

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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N.G., by F.E, Z.M. by C.M., and all others similarly
situated,

Plaintiffs, No. 14 CV 6529 (RML)

-against-

New York City Department of Education, David C. Banks,
in his representative and official capacity as Chancellor of
the New York City Department of Education, the New
York State Education Department, and Betty Rosa, in her
representative and official capacity as Commissioner of
Education of the State of New York,

Defendants.

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STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (the “Stipulation”) is made and entered into pursuant to Rule 23 of the Federal Rules of Civil Procedure and contains the terms of a settlement (the “Settlement”) by and among the current plaintiffs, N.G., by F.E, and Z.M. by C.M., as the substituted named plaintiffs for the original named plaintiffs, M.K. by H.K. and F.E., R.C. by L.C. and M.C., and V.S. by D.S. (collectively the “Named Plaintiffs”) and the Plaintiff Class in the above-captioned action (collectively “Plaintiffs”), and the New York City Department of Education (“DOE”) and David C. Banks, in his official capacity as Chancellor of the New York City Department of Education, (collectively the “DOE Defendants”), and the New York State Education Department (“NYSED”) and Betty A. Rosa, in her official capacity as Interim Commissioner of Education of the State of New York (collectively, the “State Defendants,” and with the Plaintiffs and the DOE Defendants, the “Parties”).

BACKGROUND OF THE LITIGATION:

A. On November 5, 2014, the above-captioned action of *M.K., et al. v. New York City Department of Education, et al.*, Civil Action No. 14 CV 6529 (RPK)(RML), a proposed class action, was filed in the United States District Court for the Eastern District of New York (the “Action”);

B. On July 24, 2015, the Named Plaintiffs filed an Amended Complaint;

C. On February 10, 2022, the Named Plaintiffs filed a motion for leave to file a Second Amended Complaint (“Complaint”);

D. By Order dated February 26, 2022, the Court granted the named Plaintiffs’ motion for leave to file the Complaint;

E. The Complaint alleges, among other things, that the DOE Defendants violated federal and State laws, specifically the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.* (“IDEA”), and the New York Education Law, §§ 4401, *et seq.*, by failing to offer and provide the Named Plaintiffs, proposed Plaintiff Class Members, and their Parents with: (a) timely and appropriate Transition Assessments; (b) compliant notices to provide the opportunity for their informed participation in transition planning; (c) appropriate transition planning for students including, but not limited to, present levels of performance, measurable and sufficiently individualized goals and objectives, methods and measures for meeting those goals and objectives; (d) Transition Services and programming; and (e) exit summaries and other notices for students leaving school-based services;

F. The Complaint also alleges, among other things, that the State Defendants violated federal and State law by failing to properly monitor, measure, supervise and enforce DOE’s compliance with the same federal and State laws;

G. The Parties now desire to resolve the issues in this litigation, without further proceedings and without admitting any fault or liability;

H. Counsel for Plaintiffs and counsel for the DOE Defendants and the State Defendants have engaged in extensive and good faith discussions regarding the possibility of settling the Action and have reached, by means of arm's length and extended negotiations, an agreement concerning the proposed settlement of the Action as set forth below; and

I. Plaintiffs' Counsel, having made a thorough investigation of the facts, have concluded that the terms and conditions of this Settlement are fair, reasonable and adequate and in the best interests of the Named Plaintiffs and the Plaintiff Class.

NOW THEREFORE, without any admission or concession by Plaintiffs of any lack of merit of the Action whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in their defenses whatsoever by the DOE Defendants and the State Defendants, it is hereby

STIPULATED AND AGREED, by and among the Parties to this Stipulation, through their respective attorneys, subject to approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, that the Settled Claims, as that term is defined herein, shall be compromised, settled, and released, and that this Action shall be settled and dismissed with prejudice, upon and subject to the following terms and conditions:

I. DEFINITIONS

1. For the purposes of this Stipulation, the terms listed below shall have the following meaning:

- a. **Action:** the putative class action in the Eastern District of New York originally captioned *M.K. by H.K. et al. v. New York City Department of Education, et al.*, No. 14-cv-6529 (RPK)(ML).

- b. **Borough/Citywide Office (BCO):** DOE regional field-based offices comprised of instructional and operational staff that support schools and districts for students attending DOE-operated schools or any successor office.
- c. **Class Members:** the members of the Plaintiff Class, as defined below in ¶ 4.
- d. **Commissioner’s Regulations:** the New York State Compilation of Codes, Rules and Regulations, title 8, Parts 100 and 200.
- e. **Committee on Special Education (CSE):** A DOE regional office responsible for coordinating and carrying out the special education process for students who are not enrolled in DOE schools, including school-age students who attend state-approved non-public schools, or any successor office.
- f. **Coordinated Set of Transition Activities:** A statement in the IEP that contains a statement of transition services a statement of the responsibilities of the school district and (when applicable) participating agencies for the provision of these services (See 8 NYCRR § 200.1(fff));
- g. **Court:** the United States District Court for the Eastern District of New York.
- h. **Diploma:** a regular high school diploma issued by DOE pursuant to Section 100.5 of the Commissioner’s Regulations.
- i. **District 75 Schools:** Schools operated by District 75 under one District Borough Number (DBN), which may have more than one site at one or more building locations.
- j. **DOE:** the New York City Department of Education and its successors.
- k. **Educational Professionals:** teachers, administrators, psychologists, guidance counselors, or social workers.
- l. **Effective Date:** the first school day in September of the first 10-month school year after the Judgment and the Stipulation in this Action become Final for all purposes.
- m. **Employee Infohub:** DOE’s employee website.
- n. **Fairness Hearing:** the hearing to be held by the Court pursuant to Federal Rules of Civil Procedure 23(c)(2) and 23(e) after the

Proposed Settlement Notice has been posted for the Class Members as directed by the Court.

- o. **Family Guide to Transition Planning:** a document prepared and disseminated by DOE to Parents of Class Members as described in ¶ 5(iii).
- p. **Final:** with respect to the Judgment or any other Court order in the Action, there is no further judicial review for this Action, whether by appeal, mandamus, rehearing or writ of certiorari, available in any judicial forum.
- q. **Final Date:** the date when this Stipulation becomes Final.
- r. **Graduation:** the receipt of a regular or local high school Diploma.
- s. **IDEA:** the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.*
- t. **IEP:** an individualized education program as defined by 20 U.S.C. § 1401(14).
- u. **IEP Meeting:** a meeting (regardless of location) conducted by an IEP Team to develop or review an IEP for a Class Member.
- v. **IEP Team:** the group of individuals described in 20 U.S.C. § 1414(d)(1)(B).
- w. **Indicator 13:** the component of the State Performance Plan which includes an annual review of randomly selected IEPs for students age 15 and older regarding compliance with NYSED regulations related to post-secondary transition planning and services.
- x. **Judgment:** a judgment approving this Stipulation, substantially in the form submitted by the Settling Parties, to be entered by the Court and directed by the Court as final pursuant to Federal Rule of Civil Procedure 54(b).
- y. **NYSED:** the New York State Education Department.
- z. **Parent:** parent as defined in 20 U.S.C. § 1401(23).
- aa. **Participating Agency:** the relevant state or local government entity as described in Section 200.1(jj) of the Commissioner's Regulations.
- bb. **Plaintiffs' Counsel:** the law firm of Mayerson & Associates.

- cc. **Preliminary Approval Order:** The Order to be entered by the Court, substantially in the form attached hereto as Exhibit A, *inter alia*, certifying the Plaintiff Class, preliminarily approving the terms and conditions of the Stipulation, scheduling a Fairness Hearing concerning the final approval of the Settlement, and directing that notice of the proposed Settlement and Fairness Hearing be provided to the Class.
- dd. **Prior Written Notice:** the notice described in 20 U.S.C. § 1415(c) which is provided to the Parents of a Class Member in accordance with 20 U.S.C. § 1415(b)(3).
- ee. **Proposed Settlement Notice:** the Notice of Proposed Settlement of Class Action and Settlement Fairness Hearing that is to be posted for Plaintiff Class Members substantially in the form attached hereto as Exhibit B.
- ff. **Released Parties:** any and all of the DOE Defendants and the State Defendants, including but not limited to the State of New York, as well as their predecessors, successors and/or assigns and all past or present officials, employees, representatives and/or agents of the DOE Defendants, the State Defendants, and the State of New York.
- gg. **SEIS:** DOE's Special Education Student Information System or any successor system.
- hh. **Settlement:** the settlement contemplated by this Stipulation.
- ii. **Settling Parties:** Named Plaintiffs, Class Members, their Parents, DOE Defendants, and State Defendants.
- jj. **Special Education Liaison:** Individual designated by the school principal to serve as a contact between the New York City Borough/Citywide Office and the school regarding special education issues.
- kk. **Transition and College Access Center (TCAC):** transition-focused sites that serve as a resource to students, families, and DOE staff.
- ll. **Transition Assessment:** an age or developmentally appropriate transition assessment relating to training, education, employment, and, where appropriate, independent living skills.
- mm. **Transition Counselor:** an individual with at least a bachelor's degree who may conduct Transition Assessments, support Transition Services and vocational experiences in schools, and

support Class Members in vocational placements, work sites or internships, all under the direction of a special education teacher, special education administrator, social worker, guidance counselor or psychologist. Such individuals shall attend the annual transition training mandated by this Stipulation or have received equivalent training relevant to the activities that they will be performing.

- nn. **Transition Manual:** a guidance resource for Educational Professionals for Transition Assessment, planning, and IEP Meetings.
- oo. **Transition Services:** those services defined by 20 U.S.C. § 1401(34).
- pp. **Transition Team Leader:** Individual designated by the school principal to coordinate the work of school personnel regarding postsecondary transition services within the school.

II. DURATION, SCOPE AND EFFECT OF THIS STIPULATION

2. (a) The obligations set forth in Section IV (the “Injunctive Relief”) herein will be in effect for three years from the Effective Date of this Stipulation, at which point the Stipulation shall terminate (the “Termination Date”), unless extended pursuant to ¶¶ 23-29. This Stipulation may be extended for no more than two successive one-year periods upon the terms and conditions set forth in ¶¶ 23-29. Notwithstanding the foregoing, should the monitoring reports described in ¶¶ 17-19 be delivered less than 60 days before the Termination Date or delivered less than 60 days before the termination of any one-year extension granted pursuant to ¶¶ 23-29, the Injunctive Relief will remain in effect until 60 days after the delivery of the monitoring reports. Notwithstanding any of the foregoing, ¶¶ 39-42 survive the Termination Date and any extensions thereof.

- (b) The claims against the City of New York are dismissed with prejudice.

III. CLASS CERTIFICATION

3. The Parties agree to certification of the Plaintiff Class under Rule 23(b)(2) of the Federal Rules of Civil Procedure, with the Named Plaintiffs serving as representatives of

the Plaintiff Class and with Mayerson & Associates serving as counsel to the Plaintiff Class (“Plaintiffs’ Counsel”).

4. The Plaintiff Class is defined as all students with IEPs, so long as they are eligible for special education services consistent with the Individuals with Disabilities Education Act, including 20 U.S.C. § 1414(d)(1)(A)(i)(VIII) and Sections 4401-a and 4402(3) and 4402(5) of NYS Education Law, who reside in New York City, who attend a DOE school or have been placed by DOE at a NYSED state-approved non-public school, and who are 14 years of age or older.

IV. INJUNCTIVE RELIEF

5. **Notices:**

a. Parent Letter:

- i. DOE shall send, deliver or email a letter jointly addressed to both the Class Member’s Parent and the Class Member (the “Parent Letter”) no later than the month before the IEP Meeting that develops or reviews the IEP that will be in effect when the Class Member turns fifteen years of age. The Parent Letter shall explain transition planning and services and advise the Parent to speak with the Class Member concerning transition planning and services. The Parent Letter shall be subject to modification pursuant to ¶51.
- ii. DOE shall maintain a “Family Guide to Transition Planning” describing the transition process. The Family Guide to Transition Planning shall be subject to modification pursuant to ¶51.

- iii. DOE shall inform Parents in the Parent Letter of the existence and URL location of the online link at which the Family Guide to Transition Planning can be accessed and inform Parents how to obtain a hard copy of the Family Guide to Transition Planning.
- b. Arranging IEP Meetings:
 - i. Parent: DOE shall send, or otherwise provide, the Parent of each Class Member an IEP Meeting Notice in advance of any IEP Meeting at which post-secondary goals and Transition Services for the Class Member will be discussed. For this purpose, DOE shall utilize an IEP Meeting Notice in a format approved by SED (“IEP Meeting Notice”).
 - ii. Class Member: DOE shall send, or otherwise provide, each Class Member an IEP Meeting Notice in advance of any IEP Meeting at which post-secondary goals and Transition Services for the Class Member will be discussed by providing the Class Member with (a) a copy of the IEP Meeting Notice sent to the Class Member’s Parent, or (b) an alternative notice specifically directed to the Class Member that indicates that the Class Member is invited to the IEP Meeting. In appropriate cases where the Class Member cannot access written information, DOE may orally invite the Class Member to the IEP Meeting.

- iii. Participating Agency: DOE shall where appropriate, prior to any Class Member's IEP Meeting at which Transition Services will be discussed, inquire of the Class Member's Parents if any Participating Agency(ies) for the Class Member concerning post-secondary activities has(ve) been identified. If a Participating Agency is not identified by the Parent, DOE shall, if appropriate, identify a Participating Agency that DOE concludes may provide relevant services to the Class Member. If a Participating Agency is identified by the Parent or DOE and the Class Member's Parent (or the Class Member if 18 years of age or older) provides consent, DOE shall invite representatives of the identified Participating Agency(ies) to the IEP Meeting. In lieu of a Participating Agency, DOE may instead invite representatives of any non-governmental agency that coordinates with a Participating Agency and is identified and agreed to by the Class Member's Parent (or the Class Member if 18 years of age or older).
- iv. Once a Class Member's Parent (or the Class Member if 18 years of age or older) provides consent for the Participating Agency or non-governmental agency to be invited to the Class Member's IEP Meeting, such Consent shall be effective until such time as the Parent (or the Class Member

if 18 years of age or older) revokes consent. Such consent shall inform the Parent (or the Class Member if 18 years of age or older) that the Parent (or the Class Member if 18 years of age or older) has the right to revoke consent.

- v. Should a Class Member's Parent (or the Class Member if 18 years of age or older) fail to return the written consent form to DOE or otherwise respond to DOE's request for consent, then DOE shall make one telephonic, written, or email outreach to that Class Member's Parent (or the Class Member if 18 years of age or older) seeking a response.
- vi. Should a Class Member's Parent (or the Class Member if 18 years of age or older) refuse to grant consent for DOE to invite Participating Agency representatives or fail to return the written consent form, then DOE shall seek consent from the Parent (or the Class Member if 18 years of age or older) for DOE to invite a Participating Agency representatives prior to the Class Member's subsequent annual IEP Meeting.
- vii. Other Invitees: Parents of a Class Member may invite individuals of their own choosing to attend the Class Member's IEP Meetings consistent with the IDEA.
- viii. IEP Meeting Notices and/or invitations sent or otherwise provided to Parents, Class Members, Participating Agencies

or non-governmental agencies shall be maintained or logged in SESIS.

- c. Prior Written Notice of IEP Team Transition Recommendations:
 - i. DOE shall make best efforts to, within one calendar year of the Effective Date, have SESIS or the successor to SESIS programmed/developed to ensure that information regarding decisions made at the IEP meeting with respect to a student's Coordinated Set of Transition Activities are included in the Prior Written Notice that DOE sends to the Parent after each IEP Meeting at which a Class Member's IEP was proposed to be modified or was modified.
 - ii. Prior Written Notices shall be maintained or logged in SESIS.
- d. Exit Summaries:
 - i. DOE shall comply with Section 200.4(c)(4) of the Commissioner's Regulations by providing each Class Member who attends a DOE school and graduates with a local or Regents Diploma or who exceeds the age eligibility for a FAPE ("Ages Out") with a summary of the Class Member's academic achievement and functional performance, which shall include recommendations on how to assist the Class Member in meeting their postsecondary goals (an "Exit Summary").

- ii. DOE shall provide such Exit Summary prior to the end of the school year in which the Class Member graduates or Ages Out.
- iii. DOE shall make model forms for Exit Summaries available to Educational Professionals on DOE's Employee Infohub.
- iv. An Educational Professional who is, or will become familiar with the Class Member's functional and academic levels, needs, accommodations, and post-school goals shall participate in the development of the Class Member's Exit Summary.
- v. Copies of the Exit Summaries shall be maintained or logged in SESIS.

6. **Transition Assessments:**

- a. DOE shall conduct, update, or cause to be conducted or updated, a Transition Assessment for each Class Member during the 12-month period before the IEP Meeting convened to develop the IEP that will be in effect when the Class Member turns 15 years of age. The Transition Assessment shall include input obtained from the Class Member, the Class Member's Parent, and Educational Professional(s) familiar with the Class Member. The Transition Assessment may include the use of formal and informal methods to gather information about the Class Member's interests, abilities, aptitudes, and individual needs and accommodations. The

Transition Assessment may include, without limitation, interest inventories, interviews or questionnaires, skill and aptitude tests, in-school and community-based assessments, hands-on activities, work samples, vocational evaluations, observations, and work performance measures.

- b. For any Class Member over the age of 14 for whom a Transition Assessment has not been conducted or updated since the Class Member turned 14 years of age, DOE shall conduct a Transition Assessment for that Class Member prior to the Class Member's next IEP Meeting after the Effective Date.
- c. When necessary, as the Class Member's interests and needs change or in response to a Class Member's Parent's written request, DOE shall update or cause to be updated the Transition Assessment for a Class Member prior to an annual IEP Meeting at which Transition Services will be discussed. Such updating may be based on contact with, and input from, the Class Member, the Class Member's Parent, and Educational Professional(s) familiar with the Class Member, as appropriate. DOE shall not be required to perform an update more frequently than once a year.
- d. DOE shall make sample student, Parent, and educator interview and/or questionnaire forms available on the DOE Employee Infohub.

- e. Each component of the Transition Assessment (Student, Parent, and Educator), and each Situational Measures assessment (as defined in ¶ 6(j) below), shall be prepared in written or electronic form and uploaded or otherwise logged into SESIS. The Transition Assessment shall be available for review at the IEP Meetings for the current and subsequent school years.
- f. Student Component: DOE shall make best efforts to ensure that the student component of all Transition Assessments:
 - i. Is conducted by an Educational Professional or Transition Counselor;
 - ii. Is conducted with the appropriate accommodations, services, and supports necessary for the Class Member's skills, interests, strengths, and abilities to be accurately identified and assessed;
 - iii. When appropriate, is obtained through a one-to-one directed conversation between the Class Member and an Educational Professional or Transition Counselor using an age and/or skill-appropriate assessment tool to reveal the Class Member's vocational skills, interests, strengths, and abilities and to provide the Class Member with the opportunity to give direct input into the Transition Assessment.
 - iv. When administered to a Class Member through individual or classroom-wide written or on-line assessments, shall be

overseen by an Educational Professional or Transition Counselor. In the event that such written or on-line assessments are administered to a Class Member, each such assessment, where appropriate, will be followed-up by an interview of the Class Member by an Educational Professional or a Transition Counselor.

- g. In instances when the Class Member is unable to contribute input to the Transition Assessment due to the Class Member's inability to communicate resulting from a disability, an Educational Professional, Transition Counselor, or related services provider with direct knowledge of the Class Member and the Class Member's needs, shall, based on the Educational Professional's or Transition Counselor's or related services provider's observations of the Class Member and the Class Member's interests and skills over a span of time, incorporate those observations into the Educational Professional Component of the Transition Assessment.
- h. Educational Professional Component: For each Class Member, an Educational Professional with direct knowledge of the Class Member shall complete an interview or questionnaire form as a component of the Transition Assessment.
- i. Parent Component:

- i. DOE may obtain the Parent component of a Transition Assessment (a) through an interview of the Parent by an Educational Professional prior to the IEP Meeting (which is memorialized in DOE's Parent Interview form or similar writing) or (b) through a questionnaire made available to the Parent prior to the IEP Meeting with instructions to complete and return the questionnaire to DOE in advance of the IEP Meeting.
- ii. In the event that the Parent does not participate in the interview or does not complete and return the questionnaire prior to or at the IEP Meeting, DOE personnel shall endeavor to secure input from the Parent at the IEP Meeting relating to the student's needs in the areas of training, education, employment and, where appropriate, independent living skills.
- j. Situational Component: In addition to the Transition Assessment components described in "a" above, when appropriate, DOE may conduct, or cause to be conducted, a "Situational Measures" assessment for a Class Member. A Situational Measures assessment is an assessment that utilizes real or simulated work as the basis for assessing post-secondary activities and will be performed by an Educational Professional or Transition Counselor

with direct knowledge of the Class Member's real or simulated work.

7. IEP Development:

- a. The components of the completed Transition Assessment shall be available to the IEP Team at the Class Member's IEP Meeting.
- b. As of the first IEP to be in place when the Class Member turns 15 years of age, and for the Class Member's IEPs thereafter, the IEP shall include:
 - i. a statement of the Class Member's needs as they relate to transition from school to post-school activities, taking into account the Class Member's skills, interests, strengths, and abilities;
 - ii. measurable postsecondary goals based upon age and/or developmentally appropriate Transition Assessment(s) relating to training, education, employment and, where appropriate, independent living skills;
 - iii. activities to facilitate the Class Member's movement from school to post-school activities, such as, instruction, related services, community experiences, the development of employment and other post-school adult living objectives and, when appropriate, acquisition of daily living skills; and
 - iv. a statement of the responsibilities of DOE and/or, when applicable, a Participating Agency(ies) or non-governmental

agency for the provision of such services and activities that are designed to promote the Class Member's movement from school to post-school opportunities.

- c. The IEP Team shall review and update each Class Member's Transition Services at least annually.

8. Transition and College Access Centers

- a. DOE shall maintain at least one Transition and College Center ("TCAC") or an equivalent office in each New York City borough. Each TCAC shall have information concerning transition-related programs available through DOE and available in New York City through outside agencies. Each TCAC shall be available to all Class Members and their parents.
- b. DOE shall make TCAC location and contact information available on the DOE website and shall include TCAC location and contact information in the Family Guide to Transition Planning.
- c. DOE shall electronically inform principals in DOE middle and high schools of the availability of TCACs and of major deadlines for the work-based learning or internship programs supported by the TCACs. DOE shall instruct those principals to inform the Transition Team Leader in their school of the availability of TCACs and to instruct the Transition Team Leader in their school to inform other relevant school staff regarding the availability of TCACs.

- d. Each TCAC shall hold the following:
 - i. at least 5 events each school year for class members and/or their parents regarding transition-related issues, including at least one event regarding Participating Agencies and the services Participating Agencies provide; and
 - ii. at least 5 professional learning events each school year for DOE staff, including transition team leaders, regarding transition-related issues.
- e. TCACs shall support Class Members in participating in internship and work-based or project-based learning opportunities. This support may consist of:
 - i. Collection of applications for internship and work-based or project-based learning opportunities from Class Members;
 - ii. Facilitating the placement of Class Members who apply in internship and work-based or project-based learning opportunities;
 - iii. Creating and implementing project-based learning curriculum for Class Members who participate in internship and work-based or project-based learning opportunities; and

- iv. Managing stipend payments for Class Members who participate in internship or work-based or project-based learning opportunities.

9. **Staff Training:**

- a. DOE will develop professional learning materials on transition planning for special education professionals who work at the Department of Education's Borough/City-Wide Offices ("BCO"), at District 75, and at the Committee on Special Education ("CSE"), and for supervisors of school psychologists.
- b. **Training Level 1 ("Central Training"):** Annually, DOE shall provide professional learning at a central training (the "Central Training") as part of regular work activities to at least one representative from each of the following organizational structures: each DOE Borough/City-Wide Office, District 75, and each of the CSE regional offices. DOE will maintain records of attendance at these Central Trainings.
- c. **Training Level 2:** Annually, special education professionals and supervisors of school psychologists who attend the Central Training described in "b" above shall act as trainers transmitting ("turnkey") the Central Training as follows:
 - i. Representatives from the BCO who attended the Central Training shall turnkey the Central Training to special

education liaisons and/or transition team leaders at DOE middle and high schools;

- ii. Representatives from District 75 who attended the Central Training shall turnkey the Central Training to one staff member at all District 75 Schools attended by class members and shall endeavor to train at least one person at each District 75 Site location that has one or more class rooms attended exclusively by Class Members (e.g., if one District 75 School has four separate sites/locations that teach exclusively class members in at least one classroom, DOE shall endeavor to train at least one representative from each such site location);
- iii. Representatives from the CSE who attended the Central Training shall turnkey the Central Training to CSE staff including CSE chairpersons at each CSE; and
- iv. Supervisors of school psychologists who attended the Central Training shall turnkey the Central Training to school psychologists at the CSE as well as school psychologists who work at middle schools, high schools and District 75 Schools and shall endeavor to train at least one person at each District 75 Site location that has one or more classrooms attended exclusively by Class Members.

- d. **Training Level 3:** Annually, DOE will direct special education liaisons, transition team leaders, and/or CSE staff who attend the Level 2 training sessions described in “c” above to further turnkey the Central Training to relevant staff in their schools, including special education teachers; and relevant CSE staff if not already trained.
- e. Alternatively, DOE may provide training remotely, including through use of a webinar, so long as the personnel to be trained pursuant to paragraphs “b,” “c,” and “d” immediately above are trained.
- f. DOE may also make available other training pertaining to transition planning.
- g. DOE shall create, maintain, and disseminate a Transition Manual. DOE shall post the Transition Manual in a location accessible to DOE employee Educational Professionals on the DOE Employee Infohub. The centrally developed professional learning materials shall remind DOE members of IEP Teams to consult the Transition Manual if needed during the course of an IEP Meeting.

V. CORRECTIVE RELIEF FOR CLASS MEMBERS

10. DOE will direct TCACs to make available transition counseling for Class Members and their families regarding advice about programming and services, as appropriate based on the student’s postsecondary goals. Counseling may include information about the following:

- Each stage of the OPWDD eligibility process including testing, “Front Door,” and outreach to OPWDD;
- Linkage with outside adult service agencies;
- Intake process with ACCES-VR;
- College exploration; student service office access and support;
- College application assistance; financial aid information and assistance; and
- Career exploration and counseling

11. DOE will also direct TCACs to offer parents of Class Members training sessions concerning SED services, ACCES-VR and “Front Door” services, including assistance to families in applying for such services. Parent training sessions may also include assistance regarding:

- Navigating adult services;
- College programs for young adults with intellectual disabilities and/or autism;
- College applications and financial aid;
- Career exploration; and
- Self-advocacy and self-determination

VI. NYSED RESPONSIBILITIES

12. The 100 randomly selected DOE IEPs used in NYSED’s Indicator 13 review shall be selected by DOE through a stratified sampling methodology to ensure that the resultant sample is based on a proportionate share of each BCO and Regional CSEs or successor entities. Using this method, the selected IEPs will include at least one IEP from *each* community school district as well as District 75.

13. In connection with its annual monitoring of transition components of IEPs, NYSED shall review, with respect to each of the 100 randomly-selected IEPs (selected by means of a stratified sampling methodology), the related CSE documentation, including, Meeting

Notices, post IEP Meeting Prior Written Notices and Class Member/Participating Agency invitations (the "Related Documentation").

14. In connection with its annual monitoring of transition components of IEPs, NYSED shall, upon any finding of noncompliance, use enforcement mechanisms consistent with 34 C.F.R. § 300.604, including, where appropriate, issuance of a Compliance Assurance Plan which (i) identifies noncompliance of IEPs and/or Related Documentation for individual Class Members, and (ii) corrective actions required where noncompliance relating to an individual Class Member is identified.

15. In further connection with its annual monitoring of transition components of IEPs, NYSED shall verify correction of noncompliance, using its approved procedures, and continue its follow-up review of any individual Class Member's IEP and/or Related Documentation that had been found not to be in compliance.

VII. MONITORING

16. Plaintiffs' Counsel shall perform the monitoring function with respect to this Stipulation as outlined below.

17. **Reporting by DOE:**

a. Each year during the term of this Stipulation, except for the Stipulation's last year, DOE will annually produce to Plaintiffs' Counsel, not more than 60 days after receiving NYSED's Indicator 13 report, a report concerning Indicator 13 (the "Indicator 13 Report"). The Indicator 13 Report will contain the following information and materials:

i. Indicator 13 data, consisting of a review of 100 IEPs of the stratified sample (minus any IEPs of any non-Class

Members), which review would collect Indicator 13 required data as agreed upon with NYSED and referenced at ¶12 herein. To the extent that NYSED generates any of this data, DOE may submit NYSED's data report in fulfillment of DOE's obligation herein. Such Indicator 13 data shall be confidential except for data that is otherwise available to the public.

- ii. The Indicator 13 review transmitted to NYSED. Such review shall be redacted of any student identifying information and shall not include information relating to the IEPs of any non-Class Members. For any year that is the penultimate year of the settlement term, in lieu of the final report, the DOE will provide to plaintiffs an interim report of corrective action efforts, as the final NYSED report would arrive after the termination of the settlement agreement.
 - iii. A description of any direct support provided to schools and relevant DOE Borough/City-Wide Offices identified as out of compliance in the Indicator 13 review.
- b. Each year during the term of this Stipulation, except for the Stipulation's last year, DOE will provide to Plaintiffs' Counsel by July 31 a report regarding the Transition and College Access Centers ("TCAC"). For the last year of the Stipulation, DOE will provide to

Plaintiff's Counsel by February 28 a report for the period of July 1 through December 31 of that school year. The TCAC report will contain the following information:

- i. Website address at which TCAC location and contact information is available.
 - ii. Report of the number of events held at each TCAC for each intended audience (i.e., students, parents, DOE staff).
 - iii. Number of students and number of parents who attended TCAC-arranged events regarding transition-related issues.
 - iv. Number of students with IEPs whom TCACs supported in participating in internship or work-based or project-based learning opportunities.
- c. Each year during the term of this Stipulation,, DOE shall provide to Plaintiffs' Counsel by July 31 the materials below. For the final year of the Stipulation, DOE will provide to Plaintiffs' Counsel by February 28 the following materials, which would cover the period of July 1 to December 31 of that final year.
- i. A copy of any revisions to the Parent Letter, Family Guide to Transition Planning, and Parent IEP Meeting invitations systemically issued by DOE during the applicable period;
 - ii. A copy of the Transition Manual, if DOE has not previously produced the Transition Manual, and any update thereto issued by DOE during the applicable period;

- iii. A copy of any update to the Transition Assessment forms made available for use by DOE personnel on DOE's Employee Infohub during the applicable period;
 - iv. A schedule of Training Level 1 centrally-managed trainings, the total attendance at such trainings, and copies of the learning materials for trainings conducted pursuant to ¶ 9.b during the applicable period;
 - v. Confirmation that trainings conducted pursuant to ¶¶ 9.c. and 9.d. above were conducted during the applicable period;
- d. Each year during the term of this Stipulation, except for the Stipulation's last year, DOE shall provide to Plaintiffs' Counsel by December 30 a data report (the "OAG Report") generated by the DOE Office of Auditor General ("OAG"), which OAG Report shall be based upon the OAG's review of the IEP's and related documents obtained from three random samples designed to obtain a 90% confidence rate, with a precision rate of +/- 5 and an expected error rate of 50%.
- i. Each year during the term of this Stipulation, the sample of students will be taken from all Class Members enrolled in a DOE school at the end of the school year, who had or should have had an IEP meeting during that school year. For the last year of the stipulation, the report will be provided by June 30 and the sample will be taken from all Class Members

enrolled in a DOE school during that school year who were scheduled to have or had an IEP meeting during the first semester of the school year. The reviews will provide data concerning implementation of the following provisions of this Stipulation:

- A. Whether the Parents of the Class Member was provided notice of the IEP meeting (see ¶ 5.b.i);
- B. Whether the Class Member was provided notice of the IEP meeting (see ¶ 5.b.ii);
- C. Whether the Prior Written Notice following an IEP team meeting includes information as set forth in ¶ 5.c.i (note, this data will only be collected and provided when SESIS or the successor thereto is programmed to capture this information);
- D. Whether the transition needs section of the Class Member's IEP has been completed (see ¶¶ 7.b.i);
- E. Whether the Class Member's IEP includes measurable postsecondary goals (see ¶ 7.b. ii);
- F. Whether the Class Member's IEP includes activities to facilitate the Class Member's movement from school to post-school activities (see ¶ 7.b.iii);
- G. Whether the Class Member's IEP includes a statement of the responsibilities of DOE and/or, when applicable, a

Participating Agency(ies) or non-governmental agency for the provision of services and activities that are designed to promote the Class Member's movement from school to post-school opportunities (see ¶ 7.b.iv), and

H. Whether the Class Member's IEP with respect to Transition Services was updated at least annually (see ¶ 7.c).

ii. Each year during the term of this Stipulation, the second sample of students will be taken from Class Members enrolled in a DOE school who have graduated or aged out during the school year. For any year that may be the last year of the Stipulation, the second sample of students will be taken from all Class Members enrolled in a DOE school who graduated or aged out between July 1 and February 1 of that school year. The reviews will provide data concerning implementation of the following provisions of this Stipulation.

a. Whether the Class Member received an Exit Summary (see ¶ 5.d.i); and

b. Whether the Class Member received an Exit Summary in a timely manner (see ¶ 5.d.ii).

iii. Each year during the term of this Stipulation, the third sample of students will be taken from Class Members enrolled in a DOE school at the end of the school year, who had or should

have had an IEP meeting during that school year and who turned 15 years of age during the school year. For the last year of the Stipulation, the third sample of students will be taken from all Class Members enrolled in a DOE school who had an IEP meeting between July and December of that school year and who turned 15 years of age during the school year. The reviews will provide data concerning implementation of the following provisions of this Stipulation:

- a. Whether a Transition Assessment was conducted in a timely manner (see ¶ 6.a); and
 - b. Whether a Transition Assessment included input from (i) the Class Member, (ii) a parent and (iii) an Educational Professional familiar with the Class Member (see ¶ 6.a).
- e. Each year during the term of this Stipulation, except for the Stipulation's first semester and last year, DOE shall provide to Plaintiffs' Counsel by November 1 a report of a study of documents concerning 25 randomly identified Class Members who are students in D75 schools concerning invitations to Participating Agencies and any involvement by Participating Agencies in the process that resulted in the student's IEP (the "Participating Agencies Report"). For any year that may be the last year of the Stipulation, DOE shall provide to Plaintiffs' Counsel by May 1 a

Participating Agencies Report of a study of documents concerning 25 randomly identified Class Members who are students in D75 schools concerning invitations to Participating Agencies and any involvement by Participating Agencies in the process that resulted in the student's IEP. .

- f. The Parties shall preserve the confidentiality of and not publicly disclose information that would be considered “personally identifiable” under the Federal Educational Rights and Privacy Act (“FERPA”). Plaintiffs and their counsel may publicly disclose their analysis of the above listed Monitoring Reports and the aggregate data contained therein; however, Plaintiffs and their counsel may not publicly disclose a category or a number in a category of data that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community to identify the student with reasonable certainty, including, but not limited to, a category which (a) contains between 1 and 9 students, or (b) if disclosed, would lead to the ability to determine the precise number of students between 1 and 9 in another category or categories of data. Plaintiffs may disclose to the Court any information produced by the Defendants pursuant to this Stipulation in a motion to enforce the Stipulation, but to the extent that any reports containing confidential information are incorporated in any motion brought under or to enforce this

Stipulation, such reports and any confidential information shall be filed under seal with the Court.

- g. If the term of this Stipulation is extended for one or two years pursuant to ¶¶ 23-29, DOE shall produce the above listed Monitoring Reports based upon the information concerning the entire school year for each school year, except the last school semester of the Stipulation when the Monitoring Reports shall be based upon information concerning the period of July 1 to December 31 of that school year or as otherwise specified.

18. **Reporting by NYSED:** NYSED shall report to Plaintiffs' Counsel with respect to ¶¶ 14, and 15 above. In further connection with its annual monitoring of transition components of IEPs and Related Documentation, NYSED shall provide to Plaintiffs' Counsel a data report that identifies noncompliance, sets forth NYSED's findings and recommendations, and annexes a copy of any Compliance Assurance Plan.

19. NYSED shall submit to Plaintiffs' Counsel the data report referred to in paragraph 18, including information outlined in ¶14, within 30 days following issuance of a Compliance Assurance Plan. Further, within 30 days of issuing any related Letter of Resolution, NYSED shall submit such document to Plaintiffs' Counsel.

20. If the Settlement provisions are extended pursuant to the express terms of this agreement, additional annual reporting and monitoring as described herein shall be provided on a similar schedule during the extension.

21. Within 45 days of the delivery of a portion of the Monitoring Reports listed above in ¶¶17-19, Plaintiffs' Counsel may request to meet counsel for the parties, if

Plaintiffs' Counsel objects to or has concerns about that portion of the Monitoring Reports. Within 10 business days after Plaintiffs' Counsel's request, counsel for the Parties shall meet to discuss the Monitoring Report and any appropriate corrective measures or training to address Plaintiffs' Counsel's concerns raised by the Monitoring Report.

VIII. ENFORCEMENT

22. The administration and consummation of this Stipulation shall be under the auspices, authority and jurisdiction of the Court. The Court's jurisdiction over this Stipulation, including the Court's power to enter orders concerning the Stipulation and adjudicate any dispute or controversy between the Parties concerning the interpretation of the terms and/or conditions of the Stipulation or the enforcement of the Stipulation, shall end on the Termination Date, unless some or all of the terms of the Stipulation are extended pursuant to the express terms of this agreement.

23. Except for any motions made by Plaintiffs to recover attorney's fees and/or costs pursuant to Section XII below, any motion to enforce or extend obligations under this Stipulation must be filed no later than thirty (30) days before the Termination Date or thirty (30) days before the end of any one year extension thereof, unless another date is agreed upon by the Parties. In the event of a motion to extend the Stipulation, the Court's jurisdiction shall continue for the purpose of deciding such motion and any relief ordered thereunder. If a motion to extend the Stipulation is granted, the Court's jurisdiction shall only be extended over the provision(s) of this Stipulation with which the Court finds there has been substantial noncompliance by one or more Defendants, except that, if the Court determines that a provision or provisions with which one or more Defendants have complied is/are interdependent with a provision or provisions with which one or more Defendants have substantially failed to comply, the Court may also, in its discretion, extend its jurisdiction over the interdependent provision(s).

No extension may continue any Injunctive Relief beyond two successive one year terms after the Termination Date, and the Court's jurisdiction with respect to the Injunctive Relief shall terminate as of the last day of any such extension or extensions.

24. Any application by Plaintiffs for counsel fees and/or costs pursuant to Section XII below shall not operate so as to extend any obligation, period or Termination Date described in this Stipulation or the Court's jurisdiction to enforce or interpret the Injunctive Relief and reporting obligations contained in this Stipulation.

25. A motion by one or more Plaintiffs and/or the Plaintiff Class for enforcement, contempt, extension, or further relief under the Stipulation on a class-wide basis may be based only on an allegation of one or more Defendant's substantial noncompliance with the obligations of this Stipulation. On such a motion, Plaintiff(s) bear the burden of establishing that one or more Defendant's omissions or failures to comply were not minimal or isolated, but were sufficiently significant, widespread and recurring, so as to constitute substantial noncompliance ("Substantial Noncompliance"). Neither a single incident nor a series of incidents involving a single student shall constitute Substantial Noncompliance. Individual or isolated violations of this Stipulation shall not be a basis (i) for a finding of Substantial Noncompliance or that DOE and/or NYSED has acted in contempt, or (ii) for a class wide motion for enforcement, contempt, extension or further relief. Nothing herein precludes Plaintiffs from arguing that one or more Defendants was in substantial noncompliance during one reporting period, and nothing herein limits any Defendant's response to such a motion.

26. Prior to filing any motion alleging Substantial Noncompliance, Plaintiffs' Counsel shall provide written notice to DOE's and NYSED's in-house counsel and their litigation counsel assigned to this Action at, respectively, the New York City Law Department

and the Office of the New York Attorney General, describing the nature and specifics of any alleged Substantial Noncompliance of this Stipulation by DOE and/or NYSED and shall specify the evidence of the claimed Substantial Noncompliance (the “Written Notice”). Service of the Written Notice on Defendants shall trigger a twenty (20) business day notice period (the “Notice Period”), during which counsel for the Parties shall meet to attempt to reach a resolution of the alleged Substantial Noncompliance. The Written Notice shall be provided to counsel (or their successors) by hand delivery or email during regular business hours at the following addresses, or to such other persons or at such other addresses of which Plaintiffs’ Counsel has been provided written notice:

New York City Department of Education
Office of Legal Services
Judy Nathan, Esq.
52 Chambers Street, Room 308
New York, NY 10007
Email: jnathan@schools.nyc.gov

New York City Law Department
General Litigation Division
David Thayer
100 Church Street, Room 2-106
New York, NY 10007
Email: dthayer@law.nyc.gov

New York State Department of Education
Office of Counsel
Robyn Ryan
Education Building, Room 148 EB
Albany, New York 12234
Email: robyn.ryan@nysed.gov

New York State Attorney General
Division of State Counsel
Mark E. Klein
28 Liberty Street
New York, N.Y. 10005
Email: mark.klein@ag.ny.gov

27. Plaintiff Class or Plaintiffs’ counsel may not revive or reinstate any alleged Substantial Noncompliance of an obligation contained in this Stipulation that Plaintiffs did not raise in their Written Notice following the receipt of the Monitoring Reports for each school year during the effective period of this Stipulation.

28. If no resolution is reached by the end of the Notice Period, Plaintiffs may move this Court, based on the alleged Substantial Noncompliance set forth in the Plaintiffs’ Written Notice to DOE and/or NYSED, to enforce the obligations under this Stipulation of

which DOE and/or NYSED is alleged to be in Substantial Noncompliance, consistent with ¶¶ 25-26 above and/or for contempt and/or for further relief regarding the identified obligation(s). Defendants may assert all applicable objections or defenses to such motion.

29. Except as set forth below in this paragraph, no motion for contempt, enforcement or further relief shall be brought to remedy an alleged Substantial Noncompliance that the Parties agree has been or will be cured. In the event that the Parties agree to a plan to cure an alleged Substantial Noncompliance and Plaintiffs believe that one or more Defendant has failed to implement the plan to cure, Plaintiffs must provide Written Notice as outlined above at least fifteen (15) business days before any motion is made to remedy the alleged Substantial Noncompliance.

IX. RELEASE AND INDIVIDUAL RELIEF

30. The Named Plaintiffs, Class Members, and their Parents in their capacity as guardians of their children, on behalf of themselves and their past or present administrators, representatives, attorneys, heirs, successors, and assigns (the “Releasing Parties”), hereby release and forever discharge the Released Parties from all manner of claims and causes of action whatsoever, direct or indirect, known or unknown, discovered or undiscovered, that the Releasing Parties ever had, now have, or shall or may have in the future up to and including the Termination Date of this Agreement against some, any or all of the Released Parties for or by reason of any act, transaction, occurrence, omission, cause, matter or thing whatsoever, including, but not limited to, any and all claims regarding or arising out of the acts, transactions, occurrences or omissions that are described, alleged or contained in this Action or the allegations in the Amended Complaint, up to and including the Termination Date of this Agreement, except that the released claims do not include claims by an individual Class Member and/or his or her Parent alleging that DOE failed to provide the individual Class Member a free appropriate

public education and seeking individual relief, including, without limitation, injunctive relief, compensatory education, make-up services and/or reimbursement or funding relief (“Reserved Claims”).

31. In no instance prior to the Termination Date of this Agreement shall the Releasing Parties file any new lawsuit against any of the Defendants relating to any and all claims regarding or arising out of the acts, transactions, occurrences or omissions that are described, alleged or contained in the Amended Complaint in this Action.

32. Nothing herein shall prevent a Class Member from seeking relief for Reserved Claims, or any other claim that is not defined as a Settled Claim, in an appropriate forum. A Class Member asserting a Reserved Claim may only bring an individual claim. A Reserved Claim must be asserted pursuant to applicable law, and nothing in this Stipulation, the existence of this Action, or a student’s status as a Class Member, relieves a Class Member from any obligation under applicable law to exhaust an administrative remedy.

33. The Parties acknowledge that for purposes of enforcing the Reserved Claims, the Parties’ rights and obligations under this Stipulation shall be considered rights and obligations under the IDEA and that Reserved Claims may be asserted in the same manner and in the same forum(s) as claims under the IDEA. Nothing in this Stipulation shall be read to create any right for an individual Class Member to seek enforcement of an individual Reserved Claim in this Court in this litigation in the first instance. Nothing herein diminishes the rights of individual Class Members to obtain relief as part of a successful class-wide enforcement motion based on DOE’s and/or NYSED’s alleged Substantial Noncompliance with obligations under this Stipulation or constitutes a waiver of any applicable exhaustion requirement.

X. SETTLEMENT PROCEDURES

34. The Parties agree to take all necessary steps to obtain Court approval of this Stipulation in the following sequence.

35. The Preliminary Approval Order: After execution of this Stipulation, the Parties shall request that the Court enter a Preliminary Approval Order, substantially in the form of Exhibit A to this Stipulation, providing for, *inter alia*, certification of the Plaintiff Class, preliminary approval of, notice of, and hearing on the proposed Settlement (“Fairness Hearing”). The Preliminary Approval Order shall, *inter alia*, specifically include provisions that (a) preliminarily approve the Settlement as set forth in this Stipulation, subject to further hearing and determination under Rule 23; (b) approve the Proposed Settlement Notice substantially in the form of Exhibit B hereto; (c) direct the issuance of the Proposed Settlement Notice to the Class members via a method of notice that satisfies Rule 23; (d) find that the method of providing the Proposed Settlement Notice pursuant to this Stipulation is appropriate and that the Proposed Settlement Notice fully satisfies the requirements of due process and the Federal Rules of Civil Procedure; (e) schedule the Fairness Hearing to be held by the Court to determine whether the Stipulation should be finally approved as fair, reasonable and adequate, and whether an Order finally approving the Stipulation should be entered, which shall be scheduled for a date at least 104 days after the Court issues the Preliminary Approval Order; (f) provide that no objection to the Stipulation shall be heard and no papers submitted in support of said objection shall be received and considered by the Court at the Fairness Hearing unless the objection and reasons therefore, together with copies of any supporting papers, are filed with the Court and served on the Parties to this Stipulation at least thirty (30) days before the Fairness Hearing; and (g) provide that the Fairness Hearing may be continued from time to time by Order of the Court if necessary, and without further notice to the Class.

36. Order of Final Approval of Settlement: Upon approval by the Court of the Settlement embodied in this Stipulation, an Order of Final Approval of Settlement shall be entered by the Court, which shall, *inter alia*: (a) finally approve the Settlement set forth in this Stipulation; (b) adjudge that the Settlement is fair, reasonable, and adequate to and for the Class; (c) dismiss the Action against Defendants with prejudice, except as to Reserved Claims and Defendants' ongoing compliance and monitoring obligations as to the Settled Claims; (d) bar and permanently enjoin Named Plaintiffs and all Class Members from prosecuting any and all Released Claims against Defendants; and (e) reserve jurisdiction, without affecting the finality of the Order of Final Approval of Settlement, with regard to the implementation and enforcement of this Stipulation and the Order of Final Approval of Settlement.

37. **Electronic Posting of Proposed Settlement Notice**

a. Within ten (10) business days of the date of entry of the Court's Preliminary Approval Order, DOE shall post a Proposed Settlement Notice, in substantially the same form as annexed hereto as Exhibit B, on DOE's publicly accessible website, and DOE shall maintain those postings until the conclusion of the fairness hearing.

b. Within ten (10) business days of the date of entry of the Court's Preliminary Approval order, NYSED shall post a Proposed Settlement Notice, in substantially the same form as annexed hereto as Exhibit B, on NYSED's publicly accessible website and shall maintain that posting until the conclusion and disposition of the fairness hearing.

c. Within ten (10) business days of the date of entry of the Court's Preliminary Approval order, Plaintiffs' Counsel shall post a Proposed Settlement

Notice, in substantially the same form as annexed hereto as Exhibit B, on its website and the website of the not-for-profit organization JobPath NYC and shall maintain that posting until the conclusion of the fairness hearing. Plaintiffs' Counsel shall also send a copy of the Proposed Settlement Notice to other advocacy organization(s).

38. Within ten (10) days of the filing of a motion for preliminary approval of this Settlement, DOE shall serve the notices required by 28 U.S.C. § 1715. The parties agree that those notices should be sent only to the U.S. Attorney General.

39. Plaintiffs' Counsel and counsel for the DOE Defendants and the State Defendants agree to cooperate fully with one another with respect to the Parties' seeking Court approval of this Stipulation; entry of the Preliminary Approval Order; approval of the Proposed Settlement Notice; and approval of the posting of the Proposed Settlement Notice set forth above; and all counsel agree to negotiate in good faith and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

**XI. EFFECTIVE DATE OF SETTLEMENT,
EFFECT OF NON-APPROVAL AND FORCE MAJEURE**

40. Except as otherwise provided herein, in the event that the Settlement is terminated, reversed, or fails to become effective for any reason (including in the event that the Stipulation is not approved by the Court or the Court's approval of the Stipulation is appealed and reversed), the Parties to this Stipulation shall be deemed to have reverted to their respective positions in the Action immediately prior to the execution of this Stipulation and, the Parties shall proceed in all respects as if this Stipulation and any related orders had not been entered.

41. If the DOE Defendants and State Defendants are unable to meet any obligation under this Settlement due to a "Force Majeure Event," the time for them to perform

their obligations shall be extended accordingly. A Force Majeure Event includes but is not limited to flood, earthquake, fire, acts of God, riots, war, terrorist incidents, epidemics, pandemics, government orders or mandates, or any other event that is unforeseeable. If the DOE Defendants or the State Defendants wish to invoke this paragraph, they shall advise counsel for all parties in writing at the addresses listed in paragraph 26 of this Stipulation.

XII. ATTORNEYS' FEES AND COSTS

42. Defendants agree that Plaintiffs are entitled to recover reasonable fees and costs under the IDEA, subject to the provisions of this Agreement.

43. The parties shall negotiate in good faith the amount of Plaintiffs' reasonable attorneys' fees and costs to be awarded to Plaintiffs' Counsel pursuant to 42 U.S.C. §§ 1415 for all work through and including the Court's final approval of this Agreement. Upon the execution of this Agreement by counsel for all parties, Plaintiffs' Counsel shall forward to counsel for Defendants, no later than two business day thereafter, Plaintiffs' Counsel's time and billing records and statements of costs incurred in this action for which recovery is sought, so the parties may proceed to negotiate the amount of reasonable attorneys' fees and costs. In no event will the State Defendants be responsible for more than 20% of reasonable fees incurred during the period from October 1, 2014 through April 14, 2016, the precise amount of which Plaintiffs and the State Defendants shall attempt to resolve amicably, and, failing to reach such an amicable resolution, shall be submitted for determination by the Court. Other than as set forth in the prior sentence of this paragraph, State Defendants shall bear no responsibility for any portion of Plaintiffs' attorneys' fees and costs incurred in connection with the commencement, prosecution and settlement of this action, including but not limited to any fees and costs incurred in the course of the negotiation of the settlement of this action and any proceedings seeking to obtain approval of such settlement. The parties shall attempt to resolve the amount of counsel fees and

costs to which Plaintiffs are entitled within 60 days of the agreement becoming final for all purposes.

44. Any agreement as to attorneys' fees and costs that is reached by the parties ("Provisional Agreement") is subject to the approval by all appropriate State officials, in accordance with N.Y. Public Officers Law§ 17 (hereinafter, "State "Approval"), and by the Comptroller of the City of New York pursuant to General Municipal Law§ 50-k (hereinafter, "City Approval"). Plaintiffs' Counsel agrees to execute and deliver all necessary and appropriate vouchers and other documentation requested with respect to obtaining such approvals and effectuating payment.

45. In the event that State Approval or City Approval is not obtained, counsel for the City or State Defendants shall notify Plaintiffs' Counsel within five (5) business days of the disapproval. Disapproval of the Provisional Agreement by the approving authorities of either the State or DOE Defendants, or both of them, shall render the terms of the Provisional Agreement null, void and of no further force and effect. Within thirty (30) days of either (i) the declaring of an impasse by a party that no agreement on the amount of Plaintiffs' entitlement to attorneys' fees and costs, may be reached despite the parties' good faith efforts, or (ii) Plaintiffs' receipt of notification that State Approval or City Approval has been denied, Plaintiffs' Counsel may make an application to the Court for an award of reasonable attorneys' fees and costs pursuant to 42 U.S.C. §§ 1415 for all work through and including the execution of the Stipulation and Order; and Defendants' counsel may oppose any such application.

46. DOE and Plaintiffs agree that DOE shall pay Plaintiffs 80% of Plaintiffs' reasonable attorneys' fees and costs incurred during the period from October 1, 2014 through April 14, 2016 and 100% of Plaintiffs' reasonable attorneys' fees and costs incurred after April

14, 2016. DOE and Plaintiffs agree to negotiate the amount of fees and costs incurred through the Final Date, and, if they are not able to do so within forty-five (45) days of the Final Date, unless another date is agreed upon by the Parties, Plaintiffs' Counsel may submit an application for counsel fees and costs to the Court to which Defendants shall have an opportunity to respond, and Plaintiffs' Counsel shall have an opportunity to reply, consistent with the Federal Rules of Civil Procedure and Local Rules of this Court.

47. Plaintiffs also are entitled to reasonable attorneys' fees and costs for time and expenses recorded after the Final Date, including but not limited to the reasonable fees and costs recorded while monitoring and enforcing the terms of this Stipulation. DOE shall pay Plaintiffs' Counsel 100% of the reasonable fees and costs incurred while monitoring this Stipulation. However, should NYSED not fulfill its reporting obligations under this Stipulation, as set forth in paragraphs 18 through 21 above, NYSED shall pay Plaintiffs' Counsel the reasonable fees and costs incurred in successfully moving to enforce NYSED's reporting obligations as set forth in this Stipulation. Plaintiffs' Counsel will submit a request to DOE's Counsel (and when applicable to NYSED's Counsel) for the reasonable fees and costs recorded while monitoring and enforcing the terms of this Stipulation no later than March 30 and September 30 of each calendar year for the duration of the Stipulation (including any extensions thereof) and within sixty (60) days following the Termination Date and any extensions thereof. If DOE (and when applicable NYSED) and Plaintiffs cannot agree within forty-five (45) days of Plaintiffs' requests for such fees and costs, unless another date is agreed upon by DOE (and when applicable NYSED) and Plaintiffs, Plaintiffs may move the Court for an award of attorneys' fees and costs. DOE (and when applicable NYSED) shall have thirty (30) calendar days to respond and oppose

any such motion. Plaintiffs' Counsel shall then have (10) calendar days to reply in further support of the motion.

XIII. MISCELLANEOUS PROVISIONS

48. Nothing in this Stipulation shall be deemed to be an admission or acknowledgement by any of the Defendants or any officer or employee thereof of liability, of wrongdoing, or of the truth of any of the allegations set forth in the Complaint, or that Defendants or any officer or employee thereof have in any manner or way violated the rights of any named Plaintiff's or any Class Member, or the rights of any other person or entity, as contained in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, the New York State Education Department, the City of New York, the Board of Education of the City of New York, or any other rules, regulations or bylaws of any department or subdivision thereof.

49. In addition, this Agreement shall not bind or collaterally estop Defendants, the State of New York, any and all agencies, departments and subdivisions thereof, or any of their officials, employees or agents, whether in their individual or official capacities, from raising any and all claims and advancing any and all defenses in any pending or future actions or proceedings in which the same or similar legal issues as raised in this Action are raised. Nothing contained in this Agreement shall be deemed to constitute a policy, practice or custom of Defendants, the State of New York, any and all agencies, departments and subdivisions thereof, and their officials, employees or agents, whether in their individual or official capacities.

50. This Stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiation, except with regard to an action to enforce the terms of the Stipulation. This Stipulation, however, may be raised by any Class Member during any meeting

with DOE, including any IEP Meeting, for the purpose of obtaining the benefit of any provision of the Stipulation.

51. This Stipulation contains all the terms agreed to by the Parties, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation regarding the subject matter of the instant action shall be deemed to exist, or to bind the Parties hereto, or to vary the terms and conditions contained herein. This Stipulation can only be changed by subsequent written agreement of the Parties or by order of the Court entered following application by the Plaintiffs or the DOE Defendants or the State Defendants.

52. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

53. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

54. The waiver by one Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any other prior, contemporaneous, or subsequent breach of this Stipulation.

55. Defendants reserve the right to change or otherwise alter or amend the procedures and requirements of this Stipulation if required by intervening changes in federal, State or City statutes, regulations or ordinances inconsistent with this Stipulation. In connection with any such modification or change, DOE and/or NYSED shall provide written notice of such change and the statutory or regulatory basis for such change (where such basis exists) to Plaintiffs' Counsel at least thirty (30) calendar days before any such change becomes effective. If DOE and/or NYSED is required to implement such a modification or change in less than thirty (30) calendar days, DOE and/or NYSED shall provide notice to Plaintiffs' Counsel no later than

seven (7) business days after learning thereof. If Plaintiffs object to any such modification or change that they believe alters any rights provided to a Class Member under this Stipulation, the Parties will negotiate in good faith in an attempt to resolve the dispute. Should the Parties be unable to agree to any such modification or change, Plaintiffs may seek appropriate judicial relief, including injunctive relief.

56. DOE will provide drafts of form Parent Letters and the Family Guide to Transition Planning created or modified as a result of this Stipulation to Plaintiffs' Counsel for review and comment. Plaintiff's Counsel will provide any comments or recommendations within ten (10) business days. If Plaintiffs' Counsel believe that DOE's failure to incorporate Plaintiffs' Counsel's comments or recommendations constitutes a Substantial Noncompliance with the provisions of this Settlement, Plaintiffs may seek relief from the Court consistent with the procedures set forth in ¶¶ 23-29.

57. This Stipulation and the exhibits hereto shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of New York, and the construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by the internal laws of the State of New York without regard to principles relating to conflicts of laws, except to the extent that federal law requires that federal law govern.

58. This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of arm's-length negotiations between the Parties and all Parties have contributed substantially and materially to the preparation of this Stipulation.

59. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

60. All agreements made and orders entered during the course of the Action relating to the confidentiality of information shall survive this Stipulation.

61. This Stipulation is final and binding upon all parties, their successors, and assigns.

62. This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Stipulation shall exchange among themselves original signed counterparts.

Dated: March 25, 2022
Brooklyn, New York

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Ex. A – Proposed Form of Order for Preliminary Approval
Ex. B - Posting Notice