

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~~ **THIRD STIPULATION AMENDING SETTLEMENT AGREEMENT AND ORDER**

This Third Stipulation Amending Settlement Agreement and Order (the “Third 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 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, on August 16, 2024, the Parties filed with this Court a proposed Stipulation Amending the Settlement Agreement and Order, which sought to amend the Agreement to reflect the replacement of the original External Monitor and to extend the terms of the Agreement for one additional year to account for the fact that the External Monitor had not been in place for much of the 2023-2024 school year, ECF No. 170;

¹ Chancellor Carranza resigned his commission on March 15, 2021. The current Chancellor of DOE is Melissa Aviles-Ramos.

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

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

WHEREAS, on August 26, 2024, the Court entered the above-referenced Stipulation Amending the Settlement Agreement and Order, ECF No. 171;

WHEREAS, on February 7, 2025, the Parties filed with this Court a proposed Second Stipulation Amending the Settlement Agreement and Order, which sought to amend the Agreement to address a misalignment between the Agreement's reporting requirements (§§ 22-23) and compliance standards (§§ 39-41), as well as inconsistencies in the compliance standards themselves, and otherwise improve clarity within the Agreement, ECF No. 173,

WHEREAS, on March 10, 2025, the Court entered the above-referenced Second Stipulation Amending the Settlement Agreement and Order, ECF No. 175;

WHEREAS, on August 13, 2025, the Parties advised the Court of the resignation of the second External Monitor and proposed a process to identify and appoint a third External Monitor, ECF No. 176;

WHEREAS, the Parties now seek to amend the Agreement to appoint Dov Lutzker, Esq., of the firm Epstein, Becker & Green, P.C., to serve as the third External Monitor. Mr. Lutzker, whose resume is attached to this Stipulation as Exhibit 1, is highly qualified to serve in this role given his extensive experience in the Disability Rights Section of the U.S. Department of Justice's Civil Rights Division and his current role counseling clients on matters relating to the Americans with Disabilities Act;

WHEREAS, the Parties further seek to amend the Agreement so that the American Diabetes Association, in its role of Joint Expert, assumes responsibility for observing ten Section 504 meetings per year, per paragraph 39(a), a role previously assigned to the External Monitor;

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 ensuring effective monitoring of compliance with the Agreement.

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

1. Paragraphs 33 and 35 of the Agreement and Exhibits N and O thereto are amended to replace all references to David F. Bateman, Ph.D. with Dov Lutzker, Esq.
2. Paragraph 34 of the Agreement is amended as follows:

VIII. Monitoring and Compliance

As Joint Expert, the American Diabetes Association will be responsible for advising on medical questions, concerns, or disputes regarding the provision of diabetes-related care as part of this Agreement, and for observing ten (10) Section 504 meetings per year, as set forth in Section VIII, paragraph 39(a)(i)(1)-(4) and as set forth in Exhibit P to the Agreement.

3. Paragraph 39(a) (Monitoring and Compliance) is amended as follows:

VIII. Monitoring and Compliance

Compliance with this Agreement as to Section 504 Planning as laid out in Exhibits B and C will be evidenced by Defendants meeting the following benchmarks:

- a. Beginning in Fall 2025, the Joint Expert will be required to attend ten (10) Section 504 meetings per year, upon consent of the Parent(s) and Student (if they are an emancipated minor or 18 years of age or older) and two (2) weeks advance notice to Defendants, and permitted to attend a reasonable number of additional Section 504 meetings if necessary to evaluate compliance with this Agreement.

4. Exhibits N and O of the Agreement are amended to update the **Hourly Rates** as follows: External Monitor (Dov Lutzker, Esq.): six hundred and eight dollars (\$608.00) per hour for 2025; six hundred and thirty-nine dollars (\$639.00) per hour for 2026; and six hundred and seventy-five dollars (\$675.00) per hour for 2027. The External Monitor may request to utilize the services of other staff at his firm at rates to be negotiated in good faith.

5. Exhibits N and O of the Agreement are amended to update the **Hours in Excess of 200 Per Year** as follows: The External Monitor and his staff shall not exceed two hundred (200) hours at the agreed-upon hourly rate in any single calendar year without Defendants' prior written approval, which shall not be unreasonably withheld. If the External Monitor and his staff exceed two hundred (200) hours in any single calendar year without Defendants' prior written approval, then Defendants shall be deemed to have objected to the hours in excess of two hundred (200) hours, without the necessity of a timely written objection, and Defendants shall not be obligated to pay for the hours in excess of two hundred (200) absent mutual agreement, or an order of the

Court upon application of the External Monitor. The External Monitor may apply to the Court for approval of statements that include hours in excess of two hundred (200), and the Court may approve such invoices if the hours expended appear to have been reasonably necessary for the External Monitor to fulfill his duties and responsibilities under the applicable order.

6. Exhibits N and O of the Agreement are amended to add the following: Absent timely objection or objection for good cause by Defendants, Defendants will pay the External Monitor's billing statements within forty-five (45) calendar days after receipt. In the event of a timely objection by Defendants, Defendants shall timely pay any undisputed portion of the itemized statement, and may withhold payment of the disputed portion pending resolution of the dispute.

7. Exhibit N is amended to remove the External Monitor's obligation of "[a]ttending ten (10) Section 504 meetings per year, selected by the External Monitor and Defendants, as set forth in Paragraph 39."

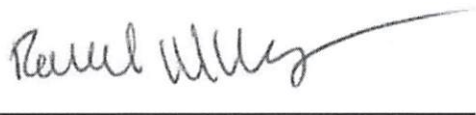
8. The Parties shall execute a Post-Approval Confidentiality Agreement (Supplemental Exhibit K) with both Mr. Lutzker and the Joint Expert to supplement the Confidentiality Agreements executed by the first and second External Monitors.

9. The Parties shall add Exhibit P to the Agreement, which confirms the Joint Expert's role in observing 504 meetings. Exhibit P is attached to this Stipulation as Exhibit 2.

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

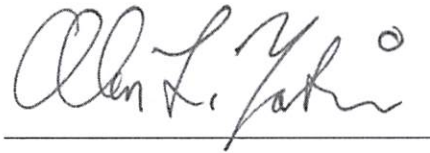
Dated: New York, NY

October 10, 2025



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So Ordered.
Nina Gershon v. *[Signature]* 10.17.25
Nina Gershon, USPJ
October 17, 2025