

**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK**

M.G., a minor, by and through his parent and natural guardian R.G.; G.J., a minor, by and through his parent and natural guardian, C.J., on behalf of themselves and a class of those similarly situated; and BRONX INDEPENDENT LIVING SERVICES, a nonprofit organization,

Plaintiffs,

-against-

THE NEW YORK CITY DEPARTMENT OF EDUCATION; THE CITY OF NEW YORK; RICHARD A. CARRANZA, in his official capacity as Chancellor of the New York City Department of Education,

Defendants.

No. 17-cv-05692 (PGG) (KNF)

**STIPULATION AND  
SETTLEMENT AGREEMENT**

This Stipulation and Settlement Agreement (“Agreement”) is made and entered into on this 22nd day of January, 2021, by and between M.G., a minor, by and through his parent and natural guardian R.G., G.J., a minor, by and through his parent and natural guardian C.J., BRONX INDEPENDENT LIVING SERVICES (“BILS”), a nonprofit organization (collectively, “Named Plaintiffs”), on behalf of a class as set forth herein (“Class” or “Class Members”), and The New York City Department of Education and RICHARD CARRANZA, in his official capacity as Chancellor of the New York City Department of Education (collectively, “DOE”). The Class Members and DOE are collectively referred to in this Agreement as the “Parties.”

**RECITALS**

WHEREAS, on July 27, 2017, the Named Plaintiffs filed a putative class action lawsuit in the United States District Court for the Southern District of New York (No. 17-cv-05692) (the “Action”) with allegations related to DOE’s administration of Related Service Authorizations (“RSAs”) issued for certain students with individualized education programs (“IEPs”) enrolled in DOE schools in the Bronx, which included alleged violations of the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400, *et seq.*, Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101, *et seq.*, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, (“Section 504”), and the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101, *et seq.*;

WHEREAS, on February 7, 2018, the Named Plaintiffs and DOE entered into a structured negotiation agreement under which Dr. Kristie Patten was retained as a joint expert for the purpose

of offering her findings and recommendations to be used to attempt to reach a settlement of this Action;

WHEREAS, DOE provided necessary access and information to Dr. Patten for her to conduct her evaluation of DOE policies, practices, and procedures regarding the issuance, administration, and utilization of RSAs to students with IEPs who are enrolled in DOE schools in the Bronx;

WHEREAS, on January 6, 2019, the Named Plaintiffs and DOE received Dr. Patten's final report and subsequently engaged in settlement negotiations;

WHEREAS, based on their investigation and through the settlement negotiations, the Named Plaintiffs have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate and in the best interests of the Class, and have agreed to settle all claims raised in the Action, on behalf of themselves and the proposed class of Plaintiffs as defined below,

**NOW THEREFORE**, without any admission or concession by the Named Plaintiffs of any lack of merit of the Action, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses by DOE,

**IT IS HEREBY STIPULATED AND AGREED**, by and among the Parties to this Agreement, through their respective attorneys, subject to approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure ("Rule 23"), that all Claims in the Action shall be compromised, settled, released as described in Section VIII below, and dismissed with prejudice, upon and subject to the following terms and conditions:

## **I. GENERAL PROVISIONS**

1. This Stipulation imposes obligations on all Parties as set forth herein. It legally binds all Parties, including all Class Members, individually and collectively.

## **II. DEFINITIONS**

1. For purposes of this Agreement, the class is defined as:

All students with individualized education programs ("IEPs") (a) who, during the period from July 27, 2015 to the last day of the Court's jurisdiction to enforce this Agreement, including any extensions thereof ("Ending Date"), attend, have attended, or will attend public schools operated by the New York City Department of Education and located in the Bronx; (b) whose IEPs include recommendations for one or more related services, as defined in this Agreement, or did recommend such services during the period from July 27, 2015 to the Ending Date; and (c) who are eligible to receive related services under the Individuals with Disabilities Education Act. Students with IEPs who attended a DOE public school located

in the Bronx between July 27, 2015 and March 13, 2020, but as of the date of this Agreement do not attend a DOE public school located in the Bronx, must have had an RSA issued on or after July 27, 2015 while they attended a DOE school in the Bronx, but did not receive their related services pursuant to such RSA during the period between July 27, 2015 and March 13, 2020.

2. For purposes of this Agreement, the following terms have the following meanings:
  - a. Individualized Education Program (“IEP”) has the meaning set forth in 20 U.S.C. § 1401(14).
  - b. Related Services means occupational therapy (“OT”), physical therapy (“PT”), bilingual and monolingual speech therapy (collectively “speech”), and bilingual and monolingual counseling (collectively “counseling”), hearing education services, and vision education services.
  - c. Parent refers to a parent, as defined in 8 N.Y.C.R.R. § 200.1(ii), of a Class Member.
  - d. Related Service Authorization (“RSA”) is an authorization letter given to a Parent of a Class Member that enables the Parent to obtain at DOE expense the services of an approved non-DOE provider of a specific related service as defined herein and as listed on the RSA. It does not include any such authorization letter that is issued pursuant to an impartial hearing order, resolution, mediation, or settlement, unless otherwise specified in this Agreement.
  - e. RSA Liaison is the DOE employee responsible for providing support to a Parent of a Class Member during the RSA process including assistance obtaining make-up related services.
  - f. Provider List is the list of related service providers that the DOE makes available to the Parents of Class Members who have been issued RSAs.
  - g. Related Service Scholarship and Loan Forgiveness Programs (“RSSLFP”) are incentive programs administered by the DOE to attract university and degree students studying in certain related services fields to seek and maintain employment with the DOE.
  - h. Special Education Student Information System (“SEISIS”) is the name for DOE’s computer-based system used to manage its provision of special education.

- i. Encounter-to-Mandate Matching is the process that DOE uses to match an encounter in SESIS or its successor system to the particular related service obligation in a student’s particular IEP.
- j. Provider Caseload Management is a data-tracking function that can record and track information about a particular related service provider’s caseload.
- k. Long-term Absent refers to a Class Member who has unexcused absence from school for a period of 20 or more consecutive school days.
- l. Saturday Sites is a DOE program at which a subset of Class Members who have not received certain related services may receive these related services at a DOE site on a Saturday.
- m. Effective Date is the date of the District Court’s final approval of the Agreement and all appeals therefrom have been concluded or the appeal period has expired.
- n. Computation of Time or periods of time referenced in any document related to this Agreement shall be computed pursuant to Federal Rule of Civil Procedure 6, unless otherwise specified herein.
- o. School Year refers to the ten month school year starting on the first day of school in September in a given calendar year.
- p. Covered Language has the meaning set forth in Chancellor’s Regulation A-663(I)(A).
- q. 311 refers to the phone number for accessing non-emergency New York City services and information, and P311 refers to the Parent Support line where 311 calls are forwarded if the caller requests information about City schools.

### **III. DURATION**

- 1. The term of this Agreement begins on the Effective Date and ends 3 full school years thereafter (the “Agreement Period”).
- 2. The claims against the City of New York are dismissed with prejudice.
- 3. The obligations set forth in Section IV of this Agreement (“Obligations”) apply only to members of the Class and only to DOE schools located in the Bronx. Notwithstanding the foregoing, the obligations set forth in Section IV will remain in effect until 45 calendar days after the delivery of the reports described in Section V for the third school year of the Agreement, at which time the Agreement will terminate (the “Termination Date”), unless extended pursuant to Section VII(3).

## IV. OBLIGATIONS

Unless otherwise provided, the Obligations set forth below commence on the first day of the first School Year of the Agreement Period and terminate on the last day of the last School Year of the Agreement Period.

### 1. **Related Service Staffing**

- a. By June 1 preceding each School Year of the Agreement Period, DOE will allocate sufficient funding to support offers of employment for no less than 75% of preliminary projected full-time OT, PT, speech, and counseling positions in DOE schools located in the Bronx for the ensuing School Year.
- b. By August 1 preceding each School Year of the Agreement Period, DOE will allocate sufficient funding to support offers of employment for the balance of projected full-time OT, PT, speech, and counseling positions in DOE schools located in the Bronx as of that date.
- c. DOE will make good faith efforts to complete all funded hiring actions by the first day of each school year covered by this Agreement.
- d. By no later than 60 days prior to the first School Year of the Agreement Period, DOE shall obtain the funding authority to increase the number of OT supervisor positions in the Bronx from 3 to 5 and commence efforts to fill these additional positions. DOE shall maintain at least 5 OT supervisor positions during the Agreement Period. If during the Agreement Period, the number of OT supervisors in the Bronx decreases to less than 5, the DOE shall commence efforts to fill any such vacancies expeditiously. If vacancies remain during the School Year for longer than 45 school days, the DOE will notify Class counsel.
- e. By no later than July 15<sup>th</sup> prior to the first School Year of the Agreement Period, DOE shall increase the funding for the RSSLFP by 25% collectively across disciplines directed at degree candidates and service providers who agree to provide related services in the Bronx. The DOE shall have the flexibility to allocate these funds between the disciplines and employment incentive programs in any way it believes will most effectively meet staffing needs consistent with candidate availability and other factors.
- f. On an annual basis, DOE shall assess the utilization of this funding and take the following actions:
  - i. If demand for the RSSLFP exceeds the availability of funds and there continue to be full-caseload vacancies, DOE shall seek additional funding by the amount the RSSLFP demand exceeds available funds, up to a maximum of 25% per year, or by the amount necessary to fill relevant vacancies, whichever is lower.

- ii. If the availability of funds for the RSSLFP significantly exceeds the demand and there remain full-caseload vacancies, DOE will consider the expansion of the RSSLFP program to include recent graduates, subject to collective bargaining obligations.
- iii. By no later than 45 days prior to the start of the first school year of the Agreement Period, DOE shall take the following actions to increase awareness of the RSSLFP:
  - 1. Distribute and post on the DOE's official website a fact sheet reflecting available incentives; and
  - 2. Distribute the above referenced fact sheet to relevant organizations.

2. **Tracking Related Services Data**

- a. DOE shall include the following functions in the proposal for the data management system for which the DOE is currently evaluating proposals to replace SESIS: Provider Caseload Management and Encounter-to-Mandate Matching.
- b. In the interim, the DOE shall make good faith efforts to implement Encounter-to-Mandate Matching by December 31, 2021. If the DOE will be unable to meet this deadline, the DOE shall notify Plaintiffs' counsel within 30 days of the deadline and, upon Plaintiffs' counsel's request, meet and confer.

3. **Timeline for Issuance of Related Service Authorizations**

- a. The DOE shall take steps to support the issuance of RSAs to applicable Class Members by the 16th school day of each school year or by the 16th school day after the Effective Date of a related service on an IEP, when a DOE or contract agency provider for a service recommended on a Class Member's IEP has not been identified as set forth in paragraph IV(3)(b) below.
- b. The timelines in this section will apply when no DOE or contract agency provider has been identified by the applicable implementation date for the related service, provided the applicable Class Member has not been identified by DOE as "Long Term Absent," is not in a detention or institutional setting, is not coded for home/hospital instruction, and/or does not have attendance at or below 25 percent.
- c. For purposes of this Agreement, DOE will be deemed to have satisfied the Obligations of this sub-section IV(3) if, with respect to initial implementation of Related Services at the start of the School Year and initial implementation of Related Services for students receiving initial IEPs during the School Year, the DOE meets the following benchmarks for the issuance of RSAs (collectively, the "commencement date"):

- i. During the first school year of the Agreement Period:
  1. For OT, 80% of RSAs are issued within 16 school days and 90% are issued within 25 school days of the commencement date;
  2. For PT, 85% of RSAs are issued within 16 school days and 90% are issued within 25 school days of the commencement date;
  3. For monolingual speech, 75% of RSAs are issued within 16 school days and 90% are issued within 25 school days of the commencement date;
  4. For bilingual speech, 80% of RSAs are issued within 16 school days and 90% are issued within 25 school days of the commencement date;
  5. For monolingual counseling, 70% of RSAs are issued within 16 school days and 90% are issued within 25 school days of the commencement date;
  6. For bilingual counseling, 80% of RSAs are issued within 16 school days and 90% are issued within 25 school days of the commencement date.
  
- ii. During the second School Year of the Agreement Period:
  1. For OT, 85% of RSAs are issued within 16 school days and 92% are issued within 25 school days of the commencement date;
  2. For PT, 88% of RSAs are issued within 16 school days and 92% are issued within 25 school days of the commencement date;
  3. For monolingual speech, 80% of RSAs are issued within 16 school days and 92% are issued within 25 school days of the commencement date;
  4. For bilingual speech, 85% of RSAs are issued within 16 school days and 92% are issued within 25 school days of the commencement date;
  5. For monolingual counseling, 75% of RSAs are issued within 16 school days and 92% are issued within 25 school days of the commencement date;
  6. For bilingual counseling, 80% of RSAs are issued within 16 school days and 92% are issued within 25 school days of the commencement date.

iii. During the third School Year of the Agreement Period:

1. For OT, 90% of RSAs are issued within 16 school days and 94% are issued within 25 school days of the commencement date;
2. For PT, 90% of RSAs are issued within 16 school days and 94% are issued within 25 school days of the commencement date;
3. For monolingual speech, 85% of RSAs are issued within 16 school days and 94% are issued within 25 school days of the commencement date;
4. For bilingual speech, 90% of RSAs are issued within 16 school days and 94% are issued within 25 school days of the commencement date;
5. For monolingual counseling, 80% of RSAs are issued within 16 school days and 94% are issued within 25 school days of the commencement date;
6. For bilingual counseling, 85% of RSAs are issued within 16 school days and 94% are issued within 25 school days of the commencement date.

4. **Make-up Related Services**

- a. Parental requests for make-up related services may be made to an email address designated for that purpose. DOE shall share the email address with Plaintiffs' counsel. Requests for make-up services may also be initiated by calling 311.
- b. Upon Parental request to the designated email address, made by no later than the end of the semester following the semester during which the RSA was issued, DOE shall authorize make-up related services for Class Members, as appropriate, for an IEP-listed related service that was missed during the period between (a) the beginning of the school year or the subsequent effective date for the related service on the IEP, and (b) the first utilization of the RSA.
- c. DOE will document all requests for make-up related services received in the designated e-mail.
- d. For make-up related services authorized pursuant to Section IV(4)(b), above, in connection with RSAs issued to Class Members after the Effective Date, Class Members will be permitted to use these make-up services during the 36 calendar months following the identification of an authorized make-up service provider or until the services are exhausted, whichever comes first.
  - i. For OT and Speech services, the make-up related services may be offered at Saturday Sites and summer sites.



- ii. For all other related services, or for Parents who do not want to utilize Saturday Sites for OT and Speech services, the DOE will work with the student's Parent to make alternate arrangements for make-up related services. The DOE shall commence efforts to make such arrangements within 30 days of receiving the parental request for alternate arrangements.
- e. For make-up related services authorized pursuant to Section IV(4)(b), above, in connection with RSAs that were issued to Class Members between July 27, 2015 and the Effective Date, Class Members will be permitted to use these make-up services during the 36 calendar months following the first day of Saturday Sites or summer sites after authorization of the services or following the DOE or Parent's identification of a make-up service provider, or until the services are exhausted, whichever comes first, so long as the Class Member submits their request for make-up related services within one year of the Effective Date.
  - i. For OT and Speech services, the make-up services may be offered at Saturday Sites and summer sites.
  - ii. For all other related services or for Parents who do not want to utilize Saturday Sites for OT and Speech services, the DOE will work to aid the Parents in identifying a properly cleared and credentialed provider to provide the make-up services, where one has not already been identified. The DOE shall commence such efforts within 30 days of authorizing make-ups for services not offered via Saturday Sites or within 30 days of being notified that that Parent does not wish to utilize Saturday sites.
- f. Saturday Site Program
  - i. DOE shall continue its existing Saturday Site Program for OT and Speech services in the Bronx (the "Saturday Site Program"). It shall begin no later than the first Saturday in December in the first school year of this Agreement and the third Saturday in November for each subsequent school year during the Agreement Period.
  - ii. DOE shall revise the notices that are sent to Parents regarding the Saturday Site Program to include information about procedures for requesting make-up related services (listed in Section IV(4)) that cannot be provided at the Saturday Sites, when applicable.
  - iii. The Saturday Site Program may be discontinued or temporarily suspended in the event that Parent/Class Member participation in the Program is not sufficient to make it financially reasonable or DOE assesses that the program cannot be safely operated. In either case, the

DOE will notify Class counsel at least 30 days before discontinuing the Program and will make alternative arrangements for students receiving services at Saturday Sites to receive their relevant related services in another setting.

- g. Make-up related services, including services provided at the Saturday Site program, may, at DOE's option, be provided remotely via tele-therapy.
- h. DOE shall make available 72 sessions of OT to Named Plaintiff M.G. and shall make these sessions available to him at Saturday Sites. Nothing herein requires the DOE to continue the Saturday program in accordance with paragraph IV(4)(f)iii above. In such case, alternate arrangements, which could upon consent include tele-therapy, will be made within 30 days for M.G. to receive any remaining sessions. M.G. shall utilize these services within 36 months.
- i. DOE shall make available 36 sessions of OT to Named Plaintiff G.J., and, if feasible, following consultation with his parent C.J, shall make this sessions available to him in addition to OT sessions he is entitled to receive in his IEP. Upon consent, these services may also be provided via tele-therapy.

5. **Notice Regarding Related Service Authorizations**

- a. Starting with the first school year of the Agreement Period, by the 10<sup>th</sup> school day of each semester during the Agreement Period, DOE will communicate expectations and RSA policies to the principals of DOE Bronx schools and the RSA Liaison(s) stating that assistance must be provided by them or a designee to each Parent of a Class Member who has received an RSA. The communication shall include a description of the assistance to be provided, including informing principals of the existence of and the contact information for the RSA Liaison. A link to this information may be provided in lieu of providing the information directly.
- b. Starting with the first school year of the Agreement Period, for all RSAs issued, DOE shall issue a directive directing DOE staff to deliver RSAs to Parents in English and the Parents' primary languages (if covered languages) through at least 2 methods, including, but not limited to backpacking, mailing, and/or e-mailing. During any period of remote learning, DOE may issue RSAs by email only. DOE shall follow up at least once with a subsequent contact (by phone, email, letter or text message) to the Parent to confirm receipt of the RSA within 10 school days of its issuance. If the DOE attempts to contact a Parent by phone and is neither able to reach the Parent nor leave a message, the DOE will make a second attempt to contact that Parent.
- c. Upon request of the Parent, the DOE will provide language assistance to Parents whose primary language is other than English.

- d. For all RSAs issued, including any RSAs that are issued pursuant to an impartial hearing order, resolution, mediation, or settlement, the DOE shall ensure that the RSA is accompanied by the following written information:
  - i. A description of how the DOE will support the Parent throughout the RSA process, including a link to the Procedural Safeguards Notice;
  - ii. Contact information for the relevant DOE personnel, including the RSA Liaison, from whom the Parent may seek assistance and/or further information regarding the RSA process, including how to make a complaint;
  - iii. Information that a Parent may receive additional assistance and information about the RSA process by calling 311;
  - iv. Information about how a Parent may make a complaint about the provision of services (or lack thereof) pursuant to an RSA; and
  - v. Information about how to request and receive make-up services.
- e. By the start of the first school year of the Agreement Period, the DOE will provide P311 (“P311”) with accurate information regarding RSA procedures and directories. DOE will create internal guidance indicating that, when follow up to a Parent inquiry is required, contact should be made within 2 business days of receipt of the initial Parent inquiry.

6. **Support for Parents**

- a. Within 5 school days of the start of each School Year during the Agreement Period, DOE shall appoint a non-school based RSA Liaison(s) to support the school in assisting a Class Member’s Parent in locating an RSA provider. Nothing herein shall preclude the DOE from subsequently appointing a school-based liaison for a particular school or schools. The school and/or the RSA Liaison shall undertake the following:
  - i. Maintain a list of each Class Member who has been provided an RSA during the relevant school year;
  - ii. By no later than 10 school days after an RSA has been issued to a Class Member, conduct outreach to the Class Member’s Parent to offer assistance in finding a provider;
  - iii. Upon request of the Class Member’s Parent, call providers to determine their availability for the applicable RSA;

- iv. Upon request of the Class Member’s Parent, provide guidance and/or assistance on completing a transportation voucher; and
  - v. Conduct periodic outreach to a Class Member’s Parent for whom there is no record that an RSA provider is in place.
- b. DOE shall make available an email address designated for the purpose of accepting Parent inquiries regarding the RSA process. DOE shall share the email address with Plaintiffs’ counsel. DOE will create internal guidance indicating that, when follow up to a Parent inquiry is required, contact should be made within 2 business days of receipt of the initial Parent inquiry. DOE will document the parent inquiries received regarding the RSA process.
- c. Related Service Authorization Provider List
- i. DOE shall make best efforts to ensure that the Provider List reflects accurate information and is updated to include providers who are willing to take RSAs. In this regard, DOE shall take the following actions:
    - 1. By August 20, preceding each School Year of the Agreement Period, DOE shall complete a review of the Provider List to confirm its accuracy with providers listed and shall remove inactive providers.
    - 2. By the start of the 2021-2022 School Year, DOE shall:
      - a) In the Independent Provider Assignment survey, include “district preference”; and
      - b) In the Provider List, include “district preference” information for those providers who have identified the geographic areas they serve, and a sort/filter function for parents to filter providers on the online Provider List by district.

7. **Related Service Authorization Provider Incentives**

- a. Within 120 days of the Effective Date, DOE shall commence steps to implement, as a pilot project, through vendor contracts, such as Multiple Task Award Contract(s) (“MTAC”), Open-Ended Requests for Proposals, and Requests of Interest resulting in Negotiated Service Agreements (collectively, “Vendor Contracts”).
- b. The Vendor Contracts may be limited to independent providers and vendors who are not associated with contract agencies. Provisions to be included in a request for such proposals could include the following:

- i. The Vendor Contract would be applicable to OT services in District 9 for which students are eligible for issuance of an RSA;
  - ii. Providers could include in their proposal a fee allocated for costs of travel and parking;
  - iii. Services must be provided in school or in the home (where applicable) or through tele-therapy (if feasible); and
  - iv. Providers would be eligible for a rate premium for serving more than 5 students in one location, which would be no more than a 15% increase over the applicable RSA rate.
- c. After the first School Year of the Agreement, the DOE will evaluate whether the use of any of the Vendor Contracts has resulted in an increase in the provision of related services to students who do not have a DOE or contract provider. The DOE will report in writing on this evaluation to Plaintiffs' counsel. If the DOE's evaluation determines that the use of any or all of the Vendor Contracts resulted in an increase in the provision of services, the DOE will make good faith efforts to expand the use of those types of contracts to other related services and other school districts in the Bronx. If the DOE determines that the none of the Vendor Contracts resulted in an increase in the provision of services, the DOE will meet and confer with Plaintiffs within 45 days to discuss other possible means of identifying providers to take assignments.

## **V. DATA COLLECTION, REPORTS, AND MONITORING**

1. DOE will provide the following to Class counsel who will monitor compliance with this Agreement:

a. For each of the three School Years of the Agreement Period, DOE shall provide a data report (the "Data Report") of the following information to Class counsel by March 31<sup>st</sup> for fall semester data and by August 31<sup>st</sup> (following the School Year) for spring semester data and aggregate School Year data:

i. On the last day of the semester, number of Class Members with IEPs that recommend OT, PT, bilingual or monolingual speech therapy, and bilingual or monolingual counseling; number of Class Members who are recommended for each type of related service.

1. The number of these recommendations, by type of service, that were in effect as of the start of the school year or are due to a student being newly found eligible for an IEP during the reporting period.

2. Of the recommendations described in Section V(1)(a)(i) above, the number of related services mandates with no provider assigned by the 16th school day and 25th school day after the commencement date, disaggregated by type of related service. This count shall not include mandates for any Class Members who were, at the time, identified as “Long Term Absent” or otherwise excluded from compliance measurements as outlined in Section IV(3)(b), above;
3. The number of mandates identified in Section V(1)(a)(i) for which the DOE issued an RSA by the 16th school day, the 25th school day, and the 100th school day after the commencement date, disaggregated by related service

b. By August 31<sup>st</sup> following each school year of the Agreement Period, DOE shall provide an annual report (“Annual Report”) containing the following information, if applicable:

- i. Confirmation that funding was available to meet obligations in Section IV(1)(a)-(b).
- ii. Analysis of RSSFLP funding utilization for recruitment of Bronx providers, including the amount of unutilized funding, if any;
- iii. Confirmation of encounter-to-mandate matching, if the deadline for implementation has passed;
- iv. Report on utilization of make-up related services requested in accordance with Section IV(4), disaggregated by the following:
  1. Report on usage of Saturday Site program, including the number of students who received services through these sites, broken down by related service;
  2. Number of requests for make-up related services; and
  3. Number of students for whom make-up related services were authorized by the DOE, disaggregated by type of related service,
- v. Confirmation of appointment of RSA liaison(s) in the Bronx;
- vi. The percentage of RSAs for occupational therapy, physical therapy, bilingual or monolingual speech therapy, and bilingual or monolingual counseling issued to Class Members within the school year that were never used, disaggregated by type of related service;
- vii. The median number of days between RSA issuance to a Class Member and RSA utilization, for occupational therapy, physical therapy,

bilingual or monolingual speech therapy, and bilingual or monolingual counseling, disaggregated by type of related service;

- viii. The number of Class Members with a related service recommendation on their IEP who did not receive one or more of their related services through a DOE or contract agency provider and who were never issued an RSA;
- ix. In the second half of each of the covered school years, the DOE will conduct a random sampling of 25 Parents of class members who were issued RSAs. The DOE will ask each Parent if they received the RSA, whether they sought support in using the RSA from the DOE, and whether they received any such support. The DOE will include a summary of these responses in each Annual Report. The results of these surveys cannot serve as the sole basis for a motion for enforcement of this Agreement.

c. By August 31<sup>st</sup> following the first school year of the Agreement Period, the DOE shall also provide the following information:

- i. Verification of increase in OT supervisor positions and confirmation of hiring;
- ii. Certification of increase in RSSLFP funding by 25% as outlined in Section IV(1)(e);

d. By 60 days before the start of the first school year of the Agreement period, DOE will provide copies of the following documents and Plaintiffs will have 30 days to provide feedback, if any, and Defendants will consider this feedback in good faith:

- i. Fact sheet regarding RSSLFP incentives;
- ii. Notice provided to parents for Saturday Sites;
- iii. Notification to principals/RSA liaisons, as listed in Section IV(5)(a);
- iv. Directive regarding the provision of RSAs in English and covered languages and by at least two delivery methods, as listed in Section IV(5)(b);
- v. Written information to accompany RSAs;
- vi. Internal guidance around 311 and the tracking of complaints related to the RSA system; and
- vii. Guidance for schools and RSA liaisons about assistance to parents detailing the obligations listed in Section IV(5)(a)-(d).

e. Unless otherwise agreed to by the Parties, DOE will meet and confer with Class counsel by phone or in person within 30 business days of the issuance of each Report, to discuss any issues with the implementation of the Agreement.

f. The Reports and information outlined in Section V(1)(a)-(d) to be provided to Class Counsel shall be confidential. However, Class counsel may publicly disclose their analysis of the Reports and aggregate data, which shall not include or be based on documents or information provided to Plaintiffs pursuant to Sections V(b) and (d). Plaintiffs may not disclose publicly a category or a number in a category of data that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community who does not have personal knowledge of the relevant circumstances outside of the data produced, to identify the student with reasonable certainty, including, but not limited to a category which (a) contains between 1 and 5 students, or (b) if disclosed, would lead to the ability to determine the precise number of students between 1 and 5 in another category or categories of data. Plaintiffs may disclose to the Court any information produced by DOE pursuant to this Settlement Agreement in a motion to enforce this Agreement, provided that if any Reports or information containing confidential information are incorporated in such a motion brought under this Agreement, such Reports and/or information and any confidential information, including confidential derived information, shall be filed under seal with the Court.

## **VI. PROCEDURE FOR CLASS SETTLEMENT**

1. The Parties agree to take all necessary steps to obtain Court approval of the settlement set forth in this Stipulation as follows:

- a. Plaintiffs' counsel shall make a motion to the Court for preliminary approval of this Agreement, and a finding that the class as defined in Section II(1) herein should be certified for settlement purposes. Defendants agree to file a letter stating that they do not oppose this motion.
- b. Counsel for the Parties agree that they will take all reasonable steps to ensure that this Agreement is approved by the District Court and becomes effective. Specifically, within 30 days of execution of this Agreement, Plaintiffs' counsel will (1) file the Agreement, including the attached Exhibit, with the Court, (2) move for Preliminary Approval of this Agreement in the District Court, and (3) request the Court set a Fairness hearing on the earliest date acceptable to the Court, certify the Settlement Class; direct issuance of the Settlement Notice and short form Notice; attached as Exhibit A.
- c. The attached Notice includes, in plain language: (1) A summary of the substantive relief included in this Agreement; (2) the date of the hearing on the final approval of the Agreement with a clear statement that the date may change without further notice to the Class; (3) the deadline for submitting objections to the Agreement; (4) contact information for Plaintiffs' counsel to answer



questions; (5) the address for Plaintiffs' counsel's website; and (6) instructions on how to access the case docket via PACER or in person at the Court's locations. A Short Form Notice is also attached, highlighting the agreement and providing a link at which the full Notice and Agreement can be found. The Notice and Short Form Notice will be published in English and Spanish within 30 days after Preliminary Approval, and will be distributed or posted as follows until the deadline for submitting objections has passed:

- i. For the Parent of a class member for whom DOE has an email address, DOE will email copies of the Notice and Short Form Notice as of the date of Preliminary Approval of this Agreement.
  - ii. Plaintiffs' counsel and DOE will each post in a prominent place of their respective websites a copy of the Notice and short form Notice and the proposed Agreement. Further, Plaintiffs' counsel will distribute the notice to stakeholders and through relevant email listservs and Plaintiff BILS will post the notice on their website and/or social media accounts.
  - iii. DOE will bear all reasonable costs for publication of the Notice in a manner agreed upon by the Parties and/or ordered by the District Court.
  - iv. At least 21 days before the Fairness Hearing, DOE's counsel and Plaintiffs' counsel will each provide a declaration to the District Court attesting to the manner in which they disseminated the Notice consistent with the Agreement.
  - v. Upon the Court's Final Approval of this Agreement and for the duration of the Term of the Agreement, DOE will post 2 laminated copies of a plain language summary of the Agreement, with a link to the DOE's and Plaintiffs' counsel's websites, agreed upon by the Parties, in English and Spanish at every DOE school in the Bronx open for in-person instruction, at a location commonly used for notices and at the Bronx Borough Office, provided it is open to the public.
- d. At the Fairness Hearing, Plaintiffs will move for Final Approval of this Agreement. The Fairness Hearing will take place at date allowing for such period of Notice to the Class as the District Court may direct, and in accordance with 28 U.S.C. § 1715, but in any event at least 104 days after the Court grants preliminary approval of this proposed Settlement Agreement.
  - e. Plaintiffs' counsel and DOE's counsel agree to cooperate fully with one another with respect to seeking Court approval of this Stipulation; entry of the

Order for Notice and Hearing; and approval of the Settlement Notice; except that DOE reserves its right to oppose any motion for intervention; and all counsel agree to negotiate in good faith and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the settlement.

- f. DOE's counsel or Plaintiffs' counsel shall have the right to terminate the settlement and this Agreement by providing written notice of their election to do so to all other parties within thirty (30) days of any of the following actions:
  - i. The Court's denial of the motion referenced in Section VI(1)(a) herein;
  - ii. The Court's declining to enter the Rule 23(e) Order;
  - iii. The Court's refusal to approve this Agreement or any material part of the proposed settlement of this action, including refusal to approve the Settlement Notice; or
  - iv. The Court's declining to enter an agreed on Order and Final Judgment.

This Agreement constitutes a compromise settlement of disputed and contested matters between the Parties. It shall not be construed as an admission by any of the Parties, nor shall it be used as evidence in a proceeding of any kind, except as necessary to administer and/or enforce the terms of this Agreement.

- g. Within ten (10) days of the filing of a motion for preliminary approval of this Settlement, Defendants shall serve the notices required by 28 U.S.C. § 1715. The Parties agree that those notices should be sent to the U.S. Attorney General and the NYS Commissioner of Education.

## **VII. JURISDICTION, DISMISSAL, ENFORCEMENT, AND DISPUTE RESOLUTION**

1. The administration of this Agreement shall be under the authority of the Court. The Court's jurisdiction over this Agreement, including its power to enter orders concerning it and adjudicate any dispute or controversy between the Parties concerning the interpretation of the terms of the Agreement or the enforcement of it, shall end on the Termination Date, except as provided in Section VII (3).

2. The Parties hereby agree to enter into a Stipulation of Dismissal of the lawsuit, in accordance with Federal Rule of Civil Procedure 41(a)(1)(A)(ii), within 5 days of the Effective Date. Plaintiffs shall file the stipulation with the Court immediately after. The Stipulation of Dismissal shall be with prejudice, subject to the District Court's retention of jurisdiction as set forth in this Section VII.

3. Except for a counsel fee motion, any motion to enforce or extend Obligations under this Agreement must be filed by the Termination Date. If plaintiffs' motion is not made in accordance with the procedures set forth in Section VII, the Agreement and the Court's jurisdiction shall terminate, except with respect to counsel fees and/or costs. In the event of a motion, the Court's jurisdiction shall continue for the purpose of deciding such motion and any relief ordered thereunder. If Plaintiffs move to extend the Agreement and such a motion is granted, the extension may not continue any Obligation beyond two years after the last school day of the third School Year of the Agreement Period, and the Court's jurisdiction with respect to the Obligations shall terminate as of the last day of the extension. Any reports for the extension period shall be limited to the School Years or semesters that are the subject of the extension. The final reports for the extension shall be due by August 1<sup>st</sup> following the last school day of the extension period and the Court's jurisdiction with respect to the reports shall terminate upon the DOE's provision of the last report required for the extension period. The Court's jurisdiction with respect to counsel fees and/or costs shall not terminate. Any application for counsel fees and/or costs, regardless of filing date, shall not extend any obligation, period or termination date described in this Agreement or the Court's jurisdiction to enforce or interpret the Obligations and reporting obligations contained in this Agreement.

4. A motion by the Plaintiff class for enforcement, contempt, extension, or further relief under the Agreement on a classwide basis may be based only on DOE's alleged noncompliance with the Obligations of this Agreement. In such a motion, Plaintiff(s) bear the burden of establishing that DOE's noncompliance with the Obligations were not minimal or isolated but were sufficiently significant and widespread or recurring so as to constitute systemic noncompliance ("Systemic Noncompliance"). A series of incidents involving a single student shall not constitute Systemic Noncompliance. A single incident shall not constitute systemic non-compliance unless the incident at issue is alleged to be a significant and widespread violation of paragraphs IV(1)(d), IV(4)(f)(i)-(iii), IV(4)(h), IV(4)(i), IV(5)(a)-(d), IV(6)(a)-(c), IV(7)(a), V(1)(a)-(d) of this Agreement. Nothing herein precludes the Plaintiffs from arguing that Systemic Noncompliance is based on Defendants' conduct from one reporting period and nothing herein limits Defendants' response.

5. Before filing any motion concerning non-compliance, Plaintiffs' counsel shall notify DOE's counsel in writing of any non-compliance by DOE with the Obligations of this Agreement and details of such non-compliance ("Written Notice").

6. Unless otherwise agreed to by the Parties, with respect to any particular dispute, the Parties agree to meet and confer in good faith, within 20 business days after receipt of a Written Notice ("Notice Period"), to discuss and try to resolve the issue(s) in the Written Notice. The Written Notice may be provided to counsel (or their successors) by hand delivery, email or certified mail during regular business hours at the following addresses:

NYC Department of Education  
Office of Legal Services  
Judy Nathan, Esq.  
52 Chambers Street, Room 308  
New York, NY 10007

NYC Law Department  
General Litigation Division  
Janice Birnbaum, ACC  
100 Church Street, Room 2-195  
New York, NY 10007

Any Obligations that Plaintiffs do not raise in their Written Notice following the receipt of the Reports for the third School Year will end and cannot be revived or reinstated.

7. If the meet-and-confer does not lead to a resolution of the dispute, then, no sooner than 15 business days after providing the other Parties with Written Notice of an intent to terminate the meet and confer process, any Party may file a motion for contempt and/or further relief with the Court to enforce the Obligations in this Agreement. Except as set forth herein no motion for contempt, enforcement or further relief may be brought to remedy those violations that the Parties agree have been or will be cured. In the event that the Parties agree to a plan to cure an alleged violation and Plaintiffs believe that the violation has still not been cured, Plaintiffs must provide Written Notice as outlined above at least fifteen (15) business days before any motion is made for enforcement, extension, further relief, or contempt to remedy those violations.

### **VIII. RELEASE OF CLAIMS**

1. Effective upon the entry of judgment by the District Court, in consideration of the relief set forth herein, the sufficiency of which is expressly acknowledged, the following claims against Defendants are fully and finally released:

- a. Plaintiffs and the Class, including the organizational Plaintiff, Bronx Independent Living Services, release any claims for systemic injunctive relief regarding the system-wide administration of the RSA system in the Bronx at issue in this Lawsuit, that arose on or before the Effective Date of this Agreement;
- b. The Named Plaintiffs, M.G. and G.J., release any and all claims for compensatory services for occupational therapy services that were not provided by Defendants in connection with the RSAs at issue in the Complaint or any other RSA issued to M.G. or G.J. prior to the filing of the Complaint, but do not release any other claims for compensatory services;
- c. Class Members release any and all claims for compensatory services for missed related services in connection with RSAs that were issued on or between July 27, 2015 and the Termination Date of this Agreement that they request and actually receive through the mechanisms listed in Section IV(4).

2. Except as set forth in Section VIII(1), nothing herein shall prevent a Named Plaintiff or an individual Class Member from seeking relief for that individual. Nothing herein shall be construed to release any additional claims for compensatory services or individual due process claims arising under the IDEA or Section 504, any claims for reasonable accommodations under the ADA or Section 504, or any monetary claims that may exist under any relevant laws. Nothing in this Agreement shall be construed to release any claims to enforce the terms of this Agreement. The organizational Plaintiff, BILS, does not release any claims of its individual members or constituents.

## **IX. COUNSEL FEES, COSTS, AND COMPENSATORY DAMAGES**

1. DOE agrees that Plaintiffs are entitled to counsel fees and costs as though they are prevailing parties and agrees not to contest Plaintiffs' entitlement to seek fees under 42 U.S.C. § 1415. The Parties agree to negotiate the amount of fees incurred. If they are not able to amicably resolve Plaintiffs' counsel fee demand within 120 days of Class counsel's service of its counsel fee demand, the Parties may agree to seek assistance from a private mediator or Class counsel may submit an application for counsel fees to the United States District Court for the Southern District of New York, to which DOE shall have an opportunity to respond consistent with the Federal Rules of Civil Procedure and Local Rules of this Court, but in any event at least 60 days.

2. Plaintiffs also are entitled to reasonable counsel fees and reimbursement of expenses for time spent on this litigation executing, monitoring and enforcing the terms of this Agreement, including for dispute resolution. Class counsel will submit a request to DOE's litigation counsel for these fees no later than June 30 of each calendar year and within sixty (60) days following the end of the Agreement Period and/or any extension thereof. If the Parties cannot agree within ninety (90) days of Plaintiffs' request for fees under this paragraph, the Parties may agree to seek assistance from a private mediator or Plaintiffs' counsel will apply to the Court for an award of counsel fees and reimbursement of expenses. The DOE shall have forty-five (45) calendar days to respond and oppose any such application. Notwithstanding any of the foregoing, this paragraph shall survive the Termination Date.

3. Payment of counsel fees and costs will be made pursuant to the procedures and timelines set forth in CPLR 5003-A(b).

4. The DOE shall pay each of the two individual Plaintiffs, M.G. and G.J., \$2000 for class representative service awards. Payment will be made within thirty days of the Effective Date in the form of a check made payable to each of the two individual Plaintiffs which will be delivered by U.S. first class mail to Disability Rights Advocates, 2001 Center Street, Fourth Floor, Berkeley, CA 94704-1204. Plaintiffs have provided the DOE with the full names of M.G. and G.J.

## **X. EFFECT OF NON-APPROVAL**

1. In the event that this Agreement is not approved by the Court or the Court's approval is appealed and reversed, the Parties to this Agreement shall be deemed to have reverted to their respective positions in the Action immediately prior to the execution of this Agreement and the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered.

## **XI. OTHER MATTERS**

1. Entire Agreement: This Agreement contains all the agreements, conditions, promises, and covenants between the Named Plaintiffs, the Plaintiff Class, and DOE 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.

2. 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 District Court upon motion.

3. 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.

4. Interpretation: This Agreement is deemed to have been drafted by all Parties hereto, as a result of arm's length negotiations among the Parties. Whereas 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, 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." 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, and such invalid or unenforceable provision shall automatically be deemed rewritten to the minimal extent necessary to eliminate such invalidity or unenforceability.

5. 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.

6. Binding on Successors: The provisions of the Agreement shall be binding upon, and shall inure to the benefit of, the successors, assigns, heirs, executors, administrators, parent entities, subsidiaries, and affiliates of the respective Parties.

7. Representation by Counsel: The Parties acknowledge that they have retained legal counsel to review this Agreement and have consulted said counsel concerning the terms and conditions of the Agreement. The Parties further acknowledge that they have read and fully understand each and every term of this Agreement and the consequences thereby, and knowingly and voluntarily enter into this Agreement. The signatories to this Agreement represent and warrant that they possess the legal and mental capacity to understand and enter into this Agreement, and that they have the authority to do so on behalf of their relevant Party.

8. Notices: Unless otherwise specified in this Agreement, any and all written notices and Progress Reports that are required and/or requested herein may be forwarded by certified mail, return receipt requested, or email, overnight delivery or hand delivery during business hours to:

a. To the Plaintiffs:

Disability Rights Advocates  
Attn: Rebecca Serbin, Esq., Stuart Seaborn, Esq.  
2001 Center Street, Fourth Floor  
Berkeley, CA 94704-1204

To the DOE:  
Judy Nathan, Executive Deputy Counsel, jnathan@schools.nyc.gov

New York City Department of Education  
Office of the General Counsel – Legal Services  
Tweed Courthouse, Room 308  
52 Chambers Street  
New York, NY 10007

and

Janice Birnbaum, Senior Counsel, jbirnbau@law.nyc.gov  
New York City Law Department  
General Litigation Division  
100 Church Street, Room 2-195  
New York, NY 10007

The Parties may designate in writing alternate addresses for any notices to be provided.

9. Governing Law: This Agreement shall in all respects be interpreted, enforced and governed under federal law, and when applicable, the laws of the State of New York.

Dated: January 22, 2021

**Counsel for Plaintiffs**  
Disability Rights Advocates  
655 Third Avenue, 14<sup>th</sup> Floor  
New York, NY 10017

By:



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Stuart Seaborn

**Counsel for the Defendants**

New York City Law Department  
100 Church Street, Room 2-195  
New York, NY 10007

By: \_\_\_\_\_/s/\_\_\_\_\_  
Janice Birnbaum  
Senior Counsel