

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

C.P., individually and on behalf of
F.P., a minor child; D.O. individually
and on behalf of M.O., a minor child;
S.B.C., individually and on behalf of
C.C., a minor child; A.S., individually
and on behalf of A.A.S., a minor child;
M.S., individually and on behalf of her
minor child, H.S.; Y.H.S., individually
and on behalf of his minor child,
C.H.S.; E.M. on behalf of her minor
child, C.M.; M.M., individually and on
behalf of K.M.; L.G., individually and
on behalf of her minor child, T.M.;
E.P., individually and on behalf of her
minor child, Ea.P.; and on behalf of
ALL OTHERS SIMILARLY
SITUATED,

Plaintiffs,

v.

NEW JERSEY DEPARTMENT OF
EDUCATION; ANGELICA ALLEN-
McMILLAN, Acting Commissioner of
Education, in her official capacity,

Defendants.

Civil Action No. 19-cv-12807-NLH-MJS

Noel L. Hillman, U.S.D.J.

Matthew J. Skahill, U.S.M.J.

**CONSENT ORDER AND
SETTLEMENT AGREEMENT**

THIS AGREEMENT is entered into by Plaintiffs C.P, individually and on behalf of F.P., a minor child; D.O. individually and on behalf of M.O., a minor child; S.B.C., individually and on behalf of C.C., a minor child; A.S., individually and on behalf of A.A.S., a minor child; M.S., individually and on behalf of her minor child, H.S.; Y.H.S., individually and on behalf of his minor child, C.H.S.;

E.M. on behalf of her minor child, C.M.; M.M., individually and on behalf of K.M.; L.G., individually and on behalf of her minor child, T.M.; E.P., individually and on behalf of her minor child, Ea.P., individually and on behalf of themselves and a class of persons similarly situated (the “C.P. Class” or “C.P. Plaintiffs”) and Defendants New Jersey Department of Education (“NJDOE”) and Angelica Allen-McMillan (collectively, “Defendants”). C.P. Plaintiffs and Defendants shall be referred to individually as a “Party” and jointly as the “Parties.”

WITNESSETH THAT:

WHEREAS, on May 22, 2019, the C.P. Class filed a class action lawsuit in the Court against Defendants, *C.P., et al. v. N.J. Dept. of Educ., et al.*, No. 19-cv-12807 (the “C.P. Lawsuit”), alleging violations of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* (“IDEA”) and 42 U.S.C. § 1983 and seeking wide-ranging declaratory and injunctive relief, as well as the recovery of attorney’s fees and costs;

WHEREAS, on October 27, 2023, the Court appointed as Class Counsel Reisman Carolla Gran & Zuba LLP, Law Office of David R. Giles, Education Law Center, Law Office of Denise Lanchantin Dwyer LLC, Thurston Law Offices LLC, and Wasserman Legal LLC;

WHEREAS, this Settlement Agreement concerns New Jersey’s special education dispute resolution system;

WHEREAS, on February 27, 2020, the C.P. Class filed the Second Amended Complaint;

WHEREAS, on June 19, 2020, Defendant filed an Answer to the Second Amended Complaint in the C.P. Class matter;

WHEREAS, since June 2022, the Parties have exchanged written settlement proposals and counter-proposals and have engaged in in-person settlement conferences to negotiate the terms of this Settlement Agreement;

WHEREAS, through these settlement negotiations, the Parties have negotiated and agreed to the specific details of this Agreement;

WHEREAS, the Parties acknowledge that, to the extent possible, it is in their best interests to resolve the issues raised in this Settlement Agreement by means other than litigation and, to this end, have on this day agreed to enter into this federally enforceable Settlement Agreement;

WHEREAS, the Parties recognize, and the Court by entering this Consent Order finds, that this Consent Order has been negotiated by the Parties in good faith and will avoid further litigation between the Parties and that this Consent Order is fair, reasonable, and in the public interest;

NOW THEREFORE, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.
2. Venue is proper pursuant to 28 U.S.C. § 1391.

II. REVISED CLASS DEFINITIONS

3. The definition of the class certified pursuant to Fed. R. Civ. P. 23(b)(2) is amended as follows: All persons who, pursuant to the IDEA, have filed or will file during the period of time that the Court retains jurisdiction, a due process petition with NJDOE, and whose cases are pending in the New Jersey Office of Administrative Law (“NJOAL”).
4. The definition of the Issues Class certified pursuant to Fed. R. Civ. P. 23(b)(3) is amended as follows: All persons who, pursuant to IDEA, filed due process petitions with NJDOE on or after May 23, 2016, who, after their due process petition was transmitted to the NJOAL, did not receive a decision within

the timeline as defined in 34 C.F.R. §300.515(a), (c) and the violation occurred prior to approval of this Agreement.

III. DEFINITIONS OF TERMS AS USED IN THIS AGREEMENT

5. “**Pending Cases**” shall be defined as any and all due process petitions for which the resolution period or the agreed upon adjusted resolution period has ended, in accordance with 34 C.F.R. §300.510(b) or (c), but the petition remains unresolved in NJOAL, regardless of whether the case is within or has surpassed the 45-day timeline.

6. “**Final Decision Cases**” shall be defined as any and all due process petitions that have been resolved in full, and shall include two distinct groups of due process petitions:

- a. **Final Decisions Post-Full Hearing**, which shall include any and all due process petitions that are resolved, in full, through the issuance of a final decision by NJOAL following the completion of a due process hearing; and
- b. **Final Decisions-No Full Hearing**, which shall include any and all due process petitions that are resolved, in full, through the issuance of a final decision by NJOAL without the completion of a due process hearing, including summary decision, dismissal of a petition with or without prejudice, and NJOAL-approved settlement agreements.

7. “**95% Compliance**” shall be defined as the timely resolution of due process petitions, in accordance with 34 C.F.R. § 300.515(a), (c), in 95% of all special education due process matters at the NJOAL during a four month period, provided that, when examining each month of the four month period, there is no decrease below 95% in the compliance rate from the prior month. The Compliance Monitor shall determine the percentage of compliance achieved in each of three

areas—**Pending Cases, Final Decisions Post-Full Hearing, and Final Decisions-No Full Hearing:**

- a. For **Pending Cases**, the total number of Pending Cases that remain at the end of each four month period that are still within the 45-Day timeline, excluding specific extensions of time requested by a party and granted by an ALJ, shall be divided by the total number of Pending Cases that remain at the end of the four month period.
- b. For **Final Decisions Post-Full Hearing**, the total number of Final Decisions Post-Full Hearing at the end of each four month period that were resolved within the 45-Day Timeline, excluding specific extensions of time requested by a party and granted by an ALJ, shall be divided by the total number of Final Decisions Post- Full Hearing that were resolved during the four month period.
- c. For **Final Decisions-No Full Hearing**, the total number of Final Decisions-No Full Hearing at the end of each four month period that were resolved within the 45-Day Timeline, excluding specific extensions of time requested by a party and granted by an ALJ, shall be divided by the total number of Final Decisions-No Full Hearing that were resolved during the four month period.

For purposes of determining NJDOE’s compliance with the Settlement, NJDOE must attain 95% compliance separately for each of the three areas above.

8. “**Day 1**” of the 45-Day timeline shall be defined as the first day following the end of the 30-day resolution period, in accordance with 34 C.F.R. §300.510(b), the end of the parties’ agreed-upon adjusted resolution period, in accordance with 34 C.F.R. §300.510(c) or in the event of a district filing, consistent with the process outlined in N.J.A.C. 6A:14-2.7(h)(11), Day 1 is the day after filing, unless the parties agree to voluntary mediation, in which case Day 1

shall be the first day after completion of the 30-day mediation period or the end of the parties' agreed-upon adjusted mediation period.

9. "45 Days or 45-Day Timeline" shall be defined as 45 calendar days from Day 1, as defined at Paragraph 8, and shall be calculated exclusively using calendar days, in accordance with 34 C.F.R. § 300.515(a), (c), excluding specific extensions of time requested by a party and granted by an ALJ as provided in 34 C.F.R. § 300.515(c). Defendants shall immediately cease counting 45 Days or the 45-Day Timeline in any manner other than calendar days, and shall revoke any and all policies, practices, guidelines, and/or procedures that permit the counting of 45 Days or the 45-Day Timeline in any manner other than calendar days.

IV. RELIEF FOR THE RULE 23(b)(2) CLASS

10. For any due process petition filed pursuant to IDEA, NJDOE shall ensure, pursuant to 34 C.F.R. § 300.515, that not later than 45 days after the expiration of the 30-day resolution period under 34 C.F.R. § 300.510(b), or the agreed-upon adjusted resolution periods described in 34 C.F.R. § 300.510(c), and accounting for the specific extensions of time requested by a party and granted by an Administrative Law Judge as provided in 34 C.F.R. § 300.515(c):

- a. A Final Decision, as defined *supra* at Paragraph 6, is reached by NJOAL; and
- b. NJOAL has mailed a copy of the decision to each of the parties.

11. For purposes of compliance with this Agreement, for all Pending Cases that exist on the date of this Agreement's approval by the Court, the 45-Day Timeline as set forth in 34 C.F.R. § 300.515 (a), (c) will reset and begin to run on the calendar day immediately following the date of final approval of this Agreement.

12. To ensure that future Rule 23(b)(2) Class Members know about the Settlement, the transmittal documents from NJDOE to NJOAL arising from a due

process petition shall, for the duration of the Court's jurisdiction over this matter, include a black box placed at the centered, at 1 point larger font than the rest of the text, with the following language:

CLASS ACTION NOTICE

Due to the entry of a Consent Order resolving a Class Action, a federal court has appointed a Compliance Monitor to oversee the timely resolution of special education due process hearings. If you believe that your due process petition is not being resolved in a timely manner, you can contact the Compliance Monitor at [email address]. You can contact Class Counsel at info@NJ45dayclassaction.com with questions or concerns regarding the Consent Order, which is explained here [notice link].

V. RELIEF FOR THE RULE 23(b)(3) ISSUES CLASS

13. Any member of the Rule 23(b)(3) Issues Class shall have two (2) years from the date of entry of this Order to file a claim in this court for individual relief under the IDEA for a violation arising out of or related to the timeline in 34 C.F.R. § 300.515(a), (c). This agreed extension is in lieu of class action tolling.

VI. APPOINTMENT OF COMPLIANCE MONITOR

14. The Court will appoint a Compliance Monitor using the following process.
- a. The parties will attempt to agree upon a candidate to serve as a Compliance Monitor. The Compliance Monitor may consist of a single person, a team of individuals, or one or more organizations. If successful, the parties jointly will present a candidate to the Court for appointment by no later than 30 days after final approval of this Agreement. If the parties cannot agree on a candidate, they shall each propose three candidates to the Court by no later than 30

days after final approval of this Agreement and the Court will select the person to serve as Compliance Monitor.

- b. If, in the future, the Compliance Monitor becomes permanently unavailable for any reason or is unable to fulfill the duties of the Compliance Monitor, the parties will meet and confer to determine whether a mutually acceptable replacement can be recommended to the Court for appointment. If there is no mutually agreed upon candidate, the Parties may make separate recommendations to the Court.
- c. NJDOE is responsible for compensating the Compliance Monitor and will establish a reasonable rate of pay consistent with market rates for the services being performed.

VII. ROLE, DUTIES, AND AUTHORITY OF COMPLIANCE MONITOR

15. The general role of the Compliance Monitor is to provide the NJDOE with the support, guidance, experience, and expertise needed to comply with the terms of this Agreement.

16. The Compliance Monitor's duties include, but are not limited to, the following: To develop a compliance plan; to oversee and monitor the implementation of the compliance plan; to amend the plan, as necessary and appropriate to address non-compliance; to review and analyze data related to non-compliance with the 45-Day rule; to identify and address barriers to non-compliance, through the development and implementation of targeted interventions; to make recommendations regarding the development, implementation, and assessment of all initiatives, interventions, and corrective actions designed to rectify non-compliance with the 45-Day Rule; and to oversee, monitor, measure, assess, and report upon the effectiveness of the compliance plan and implementation of interventions to improve compliance. The Compliance

Monitor will meet and discuss revisions and issues related to the plan with NJDOE and Class Counsel, as the Monitor deems appropriate or when requested by one of the parties.

17. The Compliance Monitor shall have full access to any and all information and data the Monitor needs from NJDOE to fulfill the Monitor's role and duties. Data includes, but is not limited to, data needed to determine, measure, and analyze the presence and causes of non-compliance, and barriers to compliance, with the 45-Day timeline; and data needed to measure, assess, and report upon the effects of interventions developed to address non-compliance. NJDOE shall make all reasonable efforts to obtain and provide any and all information and data the Monitor requests, including information and data in the custody and control of Office of Administrative Law. Once the information is provided to NJDOE, NJDOE will provide that information to the Monitor in a timely manner.

18. The Monitor may conduct individual, confidential interviews as part of the data collection process, as the Monitor deems appropriate. The Monitor shall ensure that the confidentiality of persons interviewed and of identifying information shared is protected unless the interviewee permits disclosure.

19. The Compliance Monitor shall operate independently of the parties and the Court, and shall have the authority to recommend corrective actions to ensure compliance with the settlement.

VIII. PLAN FOR COMPLIANCE

20. By no later than 90 days after the Monitor's appointment, the Monitor shall develop a Compliance Plan as stated in Paragraph 16 above. The Compliance Plan shall be a working document. As part of the plan, NJDOE shall collect data, including through the Adjournment Form referenced in Paragraph 22, as well as the electronic survey at the end of the Adjournment Form and/or through NJOAL's

electronic case management system. The Compliance Plan shall identify the data to be collected monthly in accordance with this Agreement, as well as any additional information and data to be collected as deemed appropriate by the Monitor, and shall identify the format in which the data shall be provided. Where the Monitor requires additional information or data not captured by the electronic survey or NJOAL's electronic case management system, the parties shall mutually agree upon another mechanism for collecting such information and data.

21. Upon the hiring of the Compliance Monitor, NJDOE shall provide the Monitor with a list of the unresolved due process petitions that have been transmitted to the NJOAL up to the date of approval of the Settlement, including the date of transmittal, and shall make all reasonable efforts to provide the Monitor with full access to the case files for all unresolved due process petitions that exceeded the 45-Day Timeline as of the date of final approval of this Agreement. This initial data, which pre-dates approval of this Agreement, shall not be considered evidence of non-compliance but rather shall serve as a starting point for the Monitor to begin the process of identifying the presence and causes of non-compliance and barriers to compliance, and may be included in the Compliance Plan as the Monitor deems appropriate.

22. An Adjournment Form (attached here as Exhibit A) will be used to track specific extensions of time requested by the parties and granted by the ALJ. Each Adjournment Form will be maintained in the electronic case file for each matter.

IX. COMPLIANCE REPORTING

23. The Monitor shall, at the end of each monitoring period according to the schedule set forth at Paragraphs 28 and 32 below, submit a report detailing the status of compliance with the timeline set forth in 34 C.F.R. § 300.515(a), (c).

24. On a monthly basis, starting sixty (60) days after the date of final approval of this Agreement by the Court, NJDOE will provide to the Compliance Monitor (i) the number of due process petitions received by NJDOE for that month and (ii) the number of due process petitions transmitted to the NJOAL.

25. On a monthly basis, starting thirty (30) days after the date of final approval of this Agreement by the Court, NJDOE will provide to the Compliance Monitor the data needed to assess compliance as set forth at Paragraph 7 above.

26. To assess compliance, the Compliance Monitor may review the following documents for each **Pending Case**:

- a. The Transmittal Notice and accompanying transmittal documents, which shall state the initial 45-Day deadline for disposition, calculated in accordance with Paragraph 9 above; and
- b. Any and all completed and signed Adjournment Forms showing a party's request for a specific adjournment; and
- c. All scheduling orders (including the initial scheduling order).

27. To assess compliance, the Compliance Monitor may review the following documents for each and every **Final Decision Case**, disaggregated into the two distinct **Final Decision Case** groups set forth in Paragraphs 6(a) and (b) above:

- a. The Transmittal Notice and accompanying transmittal documents, which shall state the initial 45-Day deadline for disposition, calculated in accordance with Paragraph 9 above; and
- b. Any and all completed and signed Adjournment Forms showing a party's request for a specific adjournment and the ALJ's disposition;
- c. All scheduling orders (including the initial scheduling order); and

- d. The dated and signed order of dismissal or notice of withdrawal, the final decision approving a settlement, the final decision in the case issued after a hearing, and/or any other decisions disposing of the case.

28. The Monitor will issue a report every four months, or at a shorter regular interval should the Monitor so choose, in accordance with the process and timelines set forth at Paragraph 32 below. Beyond the 18 months after approval of the Agreement, the Monitor will issue reports on a semiannual basis for as long as the Court retains jurisdiction.

29. The first report issued after the hiring of the Compliance Monitor may include, but not be limited to, a baseline of relevant data, including data available prior to the approval of the Settlement; a summary of the initiatives, interventions, and corrective actions put in place prior to the first monitoring reporting period to address the problem and the results of same; data collected during the first monitoring reporting period; a hypothesis of the causes of non-compliance and barriers to compliance; a summary of the steps taken by NJDOE during the first monitoring period to identify and address the causes of non-compliance; a summary of the actions NJDOE will take in the second monitoring period to rectify noncompliance; and how said actions will be measured and assessed.

30. The remaining reports within the 18-month time period and the subsequent semiannual reports shall include, but not be limited to, a summary of the initiatives, interventions, and corrective actions put in place during that monitoring reporting period to address the problem and the results of same; data collected during that monitoring reporting period; a discussion of the causes of non-compliance and barriers to compliance; a summary of the steps taken by NJDOE during that monitoring period to identify and address the causes of non-compliance; a summary of the actions NJDOE will take in the next monitoring

period to rectify noncompliance; and how said actions will be measured and assessed. The report shall also specifically address, among other data points, in both matched and aggregate (where appropriate and in accordance with this Agreement) format on a monthly basis and monitoring period basis, the following: (i) how many due process petitions NJDOE received each month; (ii) how many due process petitions were transmitted to NJOAL; (iii) of the petitions transmitted, how many days did it take for transmittal to occur; (iv) how many due process petitions were **Pending Cases** at the end of the month; (v) of the **Pending Cases**, how many were beyond the 45-Day Timeline, excluding specific requests for extension of time as allowed pursuant to 34 C.F.R. §300.515(c); (vi) how many due process petitions were **Final Decisions Post-Full Hearing** at the end of the month; (vii) of the **Final Decisions Post-Full Hearing**, how many were beyond the 45-Day Timeline, excluding specific requests for extension of time as allowed pursuant to 34 C.F.R. §300.515(c); (viii) how many due process petitions were **Final Decisions-No Full Hearing** at the end of the month; (ix) of the **Final Decisions-No Full Hearing**, how many were beyond the 45-Day Timeline, excluding specific requests for extension of time as allowed pursuant to 34 C.F.R. §300.515(c).

31. The Compliance Monitor shall use the information set forth in Paragraphs 26 and 27 to calculate the percentages of compliance with the timelines in 34 C.F.R. §300.515(a), (c) of due process petitions that have been transmitted to the NJOAL in **Pending Cases, Final Decisions-Post Full Hearing, and Final Decisions – No Full Hearing**.

32. When issuing a Monitoring Report, the Monitor shall follow the timeline and process listed below:

- a. The Monitoring Report shall be issued by no later than forty-five (45) days following the last day of the monitoring period.

- b. The Monitor will issue a draft of the report to the parties within twenty (20) days of the last day of the monitoring period.
- c. The parties will have ten (10) days after receipt of the draft report to submit any comments/objections to the Monitor.
- d. The Monitor will release the final report fifteen (15) days after receiving the parties' comments/objections.
- e. Within 30 days of receiving the finalized report, the parties may meet with the Monitor separately or together to discuss how to address any issues or concerns raised in the report ("post-report meeting").
- f. Each report after the first report should reflect a positive trend toward achieving or maintaining 95 percent compliance with 34 C.F.R. § 300.515(a), (c), as defined at Paragraph 7. In the event a report does not reflect a positive trend toward meeting 95 percent compliance with the timelines as defined in 34 C.F.R. § 300.515(a), (c), the Monitor shall hold a post-report meeting to discuss and address compliance barriers and/or issues with meeting the 95 percent benchmark at the post-report meeting.

33. Upon issuance of the final report, NJDOE shall, within five (5) business days, post a copy of the report, with redaction of any personally identifiable information, on its website in a clearly marked location.

X. OPPORTUNITY FOR INPUT TO MONITOR

34. Within fifteen (15) calendar days of final approval of this Agreement by the Court, NJDOE will provide an opportunity for individuals to provide input, anonymously or otherwise, regarding experiences with the NJDOE and NJOAL in having due process petitions processed, heard, and/or resolved by establishing an

email account accessible by the Monitor. The Monitor shall regularly check the email account and may choose to disclose this input within the monitoring reports.

XI. ENFORCEMENT AFTER EIGHTEEN MONTHS

35. The Class will not seek an order of contempt for eighteen (18) months after the effective date of the final approval of this Agreement by the Court. After eighteen (18) months from the date this Agreement is approved by the Court, if Class Counsel believes that Defendants have not complied materially with any provision of this Agreement, Class Counsel shall provide the Department of Education, with a notice containing (i) the act of non-compliance, (ii) a reference to the specific provision(s) of the Agreement that the Class alleges Defendants have violated, and (iii) a statement of the remedial action sought. Defendants shall have an opportunity to respond to Class Counsel's claims within 30 days. The parties shall then meet and confer within 30 days to discuss a resolution of the issues. If the parties do not resolve the issues after meeting, the Class may file a formal application with the Court alleging its claim of material non-compliance and seeking all appropriate relief. For purposes of this provision, material non-compliance is defined as any material failure by NJDOE to comply with any terms of this Agreement, including but not limited to, failing to achieve a sustained compliance rate of 95%, as defined in Paragraph 7, *supra*, for either of the **Final Decision** groups or the **Pending Cases** Group, within 18 months of final approval of this Agreement by this Court.

XII. INCENTIVE PAYMENTS

36. NJDOE shall make incentive payments to the family of each named plaintiff in the amount of \$5,000, for an aggregate amount of \$50,000. This award is subject to any child support and/or State liens against the individual Named Plaintiffs. After final approval, payment will be made upon receipt of completed child support certifications for each Named Plaintiff and New Jersey W-9(s) for

the Named Plaintiffs. Upon receipt of the above-mentioned documentation, payment will be made within thirty (30) days. Should payment not be made within 90 days, the Parties may seek assistance of the Court. Payments to the Named Plaintiffs should be made via check payable to each individual Named Plaintiff.

XIII. ATTORNEY'S FEES

37. Defendants agree that the Class is the prevailing party for the purposes of an award of attorney's fees pursuant to 20 U.S.C. § 1400 et seq. and 42 U.S.C. § 1983 and is entitled to an award of reasonable and necessary fees.

38. The parties further agree that Class Counsel is entitled to reasonable fees and expenses for legal services performed related to the post-judgment monitoring as stated in Section IX of this Agreement.

39. Class Counsel provided Defendants' counsel with a fee demand for the reasonable and necessary fees incurred during this matter, as well as, the anticipated fees for the post-judgment monitoring mentioned in Section IX of this Agreement. The fee demand for the reasonable and necessary fees already incurred included any and all proofs supporting the demand, including billing records demonstrating the date of service, the hourly rate, the time spent on the work, and a description of the nature of the work performed. After Class Counsel provided Defendants with its fee demand and the complete accompanying proofs, the parties negotiated the fees with the assistance of the Honorable Joel Schneider, former U.S.M.J. at NJDOE's expense.

40. As a result of the negotiation assisted by the Honorable Joel Schneider, Defendants will not oppose an application for an award of attorneys' fees and expenses of \$4,750,000.00 for all work performed through resolution of the Fairness Hearing scheduled as a result of the Motion for Preliminary Approval

of the Settlement. Defendants will not pay this amount from funds received by them pursuant to the Individuals with Disabilities Education Act.

41. All payments of attorney's fees and costs will be made after Defendants' Counsel receive the legally required paperwork, which may include, but is not limited to, a completed State of New Jersey W-9; State of New Jersey Vendor Invoices and/or signed vouchers, to the extent necessary; and Registration through the New Jersey Treasury to the extent necessary for the Treasury to process the payment.

42. Any payment of attorneys' fees awarded for work through final approval will be distributed as follows: Defendants will pay 41.5488% of any attorney's fees awarded for work performed through approval of the settlement to John Rue & Associates, LLC and issue a 1099 for that amount to John Rue & Associates, LLC. Defendants will pay 58.4512% of any attorney's fees awarded for work performed through approval of the settlement to the trust account of Reisman Carolla Gran & Zuba LLP (RCGZ) and issue a 1099 for that amount, which will be distributed by RCGZ to counsel other than John Rue & Associates LLC in accordance with a private agreement between those firms. After final approval, Defendants will make the payment of attorney's fees and costs within 60 days after receipt of the respective legally-required paperwork.

43. The parties agree and recognize that Defendants will not be a party to the agreement between Plaintiffs' Counsel for the allocation of the payment of fees and costs. If a dispute should arise between Plaintiffs' Counsel regarding the allocation of the awarded fees and costs, Defendants shall not be named as a party or deemed responsible for any payment arising out of the dispute.

44. For fees sought for work performed during the period of compliance monitoring pursuant to Section IX above, the Parties agree to use the procedure set forth in Paragraph 39 to determine the amount of fees to be paid by Defendants as

to each monitoring period, except that the Parties may choose whether to retain a mediator to assist in the negotiation of the fees.

XIV. PROCEDURE FOR APPROVAL OF SETTLEMENT

45. The parties are ordered to meet and confer on the form of notice to the class, the means of dissemination, the objection period, and any other issues related to notice. If the parties cannot reach agreement, they shall separately state their positions to the Court.

46. The Court will Order notice to the Class, including an opportunity to object, and schedule a fairness hearing in due course.

47. NJDOE will disseminate the Notice to the Class and bear the cost of the dissemination. For the Fed. R. Civ. P 23(b)(3) class members and current Fed. R. Civ. P. 23(b)(2) class members, the NJDOE will provide the class notice to both the class members and the class members' listed attorneys in NJDOE's special education database. The notice to the class members will be sent via U.S. mail. The notice to the attorneys will be sent via electronic mail.

XV. RELEASE OF CLAIMS

48. Effective upon the entry of this Order and Agreement by the Court, in consideration of the relief set forth herein:

- a. It is expressly understood and agreed by the Parties that this Agreement constitutes a complete and final release between the parties with respect to any and all past and present (but not future) liabilities, claims, demands, rights and causes of action, guarantees, claims for damages or other relief, settlements, costs, and compensation of any kind or nature whatsoever, arising out of the C.P. Class's claims, excluding claims concerning Plaintiffs' Second Motion for Preliminary Injunction (see Paragraph 48(e), *infra*). The Second Amended Complaint did not request any

individualized relief, so this Agreement does not release any past, present, or future individual claims.

- b. In return for the consideration of this Agreement, the C.P. Class knowingly and voluntarily, completely, and forever, releases and discharges Defendants and each of Defendants' officers, from any and all claims, causes of action, judgments, obligations or liabilities of whatever kind and character raised in the Second Amended Complaint filed on February 27, 2020, excepting any individualized relief.
- c. Notwithstanding the foregoing subparagraphs 48(a) and 48(b), nothing in this Agreement shall bar any member of the C.P. Issues Class as defined in Paragraph 4 of this Agreement from bringing a future action in an individual capacity under the IDEA arising out of a past, present, or future violation of the timeline as defined in 34 C.F.R. § 300.515(a), (c) for any form of relief, including requests for individualized relief, not pled in the Second Amended Complaint nor does this bar them from seeking relief, including individualized relief, related to the implementation of procedural guidelines as set forth in subparagraph (e) below. The parties acknowledge and agree that Defendants reserve any and all defenses and arguments related to those claims (subject to the tolling agreed to herein).
- d. The Parties acknowledge that two named plaintiffs, (i) C.P. o/b/o F.P. and (ii) M.S. o/b/o H.S., have asserted individual claims in separate actions, *inter alia*, against defendant NJDOE. The release in this Agreement does not affect any claims or defenses that have been or may be alleged in those actions.

- e. Plaintiffs hereby withdraw the Second Motion for Preliminary Injunction without prejudice. The Second Motion for Preliminary Injunction related to claims in the Second Amended Complaint regarding the attempt to adopt “Procedural Guidelines” in 2020. NJDOE has withdrawn the 2020 proposed guidelines. The parties expressly understand and agree that, because the Second Motion for Preliminary Injunction is being withdrawn without prejudice, the request for injunctive relief can be renewed. Nothing in this Agreement prevents any Class Member, parent of a student with a disability, or interested party from separately challenging any attempt to implement new guidelines or the implementation or attempted reimplementaion of any or all of the 2020 proposed guidelines.

XVI. EFFECTIVE DATE

49. The Effective Date of this Consent Order shall be the date upon which this Consent Order is entered by the Court or a motion to enter the Consent Order is granted, whichever occurs first, as recorded on the Court’s docket.

XVII. RETENTION OF JURISDICTION AND TERMINATION DATE

50. The Court shall retain jurisdiction over this case until termination of this Consent Order, for the purpose of resolving disputes arising under this Order or entering orders modifying this Order, or effectuating or enforcing compliance with the terms of this Order.

51. When the Compliance Monitor finds that NJDOE has reached 95% compliance with the timeline as defined in 34 C.F.R. §300.515(a), (c), as defined in Paragraph 7, *supra*, Defendants may move to terminate this Consent Order. The Class may object, and the Court will resolve the matter.

XVIII. OTHER MATTERS

52. *No admission of liability.* Nothing in this agreement shall be construed to be an admission of liability under any theory asserted in the Second Amended Complaint.

53. *Entire Agreement.* This Agreement, including exhibits, contains all the agreements, conditions, promises, and covenants between Plaintiffs and Defendants regarding matters set forth in it, and supersedes all prior or contemporaneous agreements, drafts, representations, or understandings, either written or oral, with respect to the subject matter of the present Agreement.

54. *Modification.* The terms and conditions of this Agreement can be amended, changed, or altered only by written agreement of the Parties through their respective counsel or by order of the Court upon motion.

55. *Drafting of this Agreement.* This Agreement is deemed to have been drafted by all Parties hereto, as a result of arm's length negotiations among the Parties. Whereas all Parties have contributed to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.

56. *Execution by Facsimile and in Counterparts.* This Agreement may be executed by the Parties hereto by facsimile and in separate counterparts, and all such counterparts taken together will be deemed to constitute one and the same agreement.

57. *Interpretation.* The language of this Agreement will be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties. The headings in this Agreement are solely for convenience and will not be considered in its interpretation. Where required by context, the plural includes the singular and the singular includes the plural, and the terms "and" and "or" will mean "and/or." This Agreement is the product of negotiations and joint drafting so that any ambiguity will not be construed against any Party. If any provision or provisions of this Agreement are found to be contrary to law, the Parties agree that

the remaining provisions will not be affected and will remain in full force and effect.

58. *Computation of Time.* Computation of time or periods of time referenced in any document related to this Settlement Agreement shall be computed pursuant to Federal Rule of Civil Procedure 65.

59. *Additional Documents.* To the extent any documents are required to be executed by any of the Parties to effectuate this Agreement, each Party hereto agrees to execute and deliver such and further documents as may be required to carry out the terms of this Agreement.

60. *Authority to Bind.* The undersigned each represent and warrant that they are authorized to sign on behalf of, and to bind, the respective Parties of this Agreement.

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

XIX. FINAL JUDGMENT


62. Upon approval and entry of this Consent Order by the Court, this Consent Order shall constitute a final judgment of the Court. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SETTLEMENT AGREEMENT, INCLUDING RETENTION OF JURISDICTION FOR ENFORCEMENT, APPROVED BY THE COURT:


Dated and entered this _____ day of _____, 2023

Noel L. Hillman
United States District Judge


FOR THE CLASS




Catherine Merino Reisman
Reisman Carolla Gran & Zuba LLP



David R. Giles
Law Office of David Giles




Robert Kim
Education Law Center



Denise Lanchantin Dwyer
Law Office of Denise Lanchantin Dwyer LLC



Robert C. Thurston
Thurston Law Offices LLC



Jeffrey I. Wasserman
Wasserman Legal LLC

FOR THE DEFENDANTS



Daniel Dryzga
Assistant Attorney General

EXHIBIT A TO AGREEMENT



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

**SPECIAL EDUCATION DUE PROCESS HEARING
EXTENSION / ADJOURNMENT FORM**

Under 34 C.F.R. § 300.515(a) of the Individuals with Disabilities Education Act, a final decision must be issued not later than 45 days after the expiration of the resolution period under 34 C.F.R. § 300.510(b), or the adjusted time periods described in 34 C.F.R. § 300.510(c), excluding specific extensions of time requested by a party and granted by an ALJ under 34 C.F.R. § 300.515(c).

PART ONE

I. Case Information

- (A) Case Name:
- (B) OAL Docket No.:
- (C) Agency Ref. No.:
- (D) Transmittal Date:

II. Time Period

- (A) Date Resolution Period Expired:
- (B) Original Final Decision Due Date (Original 45-calendar-day time period, if no prior extension had been granted):
- (C) Extended Final Decision Due Date (Current 45-calendar-day time period, if a prior extension had been granted):

III. Extension Request

- (A) The hearing date for which the party requested the specific extension:
- (B) The reason for the extension:
- (C) The length of the extension (in calendar days):

IV. Signatures and Dates

(A) The Parties

- (1) The Requesting Party (required):
- (2) The Requesting Party (if joint):
- (3) The Consenting Party (if consenting):
- (4) The Objecting Party (if objecting):

(B) The ALJ

Granted Denied , ALJ

(C) All Hearing Dates and New Final Decision Due Date

- (1) All Hearing Dates:
- (2) New Final Decision Due Date:

(A) **WHEN NO PRIOR EXTENSION HAS BEEN GRANTED:** To calculate the new Final Decision Due Date, take the Original Final Decision Due Date in **(II)(B)** and add the number of calendar days for which the party requested the specific extension in **(III)(C)**:

(B) **WHEN A PRIOR EXTENSION HAS BEEN GRANTED:** To calculate the new Final Decision Due Date, take the Extended Final Decision Due Date in **(II)(C)** and add the number of calendar days for which the party requested the specific extension in **(III)(C)**:

PART TWO

NJDOE Required Extension Survey