

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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

Plaintiffs,

- against –

14 CV 06529 (RML)

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,

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT, CERTIFYING CLASS,
APPROVING NOTICE, CLASS
REPRESENTATIVES AND CLASS
COUNSEL AND SETTING DATES
FOR FAIRNESS HEARING AND
FINAL APPROVAL**

Defendants.

WHEREAS, on November 5, 2014, the original named plaintiffs filed a putative class action lawsuit in the United States District Court for the Eastern District of New York (No. 14 CV 06529 (the “Action”)) with allegations concerning the provision of “transition services” to certain students 14 years and older with individualized education programs (“IEPs”) placed in public or non-public schools operated or funded by defendant New York City Department of Education (“DOE”); and

WHEREAS, on February 10, 2022, after an interim amendment and without objection by defendants, plaintiffs filed a motion for leave to file a Second Amended Complaint substituting new plaintiffs for original plaintiffs who had aged out of the public school system and substituting certain defendants who had been succeeded in their official capacities by others;

and

WHEREAS, the current Named Plaintiffs seek relief against Defendants for alleged violations of the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400, *et seq.*, and

WHEREAS, the named parties (collectively, the “Parties”), through their respective counsel, have entered into a proposed Stipulation and Agreement of Settlement (the “Settlement Agreement”), which, if approved by the Court, resolves the claims raised in this Action by Plaintiffs; and

WHEREAS, Plaintiffs have moved the Court pursuant to Rule 23(e)(1)(c) for (i) certification of the plaintiff Class; (ii) preliminary approval of the proposed Settlement Agreement, a copy of which is annexed as Exhibit B to the Mayerson Affidavit; (iii) approval of the Notice of Proposed Settlement of Class Action (“Class Notice”), annexed as Exhibit F to the Mayerson Affidavit; (iv) approval of a plan for providing notice to the class proposed to be certified, as set forth below; and (v) assuming that preliminary approval is granted, for a Fairness Hearing to be conducted no earlier than 104 days after the date that preliminary approval is granted; and

WHEREAS, Defendants do not oppose Plaintiffs’ Motion; and

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

IT IS HEREBY ORDERED AS FOLLOWS:

1. Unless otherwise stated, the terms in this Order have the meaning set forth in the proposed Settlement Agreement .
2. The Court has jurisdiction over the subject matter of this action and personal

jurisdiction over the representative Plaintiffs, the proposed certified class, and the Defendants.

3. The action is provisionally certified as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on the following terms:

- a. The proposed Class is provisionally certified pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure for purposes of settlement as follows:

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.

- b. The Class meets the requirements for class certification under Rule 23(a) of the Federal Rules of Civil Procedure because (1) the number of Class members is so numerous that joinder of all Class members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims of the Named Plaintiffs are typical of those of the Class; and (4) the Named Plaintiffs and their counsel will fairly and adequately protect the interests of the Class.
- c. As required by Rule 23(a)(1) of the Federal Rules of Civil Procedure, the Class is “so numerous that joinder of all members is impracticable.” There are at least tens of thousands of individuals who meet the Class definition. Moreover, the Class composition is fluid.
- d. As required by Rule 23(a)(2) of the Federal Rules of Civil Procedure, there are a number of questions of law or fact common to the Class. These questions include whether New York City students with IEPs who are 14 and over and who attend school at either a DOE public school or a non-public school that is NYSED-

approved are receiving well-coordinated transition services as required by the IDEA and New York Education Law and, if they are not, whether declaratory and injunctive relief is warranted as requested.

- e. As required by Rule 23(a)(3) of the Federal Rules of Civil Procedure, the named Plaintiffs' claims are typical of the claims of the Class. Each Class member's claims arise from their entitlement under the federal IDEA statute and state law to receive transition services, and all Class members would benefit from the Named Plaintiffs' actions and the relief afforded under the proposed Settlement Agreement.
- f. As required by Rule 23(a)(4) of the Federal Rules of Civil Procedure, the Named Plaintiffs fairly and adequately protect the interests of the plaintiff Class in that (i) the Named Plaintiffs do not have interests that are antagonistic to the interests of the Class because all allege harm by DOE's conduct and all will benefit from the relief requested in the Action; and (ii) the proposed Class counsel, Mayerson & Associates, is qualified, experienced, and capable of protecting and advancing the interests of the Class.
- g. As required by Rule 23(b)(2) of the Federal Rules of Civil Procedure, Defendants are alleged to have acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief is appropriate respecting the class as a whole.
- h. Nothing contained herein shall be deemed to constitute a finding that any of Defendants' alleged actions or omissions violated Plaintiffs' rights under any federal or State law. No finding contained herein shall be considered binding

or precedential against Defendants in any action unrelated to the instant proceeding.

4. The Court hereby provisionally appoints the Named Plaintiffs as Class representatives.

5. The Court hereby provisionally appoints Mayerson & Associates, Plaintiffs' attorneys of record, as Class Counsel.

6. The proposed Settlement Agreement is the product of arm's length, serious, informed and non-collusive negotiations between experienced and knowledgeable counsel.

7. The proposed Settlement Agreement is fair and warrants the dissemination of notice to the Class members apprising them of the Settlement.

8. The Court hereby grants preliminary approval of the terms and conditions contained in the proposed Settlement Agreement. The Court preliminarily finds that the terms of the proposed Settlement Agreement appear to be within the range appropriate for possible approval, pursuant to Rule 23(c) of the Federal Rules of Civil Procedure and applicable law.

9. The Court hereby approves the Class Notice annexed as Exhibit F to the Mayerson Affidavit.

10. Within thirty (30) days of this Order Granting Preliminary Approval, the written notice of the Settlement (the "Notice") shall be disseminated to the Class, substantially in the form attached as Exhibit F to the Mayerson Affidavit, by the following means:

- Class Counsel, DOE and NYSED will each post the Notice on their respective websites
- DOE will email the Notice to the families of all current Class Members

(current as of the date of Preliminary Approval) for whom the DOE has email addresses.

- Class Counsel will further distribute the Notice to stakeholders and post the Notice on its website, the website of JobPath NYC, and social media, including Facebook and Linked In.
- Class Counsel will further distribute the Notice via email or regular mail to the following agencies and organizations, together with a request that the recipient post the Notice on its website and/or otherwise disseminate the Notice:

- AHRC NYC
- Autism Speaks (NYC)
- Autism Spectrum News
- Black Lives Matter (NYC branch)
- Cardinal Dolan's Office
- City Council
- INCLUDEnyc
- JCC of Manhattan (Upper West Side)
- Mayor's Office For People With Disabilities Attn: Victor Calise
- Mental Health News Education
- New York Metro Parents 1 Radisson Plaza Suite 801, New Rochelle
- OPWDD (Office for People With Developmental Disabilities)
- Parent To Parent, 25 Beaver Street, Room 405
- Resources For Children With Special Needs, 116 East 16th Street
- United Federation of Teachers NYC
- 92nd Street Y (Upper East Side)

11. The Notice constitutes valid, due, and sufficient notice to the Class, constitutes the best notice practicable under the circumstances, and complies fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure. The proposed Notice apprises Class members in a fair and neutral way of the existence of the Settlement Agreement and their rights with respect to the Settlement Agreement.

12. Dissemination of the Notice as provided above is hereby authorized and

approved, and satisfies the notice requirement of Rule 23(e) of the Federal Rules of Civil Procedure.

13. A hearing is appropriate to consider whether this Court should grant final approval to the Settlement Agreement, and to allow adequate time for members of the Class, or their counsel, to support or oppose this settlement.

14. A Fairness Hearing pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, shall be held before the undersigned on June 28, 2022, at 12:00 p.m., in the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York, to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court. The hearing may be continued from time to time without further notice. The Fairness Hearing may be held remotely.

15. At least twenty-one (21) days before the Fairness Hearing, the parties and their Counsel will provide declarations to the Court attesting that they each disseminated the Notice.

16. Any member of the Class may enter an appearance on his or her own behalf in this action through that Class member's own attorney (at their own expense) but need not do so. Class members who do not enter appearances through their own attorneys will be represented by Class Counsel.

17. Any member of the Class may object to the proposed Settlement Agreement. Any member of the Class who wishes to object must do so in writing, and all objections must be filed and postmarked prior to the Fairness Hearing no later than May 27, 2022, and must be sent to the Court, DOE, NYSED and Mayerson & Associates, at the addresses listed in the Notice.

18. Any Class Member who fails to properly and timely file and serve objections

or comments shall be foreclosed from objecting to the proposed Settlement Agreement unless otherwise ordered by the Court. Any member of the Class may also request permission to speak at the Fairness Hearing by submitting a request in writing as outlined above, postmarked by this same deadline.

19. Class Counsel and DOE will respond to any timely filed objections not later than fourteen (14) days prior to the Fairness Hearing.

20. Plaintiffs will file their Motion for Final Approval of Settlement no later than twenty-one (21) days before the Fairness Hearing.

21. If for any reason the Court does not approve the proposed Settlement Agreement without material alteration, the proposed Settlement Agreement and all evidence and proceedings in connection with the proposed settlement, including the certification of the Class, shall be null and void *nunc pro tunc*.

22. The Court further orders that pending further order from the Court, all proceedings in this Action, except those contemplated herein and in the proposed Settlement Agreement, shall be stayed.

IT IS SO ORDERED.

DATED: _____, 2022

Honorable Robert M. Levy
United States Magistrate Judge