

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between the Plaintiffs (defined below) and the Defendants (defined below), hereinafter referred to individually as “Party” and collectively as “Parties,” in the civil action known as *D.R., et al. v. Michigan Department of Education, et al.*, currently pending in the United States District Court for the Eastern District of Michigan (the “Court”) as case number 2:16-cv-13694-AJT-APP (the “Case”).

The Plaintiffs are the named Plaintiffs, D.R., A.K., C.D.M., C.M., J.T., N.S., J.W., C.D., D.K., M.K., O.N., D.T., D.D., C.W., J.B., who filed this Case as minors through their parents identified in their Complaint (Dkt. No. 1) (“Complaint”).

The Defendants are the Michigan Department of Education (“MDE”), Genesee Intermediate School District (“GISD”), and Flint Community Schools (“FCS”).

**NOW, THEREFORE**, the Parties agree as follows:

1. **Special Education Fund and Amount.** Two (2) percent of the net funds paid into the FWC Qualified Settlement Fund according to the terms of the Settlement Agreement in *In re Flint Water Cases*, No. 5:16-cv-10444-JEL-MKM (E.D. Mich.) will be distributed into a Programmatic Relief Qualified Settlement Fund. Those funds, totaling an amount greater than or equal to US \$9,000,000, shall be used to establish a special education fund to be known as the Flint Water Crisis Special Education Fund (“SEF”).
  - a. **Eligible Students and Use of Funds.** The SEF shall be used exclusively to enable the school districts and public school academies within the GISD to provide special education and related services for students who resided in the City on or after April 2014 up until December 31, 2018, or who were on the City of Flint Water Supply on or after April 2014 up until December 31, 2018, or who were impacted by the Flint Water Crisis, and who require such services (“Eligible Students”). The parameters, amount, timing, and other criteria for the use, allocation and distribution of the SEF shall be determined by written, mutual agreement of the Parties no later than August 15, 2020. If the Parties cannot reach a mutual agreement by that date, they shall present their views for resolution by Magistrate Judge Patti or such other Magistrate Judge as shall be necessary.
  - b. **Special Education Services.** The special education services paid for by the SEF shall be provided to Eligible Students pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.*; Section 504 of the

Rehabilitation Act, 29 U.S.C. § 794 *et seq.* (“Section 504”)<sup>1</sup>; and the Michigan Administrative Rules for Special Education (“MARSE”), Mich. Admin. Code, R. 340.1701 *et seq.*

- c. **Administration of Fund.** The GISD Assistant Superintendent for Special Education will be the Administrator of the SEF (“SEF Administrator”). The SEF Administrator shall direct and supervise all facets of the SEF pursuant to the Parties’ written agreement described in Section 1 above. The SEF Administrator shall not be compensated by the SEF or by Plaintiffs.
- d. **Deadline.**
- 1) The funding of the SEF is contingent on the FWC Qualified Settlement Fund (Section 1, above) becoming a Final Settlement Agreement, which occurs 30 days after fulfillment of two conditions precedent pursuant to the terms of the FWC Qualified Settlement Fund. If these conditions precedent are not satisfied and the SEF is not established, this Agreement and any stipulation pursuant thereto shall be declared null and void.
  - 2) Only after the Programmatic Relief Qualified Settlement Fund is funded pursuant to the terms of the FWC Qualified Settlement Fund can the SEF be established.
  - 3) Upon the establishment of the SEF, the Parties shall work in good faith to finalize any necessary actions to ensure the SEF is fully operational by the start of the 2020-2021 school year, absent an agreement by all Parties to delay the start date for the distribution of the SEF. If the Parties cannot reach an agreement with respect to any proposal to delay the start date for the distribution of the SEF, they shall present their views for resolution by Magistrate Judge Patti or such other Magistrate Judge as shall be necessary. The Parties understand that a delay in the start date for the distribution of the SEF will be necessary if the Programmatic Relief Qualified Settlement Fund has not yet been funded pursuant to the terms of the FWC Qualified Settlement Fund by the start of the 2020-2021 academic year.
- e. **Quarterly Reporting and Audit.** The SEF Administrator shall publish quarterly reports, which will include, at a minimum, (1) how funds have been used by category, and (2) to which school districts or public-school academies the funds have been distributed. The quarterly reports will be produced by a third-party selected by all Parties and identified in the agreement required under Section 1, and all costs associated with the audits and publication shall be covered by the SEF, subject to agreement by the Plaintiffs. The dates for publication of the

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<sup>1</sup> The Parties agree that, for the purposes of this Agreement, the MDE does not have any legal obligations under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 *et seq.*

quarterly reports and biannual audits shall be agreed to by the Parties in the written agreement required under Section 1.

- f. **Final Report.** Upon the final disbursement of the SEF funds, the SEF Administrator shall publish a final report prepared by either the outside third party selected to prepare the quarterly reports in Section 1.e. or another third party selected subject to the approval of Plaintiffs. The final report shall include, but is not limited to, detailed data on the specific services provided to Eligible Students by districts and schools; the costs of those services; the manner in which the services were provided; the effectiveness of the services in addressing the needs of Eligible Students; and non-binding recommendation(s) for further consideration by GISD, FCS and MDE as to whether the effective services provided through the SEF should continue. Consideration of the report's recommendation(s) by MDE, GISD, or FCS includes each entity's discretion as to which recommendation(s) it may enact based on its respective budget determinations, and such determinations are not subject to this Agreement.

2. **Supplemental GISD Assistance to FCS and Constituent Districts Impacted by the Water Crisis.**

For the 2020-2021 school year, GISD agrees to the following:

- a. Upon resolution of the pending Act 18 Hearing in the case filed by FCS (In RE: Genesee Special Education Mandatory Plan Docket No.: 20-003550 Case No.: ISDPL 20-1) before the Michigan Office of Administrative Hearings and Rules, if GISD were to prevail and the current formula is upheld, GISD will recommend to its constituent districts, as part of the below plan review, that GISD distribute a supplemental \$600,000 appropriation to constituent districts using a formula agreed upon by the local districts. GISD will recommend that this supplemental disbursement be based on the proportionate share of special education FTE students in the constituent districts. If FCS were to prevail in the Act 18 hearing, and the formula is modified, this supplemental disbursement will not be made.
- b. For the 2020-2021 academic year, GISD will distribute a supplemental \$1,000,000 appropriation to the special education transportation consortium, which will be used solely to offset its constituent districts' expenditures for special education transportation services through the special education transportation consortium.
- c. GISD and FCS, by August 15, 2020, shall enter into a Joint Special Education Resource Agreement for the GISD to provide to FCS, at a minimum, staff and services for the 2020-2021 school year totaling a cost to GISD of \$1.2 million for positions such as, but not limited to, the following:
  - 1) Early Childhood Specialist;

- 2) Special Education Consultants / SE Services;
- 3) McKinney Vento Liaison for FCS (50%);
- 4) Math Partnership Coaches;
- 5) Literacy Partnership Coaches;
- 6) Two Early Literacy Coaches;
- 7) Coordinator/Data Support; and
- 8) Occupational and Physical Therapists.

By August 15, 2021, the GISD will provide to all Parties a report showing the staff and services that GISD provided to FCS for the 2020-2021 school year pursuant to the Joint Special Education Resource Agreement, and the associated costs of such staff and services.

- d. The GISD will work collaboratively with FCS in good faith to assist with future staffing needs such as, but not limited to, filling critical vacancies, and providing behavioral intervention and supports.
  - e. GISD will provide training, professional development, and other technical assistance from GISD to support FCS’s implementation of special education programs and its budget. GISD will provide an annual report for the 2020-2021 and 2021-2022 academic years outlining the training, professional development, and other technical assistance from GISD to support FCS’s implementation of special education programs and its budget.
3. **Modification of GISD Special Education Mandatory Plan.** During the 2020-2021 academic year, in accordance with the Revised School Code Mich. Comp. Laws (“MCL”) § 380.1711(a) and MARSE Rules 340.1831-1839, the GISD will review and make necessary modifications to the GISD Special Education Mandatory Plan (“the Plan”).
- a. **Purpose of Plan Modifications.** The purpose of the potential Plan Modifications is to determine modifications to the Plan based on the evaluation of the delivery of special education programs and services under 3.b.1. below.
  - b. **Plan Modifications.** In preparing the proposed Plan Modification, GISD shall evaluate and make necessary modifications to the following Plan components as follows:
    - 1) **Delivery of Special Education Programs and Services.** The GISD will conduct a thorough and comprehensive evaluation of “the delivery of special education programs and services designed to meet the individual needs of each student with a disability” currently enrolled in GISD and its constituent

districts as required by MCL 380.1711(a), with particular emphasis on delivering appropriate funds to districts educating special education students exposed to and impacted by the Flint Water Crisis.

- 2) **GISD Special Education Millage Rate.** The GISD agrees to pursue a millage increase. This modification shall include a specific recommendation for the rate increase, the timing of the submission of the increase to Genesee County voters, and the plan for GISD and its constituent districts to explain to voters the need for the increase and to use their best efforts to secure voter approval of the increase.
  - c. **Modification(s) of the GISD Special Education Plan.** Any Modifications to the Plan will be made in accordance with the Revised School Code MCL 380.1711(a) and MARSE Rules 340.1831-1839.
  - d. **Approval of Plan Modifications.** The GISD shall submit the proposed modified Plan to Plaintiffs for review and comment before submission to the MDE for approval pursuant to MCL 380.1711(a).
4. **High-Quality Pre-school.**
- a. The GISD reaffirms its commitment to provide high quality, developmentally appropriate, preschool programs for children ages three and four within the City of Flint. Such programs are contingent upon funding. At this time, for the 2020-2021 academic year, GISD will offer the following Early Childhood Programs:
    - 1) Early Head Start;
    - 2) Head Start;
    - 3) Great Start Readiness Program;
    - 4) SKIP to a Great Start;
    - 5) Educare.
  - b. The GISD agrees to retain an independent, early education research entity or organization to conduct a comprehensive assessment study of the need for high quality preschool in Flint to include, but not be limited to:
    - 1) determination of the universe of three- and four-year olds residing in the City of Flint (“Eligible Universe”);
    - 2) complete inventory of preschool programs currently serving Flint children, including classrooms in programs operated by Head Start, childcare providers and public schools;

- 3) the quality rating of early education provided by all operating programs utilizing nationally accepted standards for class size, teacher experience and certification, developmentally appropriate curriculum, enrichment and support services and wrap around services, the length of day and year of all programs, and other relevant factors;
  - 4) a specific determination of the need for additional preschool classrooms that meet high quality standards;
  - 5) a specific determination of the staff, services, facilities and other essential resources needed to bring all existing and additional programs to accepted standards of high quality;
  - 6) a specific determination of the funding needed for additional programs and to bring all existing programs to accepted standards of high quality;
  - 7) a plan for parent outreach and assistance with the enrollment process;
  - 8) a plan for transportation to the extent necessary to reduce barriers to access; and
  - 9) a plan and timetable for ensuring universal access of all of the City of Flint children to developmentally appropriate early education in a high-quality preschool program operated by Head Start, childcare providers and/or public schools.
- c. The SEF Administrator shall make available no more than \$100,000 to the GISD upon submission of an appropriate contract, subject to the approval of Plaintiffs, to conduct the comprehensive preschool needs assessment consistent with the above requirements. Upon completion, the GISD shall publish and disseminate the needs assessment report to its constituent districts, preschool providers, and the Parties. GISD is under no obligation to exceed the \$100,000, and any recommendations, findings, and conclusions are non-binding.

5. **FCS Participation and Cooperation with GISD.** FCS agrees to fulfill the specific requirements set forth in Exhibit A attached.

6. **Plaintiffs' and Putative Class' Release.**

- a. Except as set forth in Section 10 below, Plaintiffs release, hold harmless, and forever discharge MDE, GISD, and FCS from any and all of the remaining systemic claims asserted in their Complaint, individually or on their behalf, under IDEA, 20 U.S.C § 1400 *et seq.*; Section 504, 29 U.S.C. § 794 *et seq.* (as to GISD and FCS only); Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101 *et seq.* and MCL § 380.1701 *et seq.*
- b. This agreement further releases MDE, GISD, and FCS from any of the remaining

systemic claims brought in the Complaint under IDEA, 20 U.S.C. § 1400 *et seq.*; Section 504, 29 U.S.C. § 794 *et seq.* (as to GISD and FCS only); the ADA, 42 U.S.C. § 12101 *et seq.*, and MCL § 380.1701 *et seq.* on behalf of any putative class member as defined in Section 1 above conditioned on final Court approval pursuant to Fed. R. Civ. P. 23(e), with the cutoff date for putative class members being those born up until December 31, 2018.

- c. This Agreement, and the release contained in Section 6 herein, does not apply to any currently pending or future due process complaint proceeding filed or that will be filed under the IDEA (20 U.S.C. § 1415) by or on behalf of any Plaintiff or putative class member, or to any current or future state complaint (MARSE, Part 8 Complaint) brought by or on behalf of any Plaintiff or putative class member. For the avoidance of doubt, no individual claims under IDEA, 20 U.S.C. § 1400 *et seq.*; Section 504, 29 U.S.C. § 794 *et seq.*; the ADA, 42 U.S.C. § 12101 *et seq.*; and MCL § 380.1701 *et seq.* come within the ambit of the release in Sections 6.a. and 6.b. of this Agreement.
7. **Incorporation of the Child Find Settlement Agreement.** This Agreement expressly incorporates by reference all of the terms of the Child Find Settlement Agreement filed with this Court on April 9, 2018 (Dkt. No. 115), except as to Plaintiffs' right in Section VII thereof to seek attorneys' fees and costs. Plaintiffs' right to attorneys' fees and costs is addressed in Section 10 of this Agreement.
8. **Class Certification.** In accordance with Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs will file a motion with the Court seeking an order provisionally certifying a class under Rule 23(b)(2) for settlement purposes only, appointing Plaintiffs' counsel as class counsel, preliminarily approving this Agreement, directing class notice, and scheduling a fairness hearing. Defendants agree to support the Court's preliminary approval of this Agreement. Defendants further agree not to oppose class certification for settlement purposes, but reserve the right to reinstate their opposition to class certification in the event this Agreement is not approved. Defendants shall bear the cost of notice to the class. This Agreement will not be final unless and until, following a fairness hearing, the Court approves the Agreement and an order is entered dismissing the case pursuant to its terms.
9. **Dismissal with Prejudice.** This Agreement resolves all remaining claims in this case. Plaintiffs agree to the entry of an order dismissing all remaining claims in their Complaint with prejudice, contingent upon the Court approving this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and expressly retaining jurisdiction to enforce this Agreement according to its terms. If the Court declines to place this Agreement on the record, declines to approve the Agreement under Rule 23(e) of the Federal Rules of Civil Procedure, declines to incorporate the terms of this Agreement in an order, or declines to retain jurisdiction to enforce this Agreement, this Agreement and any stipulation pursuant thereto shall be declared null and void.
10. **Attorneys' Fees and Costs.** MDE agrees to pay \$250,000 of Plaintiffs' attorneys' fees and costs. GISD separately agrees to pay \$225,000 of Plaintiffs' attorneys' fees

and costs. FCS separately agrees to pay \$200,000 of Plaintiffs' attorneys' fees and costs. In exchange, Plaintiffs waive the right to seek any additional attorneys' fees and costs, notwithstanding the fact that additional attorneys' fees and costs accrued during the pendency of this Case.

11. **Effective Date.** This Agreement shall become effective when the Court enters an order incorporating the terms of this Agreement, retaining jurisdiction to enforce this Agreement, and dismissing all remaining claims in Plaintiffs' Complaint with prejudice.
12. **Dispute Resolution and Judicial Enforcement.**
  - a. The Court has jurisdiction to enforce this Agreement.
  - b. The Parties shall make all reasonable efforts to resolve disputes and disagreements regarding the meaning of, compliance with, and/or implementation of this Agreement informally and in good faith prior to seeking relief from the Court.
  - c. If a Party has a dispute concerning the meaning of, compliance with, and/or implementation of this Agreement, that Party will send written notice to all other Parties specifying the nature of the dispute. Within 14 days of the date of transmission of written notice (or within 3 days of the transmission of written notice if the dispute relates to the mutual agreement that the Parties must reach by August 15, 2020 with respect to the parameters, amount, timing, and other criteria for the use, allocation and distribution of the SEF as set forth in Section 1.a. or if the dispute relates to the start date for the distribution of the SEF as set forth in Section 1.d.3.), the Parties shall meet and confer in a good-faith attempt to resolve the dispute without soliciting the Court's involvement. As part of the meet and confer, the Parties shall comply with reasonable requests from another Party or Parties for information and documents related to the dispute, and shall, upon request by another Party or Parties, provide reasonable access to client representatives with knowledge related to the dispute.
  - d. If the Parties are unable to resolve any dispute or disagreement pursuant to the process set forth above, any Party or Parties may file a motion with the Court to enforce this Agreement, or may present their views to Magistrate Judge Patti or such other Magistrate Judge as shall be necessary as set forth in Section 1 of this Agreement. Any Party that intends to file a motion to enforce the Agreement shall provide all other Parties written notice of such intent at least 5 days prior to filing any such motion.
  - e. For the avoidance of doubt, as set forth in Section 6.c., the rights of Plaintiffs and any putative class members to bring individual administrative due process claims, or to file state complaints, under the statutes listed in Section 6.c., are preserved. Nothing in Section 12 herein, specifically Paragraphs 12.a. – 12.d., supplants or replaces an individual Plaintiff's or putative class member's (or their respective

parent(s)', guardian(s)', etc.) right to allege a substantive or procedural violation of the IDEA, or other state or federal laws or regulations, related to an individual Individualized Education Program. Such individual allegations must be brought in a due process complaint under 20 U.S.C. § 1415, or by filing a state complaint. This Agreement shall not be construed as excepting any Plaintiff, putative class member, or their respective parent(s) or guardian(s), from the exhaustion requirements for their individual IDEA and related claims. Nor shall this Agreement be construed as identifying a forum or venue for such claims outside of what would otherwise be appropriate under applicable law, regulations and court rules. This Agreement reflects the Parties' intent to resolve Plaintiffs' claims of alleged systemic violations of federal and state law as set forth in the Complaint without foreclosing any student's right to allege that special education and other related services provided to such student under their current or future Individualized Education Program are inadequate under the IDEA or other state or federal law.

13. **Modification.** This Agreement, which expressly incorporates by reference all terms of the Child Find Settlement Agreement filed with this Court on April 9, 2018 (Dkt. No. 115) except as to the Plaintiffs' right reserved in Section VII thereof to seek attorneys' fees and costs, contains the entire agreement of the Parties with regard to the matters referenced herein and supersedes any prior oral or written communications, understandings or statements between the Parties as to such matters. No modification of this Agreement may be made absent joint stipulation of all Parties and an order of the Court.

14. **Signatories and Counterparts.**

- a. Each signatory to this Agreement certifies that he or she is either: (i) an employee or duly appointed representative of the Party on whose behalf he or she is signing this Agreement, who has been granted full authority to execute this Agreement and thereby legally bind the Party on whose behalf he or she is signing this Agreement, or (ii) the counsel of record in the above-captioned case for the Party on whose behalf he or she is signing this Agreement, who has consulted with his or her client regarding the terms of this Agreement, and is fully authorized to execute this Agreement on his or her client's behalf and thereby legally bind his or her client by signing this Agreement.
- b. This Agreement may be executed in counterparts.

[signatures on following page]

Plaintiffs D.R., A.K., C.D.M., C.M., J.T., N.S., J.W., C.D., D.K., M.K., O.N., D.T.,  
D.D., C.W., J.B., individually and on behalf of the class

BY: [Signature]  
Their: Lawyer  
Date: 7/29/2020

Flint Community Schools

BY: [Signature]  
Its: Board President  
Date: 7/16-2020

Genesee Intermediate School District

BY: /s/John L. Miller  
Its: Its Attorney  
Date: 8/6/2020

Michigan Department of Education

BY: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

Plaintiffs D.R., A.K., C.D.M., C.M., J.T., N.S., J.W., C.D., D.K., M.K., O.N., D.T.,  
D.D., C.W., J.B., individually and on behalf of the class

BY: \_\_\_\_\_  
Their: \_\_\_\_\_  
Date: \_\_\_\_\_

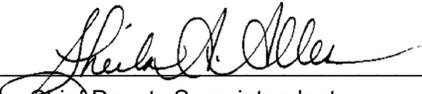
Flint Community Schools

BY: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

Genesee Intermediate School District

BY: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

Michigan Department of Education

BY:  \_\_\_\_\_  
Its: Chief Deputy Superintendent  
Date: 07/14/2020

# **EXHIBIT A**

### **Flint Community Schools' Obligations**

1. Administrators from all levels in Flint Community Schools ("FCS") (including Elementary, Middle School, High School, Business Official, Special Education Director, Curriculum Director and the Superintendent) will regularly and consistently attend monthly county wide meetings held at the GISD.
2. FCS staff will continue to regularly participate in the promoting positive school climate ("PPSC") project.
3. FCS staff will log Medicaid services with an 85% threshold or higher and participate in the Caring for Students ("C4S") Medicaid Program.
4. FCS will partner with GISD to continually ensure that all state and federal dollars are spent each year on student programs and are not returned to funders.
5. FCS will utilize resources, data analysis services, consortium benefits, cost savings committees, and county-wide systems to save dollars and improve efficiencies for staff and students.
6. FCS will allow its High School students access to tours and showcases of CTE programs, as well as other tours and showcases, at the Genesee Career Institute.
7. FCS will incorporate and factor evaluations conducted by the Neurodevelopmental Center of Excellence ("NCE") into Individualized Education Programs.