

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CL

M.A. on behalf of E.S., M.A., A.T. on behalf
of G.T., A.T., G.L. on behalf of A.O., G.L.,
H.M. on behalf of M.M., H.M., O.J. on behalf
O.D.J., O.J., A.E. on behalf of A.J.E., and A.E.,
individually and on behalf of all other similarly
situated,

Plaintiffs,

v.

NEWARK PUBLIC SCHOOLS, NEW JERSEY
DEPARTMENT OF EDUCATION, VITO A.
GAGLIARDI, SR., Commissioner, New Jersey
Department of Education, in his official and individual
capacities, BARBARA GANTWERK, Director, Office of
Special Education Programs, New Jersey Department of
Education, in her official and individual capacities and
MELINDA ZANGRILLO, Coordinator of Compliance,
Office of Special Education Programs, New Jersey
Department of Education, in her official and individual
capacities,

Defendants.

Civil Action No. 01-3389 (SRC)

SETTLEMENT AGREEMENT

This Settlement Agreement between the Plaintiff Class and the Defendants provides for the resolution and termination of this litigation following its filing with the Court. It follows several years of discovery conducted by the parties and negotiations of terms to resolve the dispute regarding the timely delivery of special education and related services to eligible Newark children and students with disabilities enrolled in Newark Public Schools (NPS) as required by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1401 *et seq.*, 34 C.F.R. §300.1 *et seq.*, and New Jersey's Special Education Statute, N.J.S.A. 18A:46-1 *et seq.* While the Plaintiff Class and the Defendants, and their respective counsel, have different views regarding a

number of issues that could have been the subject of contested litigation over the Defendants' compliance with the laws referenced herein, all parties agree that a negotiated resolution of this matter is preferable and in the public interest. This Settlement Agreement provides the framework for accomplishing specified goals relating to NPS' delivery of special education and related services in a manner that is consistent with applicable laws and decisions of New Jersey and federal courts. However, nothing in this Settlement Agreement shall be construed as an admission of liability on the part of any of the Defendants.

Section A. The Parties

1. The Plaintiff Class certified by the Court is defined as follows:

All present and future children, ages three through twenty-one, and the parents of such children, residing within the Newark public school district, who are or may be eligible for special education and related services pursuant to the Individuals with Disabilities Education Act ("IDEA") and its federal and state implementing regulations and/or pursuant to New Jersey's special education statute and who were not or will not be timely identified, located, referred, evaluated, or provided with such services. The class includes all children who are currently on "waiting lists" for special education evaluations.

2. The Defendants are Newark Public Schools ("NPS"), New Jersey Department of Education ("NJDOE"), Barbara Gantwerk, Melinda Zangrillo, and Vito Gagliardi Sr. Upon execution of this Settlement Agreement, the claims against NJDOE, Ms. Gantwerk, Ms. Zangrillo and Mr. Gagliardi are dismissed with prejudice. The Office of Special Education, NJDOE, however, shall act as the monitor in accordance with the terms of this Settlement Agreement.

Section B. Tracking the Class and NPS Students Who May be Eligible for Compensatory Services

1. Effective School Year 2011 – 2012, NPS shall track data regarding the following Newark children between ages 3 – 21:

a. All Newark children whose parents or guardians made a written request for an evaluation to determine eligibility for special education services, however, the identification meeting was not held within 20 calendar days, as required by N.J.A.C. 6A:14-3.3(e);

b. All Newark children whose Individualized Education Programs (“IEPs”) were not timely implemented within 90 calendar days from the date the parents or guardians provided written consent for evaluation, as required by N.J.A.C. 6A:14-3.4(e); and

c. As set forth in Section J below, all eligible Newark students who were not provided compensatory education services to compensate for NPS’ failure to timely locate, identify, refer, evaluate, determine eligible or provide with initial special education and related services during School Years 2009-2010 and 2010-2011.

Section C. Compliance with Goals

1. NPS shall achieve 95% compliance with the following Goals:

Goal 1: All Newark children referred for special education services shall have their identification meetings conducted within 20 calendar days of receipt of written request for an evaluation to determine eligibility for special education services, as required by N.J.A.C. 6A:14-3.3(e).

Goal 2: All Newark children determined to be eligible for special education services shall have their IEPs implemented within 90 calendar days of receipt of written parent/guardian permission to conduct evaluations, as required by N.J.A.C. 6A:14-3.4(e).

Section D. Establishment of Baseline Rate of Compliance

1. Within 60 business days from the date the methodology for measuring calculations and the baseline rate of compliance has been agreed upon in accordance with Section F of this Agreement, NPS shall establish a baseline rate of compliance that is based upon data from School Year 2010 – 2011. This baseline rate of compliance will provide NPS' current rate of compliance with the Goals identified in Section C.

Section E. Data Collection and Reporting Obligations

1. On a semi-annual basis according to the timelines set forth in this Section, NPS shall provide the parties with a "Compliance Report" including data used, methodology for measuring calculations and achievement above and below the baseline rate of compliance with the Goals set forth in Section C. The rate of compliance shall be disaggregated by the system-wide compliance rate and compliance rates by each Region of NPS.

2. NPS shall implement an electronic system (the "Electronic System") for recording and managing compliance data. The Electronic System shall, at a minimum, have such features and capabilities as the NJDOE, Office of Special Education ("NJDOE/OSE") shall require, and shall capture such information and data, and shall generate such reports, as NJDOE/OSE may specify. The Electronic System must track information, data and reports discussed in Sections B-H of this Settlement Agreement. NPS shall be responsible for entering such data and information into the Electronic System such that all information, data and reports contained in, or generated by, the Electronic System shall accurately and completely describe data, reports and information discussed in Sections B-H of this Settlement Agreement.

3. NPS shall continue to maintain written flowcharts to record the compliance data discussed in this Agreement until such time as the Electronic System is certified by NJDOE/OSE

as accurate and reliable. NPS shall make copies of the flowcharts, and data and information from the Electronic System as set forth in Section I, Paragraph 10-f, readily available to Plaintiffs and NJDOE/OSE, if necessary to support and/or explain the findings in the Compliance Reports.

4. For any Region below 75% compliance rate with the Goals set forth in Section C, NPS shall provide information in the annual, end-of-year Compliance Report regarding remedial measures that will be taken during the subsequent school year to improve the rate of compliance.

5. NPS shall also provide recommendations in the annual, end-of-year Compliance Report for a Corrective Action Plan (“CAP”), pursuant to Section G, addressing each Goal set forth in Section C for which NPS does not achieve a compliance rate of 95%.

6. On an annual basis, NPS shall also prepare and provide to all parties an end-of-year Location/Identification Report which certifies the manner in which NPS has complied with the location and identification obligations under N.J.A.C. 6A:14-3.3, including having taken the following steps during the school year :

a. NPS students suspected of having disabilities, including those attending private schools, are timely located and identified; and

b. NPS engaged in the following location/identification outreach activities:

i. Semi-annually posting “child find” notices by advertising in local newspapers including the Star Ledger, El Nuevo Coqui, Luso Americano, Brazilian Press and Haiti Progress Ltd.;

ii. Broadcasting “child find” information on the NPS cable television channel and posting on the NPS website on an ongoing basis;

iii. Placing “child find” posters and notices in every NPS school and semi-annually replacing them as needed;

iv. Semi-annually mailing “child find” posters and notices to
A. all non-public school principals and directors in Newark;

B. all day care center directors in Newark; and

C. all hospitals, agencies, homeless shelters and clinics in Newark which service children ages three (3) through twenty one (21); and

v. Semi-annually conducting a meeting with the representatives of non-public schools to provide technical assistance with respect to the location, identification, referral, evaluation and placement of children with disabilities.

c. NPS provided mandatory training to appropriate staff, as determined by NPS, regarding i) behavior and academic performance of a student that may indicate that intervention and/or referral for special education services should be provided to the student, and ii) how a referral for such intervention and/or referral can be made.

d. NPS developed a “quick reference document” and distributed it to all attendees of the trainings referenced in Section E-6-c.

e. NPS provided training materials to all attendees of the professional development activities referenced in Paragraph E-6-c, provided one copy of such materials to each school in the district and posted the materials to the NPS intranet.

7. The first Compliance Report under this Agreement shall be provided by NPS to NJDOE/OSE and Plaintiffs on or by July 31, 2012, shall cover the period July 1, 2011 through June 30, 2012, shall include the rates of compliance with the Goals set forth in Section C,

disaggregated by the system-wide compliance rate and compliance rates of each region and school of NPS, shall include a CAP with remedial measures that will be taken to improve the rate of compliance as specified in Sections E-4 and 5 and shall comply with Section E-1. Thereafter, NPS will provide compliance reports as follows: the reporting periods for the semi-annual Compliance Reports shall run from July 1 through December 31 and January 1 through June 30. The semi-annual Compliance Reports covering the period July 1 through December 31 shall only include the rates of compliance with the Goals set forth in Section C, disaggregated by system-wide compliance rate and compliance rates by each region and school of NPS. This report shall be provided to Plaintiffs and NJDOE/OSE on or by February 15 of each year this Agreement remains in force and effect. The semi-annual Compliance Reports covering the period January 1 through June 30 shall constitute the annual, end-of-year report and shall include a CAP with remedial measures that will be taken to improve the rate of compliance as specified in Sections E-4 and 5. This report shall be provided to Plaintiffs and NJDOE/OSE on or by July 31 of each year this Agreement remains in force and effect.

8. The annual Location/Identification Report shall be issued no later than July 31 of each year this Agreement remains in force and effect.

9. NPS shall complete and maintain an Intervention and Referral Services Team Procedure Review form, a copy of which is appended hereto as Exhibit A, for any student for whom a request for intervention and referral services is made.

Section F. Standards for Compliance Reports

1. NPS shall propose and provide to all parties a method for calculating compliance with the Goals in Section C of this Agreement within 30 calendar days of the execution of this Agreement. The method that NPS shall use for calculating compliance must be approved by

NJDOE/OSE within 30 calendar days of receipt of NPS' proposed method. Plaintiffs may object to the method, however, Plaintiffs may not object to the method until after final approval of the method by NJDOE/OSE. Within seven (7) days after Plaintiffs are notified that NJDOE/OSE has approved the methodology for calculating compliance, Plaintiffs may object to the proposed methodology. Plaintiffs shall identify with specificity the aspect(s) of the method to which they object and shall further state with specificity those modifications to the method that would cure the objections. Plaintiffs, NPS and NJDOE/OSE shall meet and confer for purposes of resolving the dispute. If the dispute is not resolved, Plaintiffs may make application to the Court for an order modifying the method. NJDOE/OSE shall be entitled to participate in all proceedings regarding Plaintiffs' requests for modifications to any method. The method approved for calculating compliance shall remain the same throughout the term of this Settlement Agreement, unless the parties agree or the Court directs otherwise, and NPS shall have no obligation to use a method of calculation other than the method initially approved by NJDOE/OSE. NJDOE/OSE shall be responsible for verifying the data and calculations provided by NPS and shall provide the parties with its proposed methodology and standards for verification as set forth in Section I below. NJDOE/OSE shall provide a report to the parties detailing how it has verified the accuracy of NPS' reporting within 60 calendar days after NPS' submission of each Compliance Report.

2. NPS shall continue to maintain existing institutional mechanisms intended to facilitate compliance with the requirements of IDEA, its implementing regulations and New Jersey special education laws, and shall take additional actions required to achieve compliance.

Section G. Corrective Action

1. In each annual, end-of-year Compliance Report, and subsequent to NJDOE/OSE issuing a Monitoring Report pursuant to Section I, NPS shall recommend a CAP or a modification to a CAP which addresses each Goal set forth in Section C for which NPS does not achieve the compliance rate of 95%. The proposed CAP or modification to a CAP shall be provided to NJDOE/OSE and Plaintiffs and shall be designed to ensure compliance with the relevant unmet Goals as soon as is practicable and no later than 12 months from the time the CAP or modification to a CAP is implemented. Each CAP and modification to a CAP that NPS recommends in accordance with this Settlement Agreement shall be subject to the approval of NJDOE/OSE. Such approval may be conditioned upon modifications to the CAP that NJDOE/OSE may require of NPS. NJDOE/OSE shall provide copies of all proposed CAP modifications to Plaintiffs. In the event that NPS objects to any modification that NJDOE/OSE may require, NPS and NJDOE/OSE shall meet and confer for purposes of resolving the dispute. NJDOE/OSE shall thereupon issue a decision regarding the CAP or modification to a CAP, a copy of which is provided to NPS and Plaintiffs, and the decision of NJDOE/OSE shall be binding upon NPS. NJDOE/OSE's decision regarding each CAP and modification to a CAP must be issued within 30 calendar days of NPS' proposal of the CAP or modification to a CAP.

2. Plaintiffs may object in writing to a CAP, or to any provision or modification of a CAP, within seven (7) days after receiving the final approved CAP or CAP modification from NJDOE/OSE. Plaintiffs shall identify with specificity those particular provisions of the CAP or CAP modification to which they object and shall further state with specificity those modifications to the CAP or CAP modification that would cure the objections. Plaintiffs, NPS and NJDOE/OSE shall meet and confer for purposes of resolving the dispute within seven (7) days of receiving Plaintiffs' objections. If the dispute is not resolved, Plaintiffs may make application to the Court for

an order modifying the CAP, within two (2) weeks from the date of the parties' meeting. Defendants will have two (2) weeks to respond to Plaintiffs' application, and Plaintiffs will have one (1) week to reply to Defendants' response. The Court will render its decision on the application within 30 days. NJDOE/OSE shall be entitled to participate in all proceedings regarding Plaintiffs' requests for modifications to any CAP or CAP modification. If Plaintiffs object to a CAP or CAP modification, the CAP or CAP modification will go into effect after the parties meet and confer about the CAP or CAP modification, unless all parties agree otherwise or the Court orders otherwise.

3. Once agreed upon by the parties, or once ordered by the Court, a CAP or CAP modification shall be made a part of this Settlement Agreement and treated in the same manner as a Goal specified in Section C of this Agreement.

4. NPS shall promptly and diligently implement any CAP or CAP modification adopted in accordance with the provisions of this Settlement Agreement no later than 30 calendar days from the date the CAP or CAP modification is agreed upon by the parties or ordered by the Court.

5. If a CAP or CAP modification does not result in compliance with the Goals identified in Section C within 12 months after the CAP or CAP modification was implemented, NPS or Plaintiffs may move the Court to modify the CAP. However, Plaintiffs may not move the Court to modify or rescind a CAP or CAP modification if the CAP or CAP modification was implemented under the provisions of a prior Court Order issued as a result of Plaintiffs' objections. If a CAP or CAP modification that has resulted from a Court Order does not result in compliance with the Goals identified in Section C within 12 months of implementation, the CAP will automatically terminate as soon as the next end-of-year Compliance Report is issued pursuant to Section E-5, without further order of the Court. A new CAP related to the issues covered by the previous CAP which did not result in compliance with the Goals identified in Section C, will be implemented under the

provisions of Section G, paragraphs 1 through 4. Any modifications ordered by the Court shall be implemented, made a part of this Consent Decree and treated in the same manner as a Goal specified in Section C of this Agreement.

Section H. Internal Monitoring

1. Within 90 calendar days after approval of this Settlement Agreement by the Court, NPS shall establish an internal monitoring process to address compliance with IDEA requirements at issue in this litigation. NPS shall prepare a written report that describes the internal monitoring process and provide this report to the other parties to this litigation within five months from the date the Court approves this Agreement.

2. The report shall include, at minimum, procedures for monitoring NPS schools, a school selection process for monitoring, a schedule for monitoring, monitoring tools, a description of relevant personnel training and a process for follow-up on corrective actions.

Section I. Monitoring by NJDOE/OSE

1. NJDOE/OSE, through its Special Education Compliance Officer, is responsible for the monitoring requirements of this Settlement Agreement as described below. NJDOE/OSE shall be the sole monitor under the terms of this Settlement Agreement.

2. The parties agree that Priscilla Petrosky will be designated as the NJDOE/OSE Special Education Compliance Officer. In the event it is necessary to appoint a replacement for Ms. Petrosky, NJDOE/OSE will identify the replacement who shall be hired, or contracted with, by NJDOE/OSE upon consultation with the parties. If NPS or Plaintiffs do not agree with respect to the designation of such other Special Education Compliance Officer as is chosen by NJDOE/OSE, they may object to such appointment. Upon objection, the parties shall be required to meet and confer

with respect to the issue, and if agreement is not reached, the objecting party or parties may bring the matter before the Court for resolution.

3. The primary monitoring responsibilities of NJDOE/OSE are to examine, assess and evaluate the manner in which, and the extent to which, NPS, through the Superintendent and professional staff of the school district, implements the obligations NPS has committed to satisfy by executing this Settlement Agreement as described in Sections C – G, with the exception of Paragraph E-6. Within 30 days after the parties have agreed to NPS' proposed methodology pursuant to Section F-1, NJDOE/OSE shall present to NPS and Plaintiffs its proposed methodology and standards, including timeframes, for all monitoring. Plaintiffs or NPS may object in writing to NJDOE/OSE's proposed methodology and standards within seven (7) days after it is proposed. Plaintiffs or NPS shall identify with specificity those particular provisions of NJDOE/OSE's proposed methodology and standards to which they object and shall further state with specificity those modifications to the proposed methodology and standards that would cure the objections. Plaintiffs, NPS and NJDOE/OSE shall meet and confer for purposes of resolving the dispute within seven (7) days of receiving any objections. If the dispute is not resolved, the objecting party or parties may bring the matter before the Court for resolution, along with proposed alternative methodology and standards, within two (2) weeks from the date of the parties' meeting. NJDOE/OSE and any non-objecting party will have two (2) weeks to respond to the objecting party's application and the objecting party or parties will have one (1) week to reply to NJDOE/OSE and/or any non-objecting party. The Court will render its decision on the application within 30 days. The monitoring methodology and standards shall be made a part of this Agreement.

4. NJDOE/OSE's proposed methodology and standards shall, at a minimum, include the methodology and standards for determining:

a. whether identification meetings for each student were held within 20 calendar days of the referral.

b. whether the IEP for each student was implemented within 90 calendar days of the consent for the initial evaluation.

5. NJDOE/OSE shall monitor NPS to determine whether an Intervention and Referral Services Team Procedure Review form has been completed pursuant to paragraph E(9) for any student for whom a request for intervention and referral services is made. NJDOE/OSE is not required to monitor the accuracy of the information contained on any Intervention and Referral Services Team Procedure Review form completed by NPS. NJDOE/OSE shall monitor NPS for compliance with Paragraph E-9 as follows:

In July 2012 for the period March 1 – June 30, 2012 (i.e., random sampling will be based upon those students who are referred effective March 1, 2012);

In March 2013 for the period July 1, 2012 – February 28, 2013;

In July 2013 for the period March 1 – June 30, 2013; and

In July for all future monitoring for annual periods of July 1 – June 30.

For purposes of monitoring NPS' compliance with paragraph E-9, NJDOE/OSE shall randomly sample five percent (5%) of the student files for which a request for intervention and referral services is made for the monitoring period, but the number of student files sampled shall not exceed 50 students for any monitoring period. NJDOE/OSE's obligation to monitor NPS for compliance with Paragraph E-9 shall terminate once NJDOE/OSE finds that NPS has complied with Paragraph E-9 for a consecutive 12-month period.

6. NJDOE/OSE shall provide a Monitoring Report to the parties detailing how it has verified the accuracy of NPS' compliance reporting within 60 calendar days of NPS' submission of each Compliance Report.

7. If NPS or Plaintiffs do not agree with a finding or findings of NJDOE/OSE's Monitoring Report, they may object in writing to the finding(s), or request documents regarding such findings within seven (7) days of the receipt from NJDOE/OSE of the Monitoring Report. If documents are requested, they will be provided to the requesting parties within two (2) weeks of such request. Within seven (7) days of receipt of the requested documents, or, if there is no request for documents, within seven (7) days of the objection, the parties shall be required to meet and confer with respect to the finding(s), and if agreement is not reached, the objecting party or parties may bring the matter before the Court for resolution within two (2) weeks from the date of the parties' meeting. The responding party or parties will have two (2) weeks to respond to the application of the objecting party or parties, and the objecting party or parties will have one (1) week to reply to such response. The Court will render its decision on the application within 30 days.

8. NJDOE/OSE is responsible for bringing to the attention of Plaintiffs and NPS instances of non-compliance with the terms of this Settlement Agreement as soon as they become apparent to NJDOE/OSE.

9. NJDOE/OSE shall attempt to resolve all instances of NPS non-compliance with the terms of this Settlement Agreement through consultation or discussion with the Superintendent of NPS or his/her designee, and NJDOE/OSE shall advise Plaintiffs of all such attempts at resolution.

10. In the performance of the monitoring activities under this Settlement Agreement:
 - a. NJDOE/OSE shall have complete and unrestricted access to NPS' unredacted records of each student in the Plaintiff Class. Plaintiffs shall be provided with such records upon request, with the student identification number as the only identifier. If necessary and related to this litigation, upon request, Plaintiffs shall be provided with additional identifying information regarding class members. Plaintiffs may only access such records to assist them in reviewing reports issued by Defendants and to raise objections as set forth in this Agreement. Any records of, and other information about, students requested by Plaintiffs in conjunction with this Agreement may not be introduced into evidence in other litigation or administrative proceedings, except if obtained from an independent source;
 - b. The Superintendent of NPS or his/her designee shall ensure that such documents and information are made promptly available, in electronic format when available, so long as the security of NPS' electronic database is not compromised and data may not be manipulated, when requested by Plaintiffs;
 - c. NJDOE/OSE may visit the school district and any of its schools and facilities at any time and speak freely with any school district personnel, personnel who contract with NPS, parents and students, including on a confidential basis, concerning any matters related or relevant, in the judgment of NJDOE/OSE personnel, to their duties under this Settlement Agreement. The Superintendent of NPS and counsel for the Plaintiff Class shall encourage the full cooperation of such individuals;
 - d. NJDOE/OSE personnel may also attend any formal institutional meeting or proceedings conducted by the NPS School Board and NPS personnel, including the

Superintendent or his/her designee, regarding subject matter NJDOE/OSE believes is relevant to its duties under this Settlement Agreement.

e. NJDOE/OSE is authorized to have *ex parte* contact with counsel for the Plaintiff Class and counsel for NPS;

f. NJDOE/OSE shall have complete and unrestricted access to the Electronic System, and all data and information contained on the Electronic System. Plaintiffs shall be promptly provided with data and information contained in the Electronic System relevant to the compliance and flowchart data discussed in Section E, as determined by NPS, as well as data and information contained in the Electronic System relevant to any findings set forth in the NJDOE/OSE Monitoring Reports, as determined by NPS. The conditions established under paragraph 10-a of this Section shall apply.

g. NJDOE/OSE shall have complete and unrestricted access to all other non-redacted records, files, reports, memoranda, correspondence, plans, notices, budgets, NPS' internal compliance reviews and all other non-redacted documents, whether controlled by NPS or third parties, relating, in the judgment of NJDOE/OSE personnel, to NJDOE/OSE's responsibilities as described herein. Plaintiffs shall not have such unrestricted access to data, but rather shall have access to such data as may be requested under this section, above, and shall maintain the confidentiality of all student identifying information obtained;

h. If NJDOE/OSE personnel are unable to secure access to information or individuals they believe have knowledge relevant to their duties under this Settlement Agreement, after attempting to resolve any issues through informal contact with the Superintendent, counsel for NJDOE/ OSE shall notify the undersigned counsel for the Plaintiff Class and NPS. Within fourteen (14) days after notification, the parties shall meet and confer for

purposes of resolving the dispute. If, after discussion among counsel, the matters cannot be resolved, NJDOE/OSE may present the dispute to the Court for decision. Plaintiffs shall be entitled to participate in all proceedings regarding such dispute.

11. Except as set forth in Section J, NJDOE/OSE monitoring shall in no way preclude the Plaintiff Class from seeking enforcement of the provisions of this Settlement Agreement. However, Plaintiffs' counsel agree to make a good faith effort to resolve any issues relating to enforcement with NPS prior to seeking enforcement by the Court. Counsel for the Plaintiff Class continue to represent the interests of students with disabilities for the term of this Settlement Agreement with full rights of enforcement. The parties may not seek attorney's fees against NJDOE/OSE with regard to any enforcement actions initiated by Plaintiffs against NPS, nor may the parties seek attorney's fees against NPS with regard to any enforcement actions initiated by Plaintiffs against NJDOE/OSE.

12. NPS shall promptly designate, by job title and by name, a person (the "Designated Person") who shall be ultimately responsible for implementing each and every one of NPS' obligations under the terms of this Settlement Agreement. The Designated Person's responsibilities shall include, but not be limited to:

- a. Implementing the Electronic System;
- b. Ensuring that the data entered into the Electronic System is accurate and complete for every child;
- c. Providing such reports and information to NJDOE/OSE as NJDOE/OSE may require;

d. Providing to NJDOE/OSE access to individuals, records and data, including but not limited to providing that access required under this Section of this Settlement Agreement;

e. Ensuring compliance with the Goals of this Agreement;

f. Devising CAPs required under Section G of this Agreement;

g. Implementing the CAPs required under Section G of this Agreement.

13. In the event that NPS changes the Designated Person, NPS shall promptly notify NJDOE/OSE and Plaintiffs of such change in writing.

14. In the event that NJDOE/OSE determines, in its sole discretion, that NPS is not substantially and diligently fulfilling any of its responsibilities under this Settlement Agreement, NJDOE/OSE shall report such failure to the Designated Person, and advise Plaintiffs of such failures. The Designated Person shall promptly take action to remedy such failing. In addition, the Designated Person shall inform NJDOE/OSE and Plaintiffs in writing of the particular action that will be taken to remedy the failure, the particular persons who are charged with taking the action to remedy the failure, and the date by which the remedial action will be completed. If NPS does not timely remedy the failure, NJDOE/OSE may seek relief from the Court, including requesting that the Court enter an Order compelling certain action by NPS, and requesting an Order of contempt against NPS, or against the person or persons who failed to substantially and diligently fulfill their responsibilities to cure the failure. Plaintiffs shall be entitled to participate in all such proceedings. In addition, NJDOE/OSE shall report the failure to the Superintendent. The Superintendent shall promptly take all appropriate action, including, but not limited to, taking appropriate disciplinary action against NPS personnel.

15. NPS acknowledges that, in order to effect compliance with NPS' obligations under this Settlement Agreement, NJDOE/OSE may direct that NPS dedicate certain monies received from NJDOE to specific purposes. In the event that NJDOE/OSE directs the use of funds for specific purposes, NPS shall promptly provide NJDOE/OSE and Plaintiffs with verification that the funds were spent in accordance with NJDOE/OSE's directive. The verification shall be in a form and manner prescribed by NJDOE/OSE. NPS shall provide NJDOE/OSE access to any books or records, and shall make available to NJDOE/OSE any employee of NPS, for purposes of providing information and verification regarding the use of specified funds.

16. Nothing in this Settlement Agreement shall limit, in any way, any power, authority or prerogative that NJDOE/OSE may otherwise have under any federal or State law.

Section J. Missed Services

1. Within 120 days of the execution of this Agreement, NPS shall prepare and provide to NJDOE/OSE and Plaintiffs a list of all students from School Years 2009-2010 and 2010-2011 who did not have an identification meeting within 20 calendar days of receipt of a written referral or did not have an IEP implemented within 90 calendar days of receipt of written parent/guardian permission to conduct evaluations. The list shall be confidential, not subject to public disclosure or introduced into evidence in any other litigation or administrative proceeding. The list shall include the student's identification number, grade, referring school, classification, the services missed by the student, including the amount of time/service missed. If necessary and related to this litigation, upon request, Plaintiffs shall be provided with additional identifying

information regarding any student, unless the student's parent/guardian is addressing the missed services remedy as referenced in paragraph 4 of this Section.

2. For any Newark student whose identification meeting(s) was not conducted within 20 calendar days of receipt of written referral or whose IEP was not implemented within 90 calendar days of receipt of written parent permission to conduct evaluations, at the next regularly-scheduled IEP meeting for each such student, or at another meeting prior thereto, NPS, through each student's IEP Team, shall decide if the student is eligible for compensatory services and the amount and type of compensatory services to provide to the student to make up for the missed services.

3. Notice of the IEP meeting referenced in Section J-2 must, at a minimum, advise the parent/guardian that the issue of compensatory education, which consists of services provided in addition to the child's regular IEP-mandated services to make up for past missed services, will be discussed at the meeting. The notice must be provided in the parents' native language in accordance with N.J.A.C. 6A:14-2.4 and must be mailed to parents at least 10 days before the IEP meeting. At the IEP meeting, the IEP Team will explain the parent's/guardian's right to file for mediation or due process if they do not agree with the determination regarding compensatory education.

4. A member of the Plaintiff Class cannot seek enforcement of this Section of this Settlement Agreement. However, any class member is entitled to file for either mediation or due process to challenge any compensatory education determination.

5. When it is determined by the IEP Team that a student is eligible for compensatory services, those services shall be implemented as agreed by the IEP Team.

6. NPS shall ensure that the instructional programs of students will not be negatively impacted in delivering compensatory services.

7. NJDOE/OSE shall provide \$1,000,000 to NPS for this compensatory services program. NJDOE/OSE shall reimburse NPS for the provision of compensatory services during the 2011-2012 and 2012-2013 School Years to all students identified by the IEP Team(s) pursuant to this Section in an amount not to exceed \$1,000,000. Even if this allocated budget is not exhausted by the end of the 2012-2013 School Year, but all compensatory services to be provided by NPS have been delivered, all requirements under this Section J shall terminate. In no event shall NJDOE/OSE be required to provide any additional funding after the budget allocation of \$1,000,000 is spent. Should NPS' determinations for compensatory services under this Section exceed \$1,000,000, NPS shall not, under the provisions of this Agreement, be responsible for payments exceeding the allocated budget to be provided by NJDOE/OSE.

8. NPS shall provide to NJDOE/OSE and Plaintiffs any and all documentation requested by NJDOE/OSE to support reimbursement for the expenditures related to the provision of the compensatory services. NJDOE/OSE shall provide reimbursement on a quarterly basis. The NJDOE/OSE determinations regarding the amount of reimbursement to be provided to NPS pursuant to this paragraph shall be final and binding upon NPS.

9. NPS shall report to Plaintiffs and NJDOE/OSE quarterly, in writing, regarding the results of each IEP Team meeting referenced in this Section, including the determinations made regarding eligibility of students for compensatory services, the compensatory services determined by the IEP Team(s), the status of implementation of the compensatory services and the costs of such services.

Section K. Term of Agreement

This Agreement, once executed by Plaintiffs, NPS and NJDOE/OSE through their counsel, shall be effective and binding from the date on which it is filed with the District Court through the date on which all provisions of this Settlement Agreement have been achieved. NPS may seek partial relief from any Section C goal which a Region or school level(s) such as elementary, middle or high schools meets for a consecutive two-year period, however, such partial relief consists solely of a court dismissal of the Section C goal which was met and solely for the region(s) or school level(s) that met the goal.

Section L. Modification of Agreement

The provisions of this Settlement Agreement may be modified during the term of the Settlement Agreement as follows: Plaintiffs, NPS and NJDOE/OSE will confer regarding any proposed modifications and will submit any proposed modifications to the Court for approval. Should Plaintiffs, NPS or NJDOE/OSE dispute the need for the proposed modifications, the Court shall resolve such dispute.

Section M. Entire Agreement

This Settlement Agreement constitutes the entire agreement between Plaintiffs, NPS and NJDOE/OSE and supersedes any prior understanding or representation of any kind preceding the date of its execution. There are no other promises, conditions, understandings, contracts or other Agreements, whether oral or written, relating to the subject matter of this Agreement.

Section N. Changes in Law

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

Section O. Attorneys' Fees


1. NPS agrees to pay attorneys' fees in the amount of \$ 233,000 for the services of Plaintiffs' counsel in connection with the work of counsel reasonably necessary to the resolution of this matter through the date of this Settlement Agreement, half of which is to be paid to the Education Law Center within sixty (60) days of the filing of this Settlement Agreement by the Court, and the remainder of which is to be paid to the Education Law Center within one year of the filing of this Settlement Agreement by the Court. NJDOE/OSE agrees to pay attorneys' fees in the amount of \$ 117,000 for the services of Plaintiffs' counsel in connection with the work of counsel reasonably necessary to the resolution of this matter through the date of this Settlement Agreement, half of which is to be paid to the Education Law Center within sixty (60) days of the filing of this Settlement Agreement by the Court, and the remainder of which is to be paid to the Education Law Center within one year of the filing of this Settlement Agreement by the Court.

2. Other than the fee specified in paragraph 1 of this Section and paragraph 11 of Section I, no party shall be entitled to recover or charge any attorney's fees or costs against any other

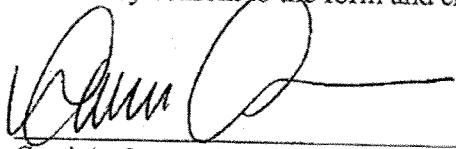
party, except as a prevailing party on an application to enforce a provision of this Settlement Agreement and only upon order of the Court.

It is so ordered.

Dated this 27 day of ^{January, 2012} ~~December~~, 2011.

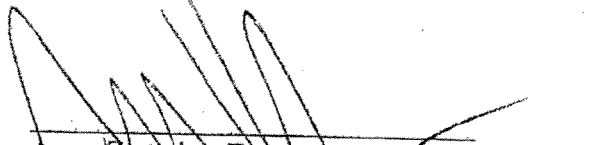

Hon. Stanley R. Chesler, U.S.D.J.

We hereby consent to the form and entry of the within Order:


Cami Anderson, Superintendent
Newark Public Schools
2 Cedar Street
Newark, NJ 07102


12/16/11

Dated:


Arsen Zartarian, Esq.
Newark Public Schools
2 Cedar Street
Newark, NJ 07102
Attorney for Defendant Newark Public Schools

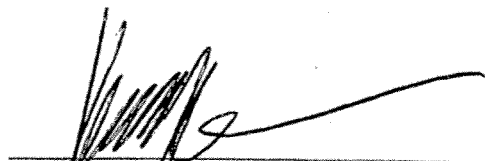
Dated:

12/15/11


Christopher Cerf, Acting Commissioner
New Jersey Department of Education
100 Riverview Plaza
Trenton, NJ 08625

Dated:

1/10/12




Kevin Jespersen, Esq.
Michael Walters, Esq.
NJ Department of Law
25 Market Street
P.O. Box 112
Trenton, NJ 08625
Attorney for State Defendants

Dated: 1/12/12



Ruth Deale Lowenkron, Esq.
Education Law Center
60 Park Place, Suite 300
Newark, New Jersey 07102
Attorneys for Plaintiffs

Dated: 12-13-11



Lawrence Lustberg, Esq.
Gibbons, Del Deo, Dolan, Griffinger & Vecchione, P.C.
One Riverfront Plaza
Newark, NJ 07102-5497
Attorneys for Plaintiffs

Dated: 12/13/11

Intervention and Referral Services (I&RS) Team Procedure Review

Name of Student: _____ D.O.B. _____
 School: _____ Grade: _____

Instructions: Respond to questions 1 and 2 and, if appropriate, question 3 regarding the I&RS activities regarding the student named above.

1. Was there a request for intervention and referral services for the student?	<input type="checkbox"/> YES <input type="checkbox"/> NO
2. Did the I&RS team identify a need for intervention and referral services for the students? IF YOU ANSWERED "NO" TO QUESTION 2, DO NOT ANSWER QUESTION 3. IF YOU ANSWERED "YES" TO QUESTION 2, YOU MUST ANSWER QUESTION 3.	<input type="checkbox"/> YES <input type="checkbox"/> NO
3. Did the I&RS team develop an action plan for the student?	<input type="checkbox"/> YES <input type="checkbox"/> NO