full agreement that she is exceptionally well-suited to fulfill the role defined in the Amended Consent Order of developing and overseeing a Compliance Plan designed to achieve 95% compliance with the IDEA's 45-Day timeline, monitoring implementation, and submitting periodic reports and recommendations to the Court.

Justice LaVecchia brings more than four decades of public law experience to this appointment, including over twenty-one years as an Associate Justice of the New Jersey Supreme Court. During her time on the bench, she authored significant decisions in the areas of civil rights, complex regulatory litigation, and administrative law, developing a deep and nuanced understanding of the legal frameworks that govern the relationship between state agencies and the individuals they serve. That experience translates directly to the core challenge presented here: ensuring that a state agency responsible for administering the rights of students with disabilities meets its federally mandated obligations.

Before her judicial tenure, Justice LaVecchia served in several senior positions within New Jersey state government that bear particular relevance to this matter. As Director of the Division of Law within the New Jersey Department of

Law and Public Safety, she supervised more than 450 attorneys responsible for counseling and defending the agencies of the Executive Branch, including the very regulatory structures through which NJDOE and the New Jersey Office of Administrative Law (NJOAL) operate. She also served for approximately six years as the State's Chief Administrative Law Judge and Director of NJOAL, where she presided over contested case proceedings and developed expertise in the mechanics of administrative adjudication.[3] This familiarity with how New Jersey's administrative hearing system functions, and the structural factors that can impede timely resolution, will be invaluable as Justice LaVecchia develops the Compliance Plan and identifies barriers to compliance with the 45-Day timeline

Justice LaVecchia also brings direct experience as a court-appointed special master and monitor. Since entering private practice at McCarter & English, LLP in 2022, she has served as special master and later monitor in *A.A. v. Callahan*, No. MER-L-002001-23 (Super. Ct. N.J.), a class action involving the New Jersey State Police's compliance with court-ordered expungement processing timelines – a role structurally analogous to what is required here. Working with the parties in that case, she assisted with negotiation of a resolution addressing a backlog of processing approximately 46,000 expungement orders. She has additionally served as a court-

[3] Justice LaVecchia's tenure at NJOAL pre-dated the adoption of the "federal days" construct to calculate due process hearing timelines.

appointed special discovery master in a New Jersey civil RICO action, and as neutral chair in complex insurance coverage disputes.

In sum, Justice LaVecchia's combination of constitutional and civil rights jurisprudence at the appellate level, executive branch regulatory experience within New Jersey state government, and hands-on service as a court-appointed special master and monitor make her uniquely qualified to oversee compliance with the Amended Consent Order and to provide the Court with the independent, expert guidance that effective enforcement of this settlement requires. The Parties are confident in her ability to serve impartially and effectively.

ARGUMENT

A. The Court Has Authority to Approve the Amended Consent Order

The Court retained jurisdiction of the Consent Order for the purpose of "entering orders modifying [the] Order, or effectuating or enforcing compliance with the terms of [the] Order." Original Consent Order ¶ 50. Parties seeking modification of a consent decree in institutional reform litigation "must establish that a significant change in facts or law warrants revision of the decree and that the proposed modification is suitably tailored to the changed circumstance." *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 393 (1992). "*Rufo* and its progeny grant federal courts of equity substantial flexibility to adapt their decrees to changes in the facts or law, particularly in institutional reform litigation, where the public interest is

paramount." *Smith v. Bd. of Educ. of the Palestine-Wheatley Sch. Dist.*, 769 F.3d 566, 572 (8th Cir. 2014).

In this case, the Parties agree that changed circumstances warrant amendment of the Original Consent Order, which was contemplated by the Original Consent Order itself. The Parties have negotiated a strengthened enforcement mechanism with a Special Master with real authority to effectuate change.

A comparison of the powers of the Compliance Monitor and the Special Master illustrate how this modification will benefit the Rule 23(b)(2) Class.

	Compliance Monitor	**Special Master**
Legal Basis for Appointment	Consent Order provision. No specific Federal Rule cited.	Appointed pursuant to Fed. R. Civ. P. 53, grounded in the inherent power of federal courts to enforce remedial orders.
Core Mission	Primarily advisory role, to provide NJDOE with "support, guidance, experience, and expertise" needed to comply.	Role is to develop a Compliance Plan, submit Plan to Court to be adopted as a Court Order, report on compliance, modify Plan with Court approval, seek remedial Orders from the Court to achieve 95% compliance.
Authority to Act	Authority is to *recommend* corrective actions.	Special Master shall, without limitation, oversee and monitor implementation of the Compliance Plan; review and analyze data related to

	Compliance Monitor	**Special Master**
		compliance; identify and address barriers to compliance, through the development and implementation of targeted interventions; 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; oversee, monitor, measure, assess, and report upon NJDOE's progress under the Compliance Plan toward achieving 95% Compliance; and seek remedial Orders from the Court if NJDOE is not making progress required by the Compliance Plan. The foregoing examples are illustrative and not an express limit on the actions the Special Master may take to achieve 95% Compliance.
Oversight of Defendants	Monitor provides support and guidance and meets with NJDOE and Class Counsel as she deems appropriate.	Special Master oversees specific Compliance Plan with benchmarks, deadlines, and defined NJDOE responsibilities and can mandate specific NJDOE actions through Court Orders.

	Compliance Monitor	**Special Master**
Data Access	Full access to data from NJDOE and NJDOE makes "all reasonable efforts" to provide data, including NJOAL data.	Full access to data from NJDOE and NJDOE makes "all reasonable efforts" to provide data, including NJOAL data, plus explicit authority to independently investigate if not satisfied with NJDOE's data production.
Electronic Case Management System	Not addressed.	Full access to NJOAL's electronic case management system once operational. Special Master shall conduct random audits to verify compliance and review and assess the functionality and accuracy of the system.
Dedicated NJDOE Staff	No dedicated staff requirement.	NJDOE agrees to fund a full-time employee, housed within NJOAL, whose role is to maintain data, and report to Class Counsel, NJDOE, and the Special Master. Employee must produce any data requested by the Special Master.
Interviews	May conduct individual, confidential interviews as part of the data collection process, as the Monitor deems appropriate.	Shall conduct individual, confidential interviews to the extent necessary to verify and supplement data collection.

	Compliance Monitor	**Special Master**
Plan Development	Monitor develops Compliance Plan within ninety days.	Special Master develops Compliance Plan with the Parties within a timeframe she establishes. Plan must include (a) benchmarks; (b) specific NJDOE action items; (c) outline of Special Master's own work; (d) presumptive deadlines for both NJDOE and benchmarks; and (e) a target date for achieving 95% compliance.
Plan Status	Compliance Plan is a working document with no formal court adoption.	Compliance Plan submitted to the Court and adopted as a Court Order.
Report Destination	Reports issued to parties and posted on NJDOE website.	Final reports filed directly on the Court's docket.
Report Contents	Compliance data and trends.	Report shall include, but not be limited to, a summary of NJDOE's progress toward benchmarks in the Compliance Plan, stakeholder input, and the initiatives, interventions, and corrective actions put in place during that reporting period to address the problem and results of same; data collected during that reporting period; a discussion of the causes of non-compliance and the barriers to compliance; a

	Compliance Monitor	**Special Master**
		summary of the steps taken by NJDOE during that reporting period to identify and address the causes of non-compliance; a summary of the actions that NJDOE will take in the next reporting period to rectify noncompliance; and how said actions will be measured and assessed.
Remedial Recommendations	Authority to *recommend* corrective actions.	If necessary, Special Master can make recommendations for remedial or coercive Orders requiring corrective action.
Court Access	No direct court access.	Direct access to the Court. Special Master may seek remedial orders directly.
Class Member Interaction	Email account for public input and Monitor may disclose input in reports.	Special Master (or delegee) will affirmatively respond to 23(b)(2) class member inquiries and will address with NJDOE and Class Counsel non-compliance issues raised by class members.
Meetings	Monitor meets with NJDOE and Class Counsel to review reports, as the Monitor deems appropriate or when requested.	Mandatory meetings at least every two months with Class Counsel and NJDOE counsel (separately or together at Special Master's discretion) and Special Master may

	Compliance Monitor	**Special Master**
		include Class members and other stakeholders.
***Pro Se* Litigants**	Not specifically addressed.	Shall conduct random reviews of cases, particularly those in which parents or guardians are *pro se*, that have not been scheduled for a hearing within 45 Days of Day 1 to assess compliance with the 45-Day Timeline and identify and address systemic barriers affecting the case's timely progression. Such review shall include, if available, audio recordings of prehearing conferences. To assist *pro se* parties, within ninety days of the entry of the Amended Consent Order, NJDOE and Class Counsel will draft a litigation guide for *pro se* litigants and NJDOE will ensure dissemination to all *pro se* parties at the time of filing. NJDOE will also maintain the guide on its website in an easily accessible location. Prehearing conferences will be automatically audio-recorded for all cases in which parents or guardians

	Compliance Monitor	**Special Master**
		are *pro se*.[4] For represented parties, prehearing conferences will be recorded upon request. Copies of recordings will be made available, at no charge, upon request.

Appointment of a Special Master is warranted in this case. Federal courts may appoint a Special Master in exceptional circumstances. A case involving complex institutional reform, in which a governmental unit has had the opportunity to address the problem on its own but failed, meets the exceptional circumstances requirement. *Duane B. v. Chester-Upland Sch. Dist.*, No. 90-0326, 1994 U.S. Dist. LEXIS 18755, at *35 (E.D. Pa. Dec. 29, 1994); *Blackman v. Dist. of Columbia*, 185 F.R.D. 4, 6-7 (D.D.C. 1999) (appointing Special Master to enforce IDEA due process hearing compliance upon defendants' continued failure to meet statutory obligations); *Coleman v. Wilson*, 912 F. Supp. 1282 (E.D. Cal. 1995); *Hook v. State of Ariz.*, 120 F.3d 921, 926 (9th Cir. 1997); *Nat'l Org. for Reform of Marijuana Laws v. Mullen*, 828 F.2d 536, 539 (9th Cir. 1987) (noncompliance with injunction over more than one year is "exceptional condition" warranting Special Master appointment under Rule 53); *Halderman v. Pennhurst State Sch. & Hosp.*, 612 F.2d 84, 111 (3d Cir.

[4] There is currently a policy of recording pre-hearing conferences for *pro se* litigants. This renders that policy enforceable as part of a Court Order.

1979) (en banc), *rev'd on other grounds*, 451 U.S. 1 (1981). Further, both parties consent to the appointment of a Special Master.

B. The Amendment is Fair, Adequate, and Reasonable

In *In re Diet Drugs Prods. Liab. Litig.*, 385 F.3d 386 (3d Cir. 2004), the court of appeals, analyzed the appropriateness of an amendment to a class action settlement without addressing all of the factors in *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975). The court held that, "in evaluating an amendment to a class action settlement, the court should consider whether the amendment provides additional benefits and protections for the class." 385 F.3d at 392. "One purpose for which it is appropriate to approve such an amendment is adjusting for changed circumstances, particularly in light of the parties' experience in implementing the agreement." *Id.* Finding that the sixth amendment to the settlement added new rights without depriving any class members of any preexisting rights, the court affirmed the district court's holding that the amendment was fair, reasonable, and adequate, without analyzing the *Girsh* factors. *Id.* at 394.

In *Brown v. Am. Home Prod. Corp. (In re Diet Drugs Prods. Liab. Litig.)*, MDL No. 1203, No. 99-20593, 2010 U.S. Dist. LEXIS 66879, at *16 (E.D. Pa. July 2, 2010), the court considered the *Girsh* factors in connection with an amendment to a class action settlement. In this case, as in *Brown,* the *Girsh* factors strongly favor approval of the Amended Consent Order. This is not a case in which the class must

accept a compromise of its claims in exchange for relief. To the contrary, the Amended Consent Order delivers the type of relief, appointment of a federal monitor with expanded authority and compliance benchmarks, sought in the Second Amended Complaint.

Where a proposed amendment provides the class with everything that could be obtained through litigation, and does so without requiring the sacrifice of any class member's rights, the *Girsh* factors are satisfied with unusual force. The nine *Girsh* factors are (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *Id.* at 157 (internal quotations omitted); *see also Adam X. v. New Jersey Dep't of Corrections*, No. 17-00188, 2022 WL 621089, at *6–9 (D.N.J. Mar. 3, 2022) (applying *Girsh* factors to approve class action settlement providing for external compliance monitor in IDEA case).

As was the case with the Original Consent Order, the first *Girsh* factor, the complexity, expense, and likely duration of the litigation, strongly favors approval.

The regulatory scheme underlying New Jersey's IDEA compliance obligations is complex. *See* ECF No. 574 (Transcript of Opinion) at 56 (citing *Tallman v. Barnegat Bd. of Educ.*, 43 F. App'x 490, 495 (3d Cir. 2002)). The significance of this factor is greatly amplified in the context of the Amended Consent Order. The Class has been waiting since 2019. Every day NJDOE remains noncompliant is a day that a child with a disability is denied timely resolution of her due process petition, and, as this Court observed, "once lost [time] can never be recovered." ECF No. 574 at 14. A contempt trial, post-trial motion practice, and any ensuing appeal could consume years that these children do not have. The Amended Consent Order eliminates that risk entirely.

The Original Consent Order gave NJDOE eighteen months to remediate and achieve 95% compliance. Having failed to do so, NJDOE now consents to appointment of Justice LaVecchia as Special Master, without the need for a contempt proceeding, without additional litigation, and without any further delay to the Class. This Court recognized at the original fairness hearing that "a trial and subsequent appellate practice would be unlikely to produce the 95 percent compliance rate within 18 months set forth in the settlement." ECF No. 574 at 60. That observation applies with even greater force here: the Amended Consent Order delivers the structural reform the class sought more quickly and more certainly than any contempt proceeding could.

The second *Girsh* factor, the reaction of the class, strongly favors approval. The *Girsh* factor addressing class reaction was fully litigated and resolved at the time of the Original Consent Order's approval. When the Original Consent Order was submitted for final approval, only four of the 5,483 notified class members filed objections, and this Court found those objections did not warrant rejection of the settlement. ECF No. 574 at 57–58. Where, as here, an amendment exclusively escalates, rather than compromises, the relief previously approved, there is no basis to infer that the Class reaction would be less favorable than it was to the original Order. The Amended Consent Order provides the Rule 23(b)(2) Class with the federal monitoring and strict compliance benchmarks originally sought in the Second Amended Complaint. A Class that overwhelmingly accepted the Original Consent Order has every reason to support an amendment that strengthens it.

The third *Girsh* factor, the stage of proceedings and the amount of discovery completed, continues to heavily favor approval, just as it did in 2024. The parties engaged in years of extensive discovery, litigated cross-motions for summary judgment, and prepared a joint pretrial order with 546 proposed exhibits. ECF No. 574 at 59. This case was trial-ready before the Court approved the Original Consent Order. The record supporting the class's entitlement to the relief embodied in the Amended Consent Order is fully developed and beyond dispute. ECF No. 574 at 57–58

The fourth and fifth *Girsh* factors "survey the potential risks and rewards of proceeding to litigation in order to weigh the likelihood of success against the benefit of an immediate settlement." ECF No. 574 at 59–60 (quoting *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 537 (3d Cir. 2004)). These factors weigh decisively in favor of approval because the Amended Consent Order eliminates any meaningful litigation risk with respect to the injunctive relief at the heart of this case.

The Second Amended Complaint sought, among other relief, the appointment of a federal monitor empowered to oversee systemic reform of New Jersey's special education dispute resolution procedures and to enforce compliance with the 45-Day Rule. ECF No. 78 at 83. The Amended Consent Order grants that type of relief. It appoints Justice LaVecchia as Special Master with authority to enforce compliance and require corrective action, a power the Compliance Moniter does not have. It imposes stricter compliance benchmarks than those contained in the Original Consent Order. And it accomplishes all of this without requiring the class to release, waive, or compromise any individual claims.

When an amended consent order grants such relief, without requiring any trade-off, there is nothing a trial could add. *See* ECF No. 574 at 60. The provisions of the Original Consent Order requiring compliance with the 45-Day Rule remain fully in effect. The Amended Consent Order adds the federally-monitored enforcement mechanism rendered necessary by continued non-compliance.

The sixth factor, the risk of maintaining the class through trial, is neutral. The remaining *Girsh* factors pertaining to monetary judgment and the settlement fund are inapplicable, as neither the Original nor the Amended Consent Order provides for damages. ECF No. 574 at 60. These factors do not weigh against approval.

When approving the Original Consent Order, this Court concluded that the inclusion of a compliance monitor was "an additional safeguard that the settlement reforms are real, will be implemented and will provide the class with the increased treatment that they have bargained for." ECF No. 574 at 61 (quoting *Alves v. Main*, No. 01-00789, 2012 WL 6043272, at *22 (D.N.J. Dec. 4, 2012)). But that safeguard was not enough to result in the compliance rates required by the Original Consent Order required and the appointment of a Special Master is the logical and necessary next step.

Rather than litigating contempt, the parties have agreed to the relief the class was always seeking, the appointment of a Special Master. Justice LaVecchia brings precisely the qualifications and authority this role demands. The Amended Consent Order is fair, reasonable, and adequate, and it delivers the full measure of relief sought at the outset of this litigation. For all of these reasons, the Parties jointly request that the Court approve the Amended Consent Order and appoint the Honorable Jaynee LaVecchia (Ret.) as Special Master in this case.

C. The Court has Discretion to Determine Whether and How to Provide Notice to the Rule 23(b)(2) Class[5]

The Court has broad discretion to determine what, if any, notice is required in connection with an amendment to a class action settlement. Notice is "only required where the amendment to the settlement agreement would have a material adverse effect on the rights of class members." *Brown,* 2010 U.S. Dist. LEXIS 66879, at *16 (citing *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450 n.10 (D.N.J. 1997), *aff'd,* 148 F.3d 283 (3d Cir. 1998)). The question of what notice is appropriate "is within the sound discretion of the District Court," *id.*, and Fed. R. Civ. P. 23(e) "makes clear that determinations about settlement notices in class actions are within the discretion of the district court." *In re Diet Drugs Prods. Liab. Litig.*, 93 F. App'x at 344. And critically, the question is not whether the Court complied with the full strictures of Rule 23 or satisfied constitutional due process as though approving an initial settlement; it is simply "whether the District Court, in its continuing jurisdiction to oversee class action settlements, erred in approving a modification of the settlement." *Id.* at 342 (citation modified). That is a considerably more permissive standard than what governs initial approval, and it vests the Court with substantial latitude here.

[5] The Amended Consent Order does not affect the rights of the Rule 23(b)(3) Class in any way. Thus, notice is not required for that Class.

Courts in this Circuit have repeatedly exercised that discretion to dispense with individualized notice where an amendment does not harm the class. In *In re Diet Drugs*, when the parties jointly moved to approve the fifth amendment to a large multi-district litigation settlement, the District Court approved the amendment upon service on counsel for represented plaintiffs and posting on the official multi-district litigation website, with no individualized mailing to class members. 93 F. App'x at 340, 344. The Third Circuit found the notice "firmly within the discretion of a district court" and affirmed. *Id.* at 344. The same court reached the same conclusion with respect to the tenth amendment to that agreement, reasoning that "[e]specially because the amendment had no material adverse effect and, in fact, provided many additional benefits," notice to represented parties and posting on the website was sufficient. *Brown*, 2010 U.S. Dist. LEXIS 66879, at *17. In a subsequent amendment to the same agreement, the court held that electronic docketing and electronic service on registered parties constituted sufficient notice. *In re Diet Drugs Prod. Liab. Litig.*, MDL No. 1203, 2017 U.S. Dist. LEXIS 34005, at *27 (E.D. Pa. Mar. 9, 2017), *aff'd*, 763 F. App'x 237 (3d Cir. 2019).

The proposed Amended Consent Order is, if anything, an even stronger candidate for approval without individual notice than the amendments sustained in *Brown* and *In re Diet Drugs*. The amendment modifies the original decree solely to provide the class with greater relief: replacing the Compliance Monitor with a

Special Master, a former Justice of the New Jersey Supreme Court appointed pursuant to Fed. R. Civ. P. 53, who possesses expanded authority, direct access to the Court, and the power to seek remedial and coercive orders to compel NJDOE's compliance. The modification does not reduce or compromise any benefit previously conferred on the class, does not release any claims, and does not impose any new obligations on class members whatsoever. It is an unambiguous, one-way enhancement of the enforcement apparatus that exists for the class's benefit.

The purpose of notice in the class action context is to protect class members from being harmed by modifications to their rights without an opportunity to object. Where an amendment imposes no harm, where class members have nothing to object to and nothing to lose, the protective rationale for notice falls away, and the costs of notice become the sole operative consideration. Those costs are not trivial in this case. Generating, distributing, and processing a round of individualized notice to a class of IDEA due process petitioners statewide could take a substantial amount of time. During that time, class members who are currently experiencing unlawful delays in their due process hearings would continue to wait, without the benefit of the enhanced oversight and enforcement that the Amended Consent Order is designed to provide. Requiring notice under these circumstances would, in effect, punish class members for NJDOE's non-compliance by delaying the remedy their noncompliance necessitated.

Delay is not an abstract concern in this case. This litigation exists because New Jersey's due process system has failed for years to provide timely hearings to families of children with disabilities. Every day that the enhanced enforcement mechanisms of the Amended Consent Order are not in place is a day that those families continue to wait in violation of the Original Consent Order. The Court's own docket demonstrates that urgency: the Compliance Monitor's Fourth Report, issued November 7, 2025, showed NJDOE's continued failure to show the required 95% compliance rate, prompting the contempt-predicated amendment now before the Court. Interposing a notice period between the Court and the appointment of a Special Master with meaningful tools to address that failure would serve no class member's interest.

Accordingly, the Court could determine that it is in the best interest of the Rule 23(b)(2) Class to exercise its discretion to approve the Amended Consent Order with notice provided through website posting and service through ECF on represented parties in the action, as was done in *Brown* and *In re Diet Drugs,* 2017 U.S. Dist. LEXIS 34005, at *27, as well as service upon counsel for *Amici Curiae*.

CONCLUSION

Based on the foregoing, the Parties jointly request the Court's approval of the Amended Consent Order with notice provided through website posting, service

through ECF on represented parties in the action, and service upon counsel for *Amici Curiae*.

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Respectfully submitted,

CLASS COUNSEL

/s/ Catherine Merino Reisman
Catherine Merino Reisman
Judith A. Gran (*pro hac vice*)
Reisman Gran Zuba LLP
923 Haddonfield Road, Suite 300
Cherry Hill, New Jersey 08002
856.354.0021
catherine@rgz.law
judith@rgz.law

David R. Giles
Law Office of David Giles
34 Rynda Road
South Orange, New Jersey 07079
973.763.1500
davidgiles@davidgileslaw.com

Elizabeth Athos
Jessica Levin
Education Law Center
60 Park Place, Suite 300
Newark, New Jersey 07102
973.624.1815 ext. 200
eathos@edlawcenter.org
jlevin@edlawcenter.org

Denise Lanchantin Dwyer
Law Office of Denise L. Dwyer, LLC
707 Alexander Road, Suite 208

JENNIFER DAVENPORT
ATTORNEY GENERAL OF NEW JERSEY

By: */s/ Matthew Lynch*
Matthew Lynch
Deputy Attorney General
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, New Jersey 08625
609.376.3100
matthew.lynch@law.njoag.gov

Princeton, New Jersey 08540
609.632.0475
denise@dlwyerlaw.com

Jeffrey I. Wasserman
Gregory G. Little
Wasserman Little LLC
1200 Route 22 East, Suite 2000
Bridgewater, New Jersey 08807
973.486.4801
jwasserman@wassermanlittle.com
glittle@wassermanlittle.com