

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

M.F., a minor, by and through his parent and natural guardian YELENA FERRER; M.R., a minor, by and through her parent and natural guardian JOCELYNE ROJAS; I.F., a minor, by and through her parent and natural guardian JENNIFER FOX, on behalf of themselves and a class of those similarly situated; and THE AMERICAN DIABETES ASSOCIATION, a nonprofit organization,

Plaintiffs,

-against-

THE NEW YORK CITY DEPARTMENT OF EDUCATION; THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE; THE OFFICE OF SCHOOL HEALTH, THE CITY OF NEW YORK; ERIC ADAMS, in his official capacity as Mayor of New York City; DAVID C. BANKS, in his official capacity as Chancellor of the New York City Department of Education, ASHWIN VASAN, in his official capacity as Acting Commissioner of the New York City Department of Health and Mental Hygiene; and ROGER PLATT, in his official capacity as Chief Executive Officer of the Office of School Health,

Defendants.

No. 18-CV-6109 (NG) (SJB)

~~PROPOSED~~
STIPULATION
AMENDING
SETTLEMENT
AGREEMENT AND
ORDER

This Stipulation Amending Settlement Agreement and Order (the “Stipulation”) is made and entered into by and between Plaintiffs M.F. (by and through his natural guardian Yelena Ferrer), M.R. (by and through her natural guardian Jocelyne Rojas), I.F. (by and through her natural guardian Jennifer Fox), on behalf of themselves and a class of those similarly situated and the American Diabetes Association (collectively, “Plaintiffs”) against the New York City Department of Education (“DOE”), the New York City Department of Health and Mental

Hygiene (“DOHMH”), the Office of School Health (“OSH”), the City of New York (the “City”), Chancellor Richard Carranza,¹ Acting Commissioner Oxiris Barbot,² and Chief Executive Officer Dr. Roger Platt³ (collectively, “Defendants”)

RECITALS

WHEREAS, on November 1, 2018, Plaintiffs filed a class action complaint alleging that that Defendants’ systemic failures to provide students with diabetes a free and appropriate public education (“FAPE”) as well as equal access to school and all school-related programs and activities violate Section 504 of the Rehabilitation Act of 1973 (“Section 504”), the Americans with Disabilities Act (“ADA”), and the New York City Human Rights Law (“NYCHRL”), ECF No. 1.

WHEREAS, on September 29, 2022, the Parties executed a Settlement Agreement resolving this dispute (“Agreement”), ECF No. 131-1;

WHEREAS, on April 21, 2023, the Court entered an Opinion and Order Granting Final Approval of Class Action Settlement, ECF No. 156;

WHEREAS, the Agreement creates the role of External Monitor to monitor and enforce the Agreement and appoints Peter Blanck, Ph.D., J.D. to this role; ECF No. 131-1, ¶¶ 33, 35.

WHEREAS, Dr. Blanck has resigned from the role of External Monitor;

WHEREAS the Parties have conducted a diligent search and identified David F. Bateman, Ph.D. to serve in the role of External Monitor. Dr. Bateman, whose resume is attached

¹ Chancellor Carranza resigned his commission on March 15, 2021. The current Chancellor of DOE is David C. Banks.

² Acting Commissioner Barbot resigned her commission on August 4, 2020. The current Commissioner of DOHMH is Ashwin Vasan.

³ Dr. Platt retired from City service in or about February 2021.

as Exhibit 1, is highly qualified to serve in this role, as he is an expert in the rights of students with disabilities and has served in various capacities, including researcher, consultant, impartial hearing officer, and educator;

WHEREAS, the Parties wish to amend the Agreement to reflect the substitution of Dr. Bateman for Dr. Blanck;

WHEREAS, the Parties further wish to extend the terms of the Agreement for one additional year to account for the fact that the External Monitor has not been in place for much of the 2023-2024 school year, which has prevented the Agreement monitoring provisions from fully functioning as anticipated under the Agreement;

WHEREAS, the Parties remain in negotiations about other necessary modifications due to a misalignment between the Agreement's reporting requirements (§§ 22-23) and compliance standards (§§ 39-41) as well as inconsistencies in the compliance standards themselves, but submit this Stipulation at this time to ensure the External Monitor is in place for the 2024-2025 school year;

WHEREAS, the Agreement authorizes the Parties to modify its terms and directs the Parties to memorialize in writing any agreed-upon modification, sign the modification, and file it with the Court for approval. ECF No. 131-1, ¶ 52 ("If the Parties reach agreement on the required modification, it shall be reduced to writing, signed, and filed with the Court for approval.");

WHEREAS, the Parties have negotiated terms to amend the Agreement, as set forth below, which they believe will further the goals of the Agreement; and

WHEREAS, the Parties' amendments, as set forth below, do not in any way compromise or work to the detriment of any Party or member of the Class, and, to the contrary, benefit the

Parties and the Class by giving effect to the intended scope and period of monitoring contemplated by the Agreement.

THEREFORE, the Parties, by and through their respective counsel of record,

STIPULATE that:

1. The Definition of "Reporting Period" in the Agreement (§11) shall be amended as follows:

Initial Reporting Year (2023-2024)

Report 1: September 1-January 1

Report 2: January 2-June 30

Reports produced by Defendants during the Initial Reporting Year will not be used to assess Defendants' compliance with the Agreement.

Year 1 (2024-2025 School Year):

Report 1: September 1-January 1

Report 2: January 2-June 30

Year 2 (2025-2026 School Year):

Report 3: September 1-January 1

Report 4: January 2-June 30

Year 3 (2026-2027 School Year)

Report 5: September 1-January 1

Report 6: January 2-June 30

2. Paragraph 42 of the Agreement shall be amended to state: This Agreement shall have effect from September 1, 2023 to August 15, 2027.

3. Paragraphs 33 and 35 of the Agreement and Exhibits N and O thereto shall be amended to replace all references to Peter D. Blanck, PhD., J.D. with David F. Bateman, Ph.D.

4. Exhibits N and O of the Agreement shall be amended to update the Hourly Rates for the External Monitor as follows: External Monitor (David F. Bateman, Ph.D.): three hundred seventy-five dollars (\$375.00) per hour); Graduate student or other staff assistants: twenty-five to one-hundred dollars (\$25.00 - \$100.00) per hour.

5. The Parties shall execute a Post-Approval Confidentiality Agreement (Supplemental Exhibit K) with Dr. Bateman to supplement the Confidentiality Agreement executed with Dr. Blanck.

IN WITNESS WHEREOF, the Parties hereto have caused the Stipulation to be executed,

Dated: New York, NY

August 12, 2024



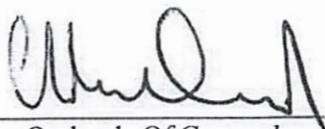
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So Ordered.



/s/(NG)

*Nina Gershon, USDJ
August 26, 2024*