

**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 15th 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 10th 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 31st for fall semester data and by August 31st (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 31st 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 31st 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 as of the date of Preliminary Approval of this Agreement, DOE will email copies of the Notice and Short Form Notice.
 - 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.
- 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 1st 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
Email: jnathan@schools.nyc.gov

NYC Law Department
General Litigation Division
Janice Birnbaum, ACC
100 Church Street, Room 2-195
New York, NY 10007
Email: jbirnbau@law.nyc.gov

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 CLASS SERVICES AWARDS

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, 14th Floor
New York, NY 10017

By:



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

EXHIBIT A

PROPOSED NOTICE

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT

IF YOU ARE THE PARENT OR GUARDIAN OF A NYC DEPARTMENT OF EDUCATION (“DOE”) STUDENT IN THE BRONX WITH AN INDIVIDUALIZED EDUCATION PROGRAM (“IEP”) THAT RECOMMENDS OR RECOMMENDED ONE OR MORE RELATED SERVICES (FOR EXAMPLE, SPEECH THERAPY, OCCUPATIONAL THERAPY, OR COUNSELING)

OR IF YOU ARE OR WERE A STUDENT AT A DOE PUBLIC SCHOOL IN THE BRONX WITH AN IEP THAT RECOMMENDS OR RECOMMENDED ONE OR MORE RELATED SERVICES

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY LEGAL PROCEEDINGS IN THIS LITIGATION.

The proposed settlement (the “Settlement” or “Settlement Agreement”) resolves a lawsuit claiming that the DOE discriminated against some students with disabilities who attend DOE schools in the Bronx and have IEPs that recommend one or more related services. The lawsuit specifically addresses the distribution and administration of related service authorization (“RSA”) vouchers.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

- **You can object**—you may write to the Court if you do not like the Settlement.
- **You can go to the Fairness Hearing**—you may ask to speak to the Court regarding the fairness of the Settlement.
- **If you do nothing** and the Settlement is approved, you will be bound by the terms of the Settlement.
- These rights and options are explained in this Notice.

If you have questions or would like to get a copy of the full Settlement Agreement, please call Disability Rights Advocates at (212) 644-8644, email at rsa@dralegal.org, or visit dralegal.org.

GENERAL INFORMATION

1. What is this lawsuit about?

The lawsuit, *M.G. v. New York City Department of Education*, Case No. 17-cv-05692-PGG-KNF, filed in the United States District Court for the Southern District of New York in 2017, was brought by the Plaintiffs: two Bronx students, M.G. and G.J., and Bronx Independent Living Services (“BILS”). The lawsuit alleges that the New York City Department of Education has discriminated against students with disabilities who have IEPs that recommend one or more related services and attend DOE schools in the Bronx. Related services include occupational therapy, speech therapy, physical therapy, counseling, and other services. The Plaintiffs allege that the DOE violated the Plaintiffs’ and other Bronx students’ rights by failing to provide students with the related services on their IEPs, and particularly that the DOE does not provide enough information and support to families who have received a Related Service Authorization (“RSA”) voucher for related services to ensure that students are able to get the services on their IEPs. The DOE has denied any wrongdoing concerning these allegations.

2. What is a class action?

The Plaintiffs made their claims on behalf of themselves and other students who might also have been impacted by these practices. The Plaintiffs are asking the Court to be allowed to serve as Class Representatives on behalf of all the impacted students (also called the Class Members or the Class).

3. Why is there a Settlement?

The Court has not decided the case in favor of either side. Instead, the Plaintiffs and the DOE have agreed to settle the case. They believe that the Settlement they have reached is fair, adequate, reasonable, and in the best interests of the Class Members. In reaching this conclusion, the Class Representatives and their lawyers have considered the benefits of the Settlement, the possible outcomes of continued court proceedings, and the expense and length of continued proceedings and possible appeals.

4. Who is covered by the Settlement?

There are two groups of students covered by the Settlement. They are:

- Current DOE students: Students who currently attend a DOE school in the Bronx and had or have an individualized educational program (“IEP”) that recommends one or more related services (like speech therapy or occupational therapy) between July 27, 2015 and today.
 - The current students group also includes future students with IEPs who will attend DOE schools in the Bronx through the end of the Settlement Agreement (three full school years after the agreement starts).

If you have questions or would like to get a copy of the full Settlement Agreement, please call Disability Rights Advocates at (212) 644-8644, email at rsa@dralegal.org, or visit dralegal.org.

- **Former DOE students:** Students who attended a DOE school in the Bronx between July 27, 2015 and March 13, 2020, had an IEP that recommends one or more related services (like speech therapy or occupational therapy), received a Related Service Authorization (“RSA”) voucher for one or more of their related services, and did not receive the related services under that RSA between July 27, 2015 and March 13, 2020.

5. What do I do if I am not sure whether I or my child is included?

If you are not sure if you or your child is covered by the class, please email Disability Rights Advocates at rsa@dralegal.org or call (212) 644-8644 for more information.

6. Can a student receive money under the Settlement?

No. The Settlement does not give any monetary relief to Class Members.

7. What does the Settlement provide for the Class?

If this Settlement is approved, the DOE will be putting in place certain policies and procedures. The Settlement will be in effect for three full school years after the time the Court approves the Settlement. The actions in the Settlement generally relate to:

- Increasing the ability of the DOE to provide related services without having to use RSAs.
- When RSAs are necessary, ensuring that they are issued in a timely manner and the DOE takes steps to provide information and support to families who have received an RSA.
- Providing make-up services to students who missed services because they were unable to use an RSA or had a delay between when they were supposed to have begun services and when their services under the RSA began.

Plaintiffs will be monitoring the DOE’s compliance with the Settlement’s required actions during the term of the Settlement. This notice summarizes the requirements in the Settlement:

- **Increasing the ability of the DOE to provide related services without having to use RSAs.**
 - Assign enough funding by the summer before each school year of the agreement period to support employment offers for projected full-time occupational therapy (“OT”), physical therapy (“PT”), speech therapy, and counseling positions at DOE schools in the Bronx for the following school year;
 - Increase the number of OT supervisors in the Bronx;

If you have questions or would like to get a copy of the full Settlement Agreement, please call Disability Rights Advocates at (212) 644-8644, email at rsa@dralegal.org, or visit dralegal.org.

- Increase funding to the DOE's Related Service Scholarship and Loan Forgiveness Program to increase the DOE's ability to recruit degree candidates in certain related services fields to seek and maintain employment with the DOE;
- Ensure functions relevant to related service case management and tracking are included in the proposal for the data management system for which the DOE is currently seeking to replace its current system.
- **When RSAs are necessary, ensuring that they are issued in a timely manner and the DOE takes steps to provide information and support to families who have received an RSA.**
 - When neither a DOE provider nor contract agency provider can be identified, take steps to issue RSA vouchers by the 16th school day of each school year, or by the 16th school day after the relevant effective date;
 - Continue the Saturday Site program for OT and speech services in the Bronx and begin that program each school year by an agreed-to date;
 - Appoint non-school based RSA liaison(s) to support the school in assisting class members' parents in locating an RSA provider; establish procedures for how this support will be provided;
 - Notify principals of DOE Bronx schools and designated RSA Liaisons of their obligation to provide assistance to parents of class members;
 - Establish requirements for the notice given to parents of students who have received an RSA, including procedures for ensuring that parents receive this notice and a requirement that the notice describe how the DOE will support the parents through the RSA process;
 - Provide P311 with accurate information on the RSA process as an additional source of support for parents who need assistance with this process;
 - Take steps to ensure accuracy of the RSA Provider List given to parents with the RSA and to add additional detail regarding the providers' geographic preferences;
 - Implement the Vendor Contract pilot project as a potential means of incentivizing independent providers to provide related services.

If you have questions or would like to get a copy of the full Settlement Agreement, please call Disability Rights Advocates at (212) 644-8644, email at rsa@dralegal.org, or visit dralegal.org.

- **Providing make-up services to students who missed services because they were unable to use an RSA or had a delay between when they were supposed to have begun services and when their services under the RSA began.**
 - The DOE has also agreed to provide make-up services for students who were given an RSA for one or more related services and were not able to get services through that RSA (either who could not use the RSA at all, or who missed services between when they were supposed to have started receiving the related services and when they were eventually able to start services with the RSA). These services may be offered at Saturday Sites or summer sites. If a parent does not wish to utilize Saturday Sites or summer sites, the DOE will work with the parent to identify a provider. Parents can request make-up services by emailing [TBD E-MAIL ADDRESS] or calling 311.
 - If a class member missed services in connection with an RSA they received between July 27, 2015 and the day this Settlement becomes effective, they have one year to submit a request for make-up related service and will have up to three years to use the make-up services.
 - If a class member misses services in connection with an RSA during the course of the Settlement, they can submit a request for make-services by no later than the end of the semester after the semester in which they receive the RSA. (For example, if a student is given an RSA in the fall semester and misses services, their parent has until the end of the spring semester of that school year to request make-up services.)
- **Monitoring of Agreement**
 - As part of the Settlement Agreement, the DOE has agreed to provide Class Counsel, on a confidential basis, with data and other information needed for Class Counsel to ensure that the DOE is following the terms of the agreement. If Class Counsel finds that the DOE has not followed the terms of the agreement, the parties (the Plaintiffs and the DOE) will work to resolve the issue. Additionally, the parties are asking that the Court remain available to assist if there are compliance issues that the parties cannot resolve themselves. This monitoring will occur throughout the Settlement term, which is three full school years after the Settlement is approved.

8. Do I have to give up any rights if the Settlement is Approved?

Under the Settlement Agreement, the Named Plaintiffs agree to release (give up) certain claims and release certain claims on behalf of the Class.

- The Named Plaintiffs and the Class release any claims for systemic injunctive relief related to the administration of the RSA system in the Bronx that arose before the date

If you have questions or would like to get a copy of the full Settlement Agreement, please call Disability Rights Advocates at (212) 644-8644, email at rsa@dralegal.org, or visit dralegal.org.

the Settlement is effective. This means that neither the Named Plaintiffs nor any Class Member can bring another case challenging the way the RSA system in the Bronx is operated on a system-wide level based on events that occurred before this Settlement goes into place.

- The Named Plaintiffs M.G. and C.J. release any and all claims for compensatory (make up) services for occupational therapy in connection with the RSAs they received. The Named Plaintiffs do not release any other claim for compensatory services.
- Class members only release claims for compensatory services in connection with RSAs issued to them between July 27, 2015 and the end of the Settlement term if they request and actually receive make-up services.
- Neither the Named Plaintiffs nor Class Members release any other claims such as due process claims arising under the IDEA or Section 504, any claim for reasonable accommodations under the ADA or Section 504, or any monetary claims.

9. What does the Settlement provide for the Named Plaintiffs?

As part of the Settlement Agreement, the DOE has agreed to pay the two individual Named Plaintiffs \$2,000 each for class representative services and provide the two individual Named Plaintiffs with make-up services for the occupational therapy they missed as a result of getting RSA vouchers they were unable to use.

10. When will the Court decide if it approves the Settlement?

The Court will hold a hearing (called a “Fairness Hearing”) on [DATE/TIME] in the Courtroom of the Honorable Judge Paul G. Gardephe at the Thurgood Marshall United States Courthouse, 40 Foley Square, Courtroom 705, New York, NY 10007, to determine whether the proposed Settlement Agreement is fair, adequate and reasonable, and should be finally approved. **[Dial-in or Zoom information if hearing will be held remotely]**. If the Judge approves the Settlement after the Fairness Hearing, there could still be appeals. If any appeal is filed, it is uncertain how long it might take to resolve. If the Settlement is approved, and no appeal is filed, the DOE will start taking the actions required by the Settlement.

11. Do I have a lawyer in this case?

Yes. If you or your child is a Class Member, attorneys from Disability Rights Advocates represent you solely for the purposes of this Settlement. You will not be charged for being represented by these lawyers in this matter. If you want to get your own lawyer, you may hire one at your own expense.

12. Will the lawyers in this case be paid?

If you have questions or would like to get a copy of the full Settlement Agreement, please call Disability Rights Advocates at (212) 644-8644, email at rsa@dralegal.org, or visit dralegal.org.

Yes. The Settlement Agreement states that the attorneys for the Class can seek reasonable attorneys' fees from the DOE for investigating the facts of this case, litigating the case, negotiating the Settlement, and monitoring and enforcing the Settlement. The payment of attorneys' fees will not impact the services provided by the DOE under this Settlement, or the policies and practices the DOE has agreed to implement.

OBJECTING TO THE SETTLEMENT

13. How do I tell the Court that I do not like the Settlement?

If you or your child is a member of the Class, you can object to the Settlement if you do not like it. You can give reasons why you think the Court should not approve the Settlement so that the Court can consider your views. You cannot ask the Court to change the terms of the Settlement; the Court can only approve or deny the Settlement. If the Court denies the Settlement, the actions outlined in this notice will not occur and the lawsuit will continue.

To object, you must send a letter saying you object to *M.G. et al. v. New York City Department of Education, et al.* Be sure to mention the case name, and include your name, address, telephone number, your signature, and the reasons you object to the Settlement. Mail the objection to the following addresses postmarked no later than **[DEADLINE]**:

Clerk of Court
United States District Court for the Southern District of New York
Daniel Patrick Moynihan
U.S. Courthouse
500 Pearl Street
New York, NY 1007

Stuart Seaborn
Disability Rights Advocates
2001 Center Street, Fourth Floor
Berkeley, CA 94704

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

14. When will the Court make a decision about approving the Settlement?

The Court will hold a Fairness Hearing on **[DATE/TIME]** in the Courtroom of the Honorable Judge Paul G. Gardephe, Thurgood Marshall United States Courthouse, 40 Foley Square, Courtroom 705, New York, NY 10007, to determine whether the proposed Settlement Agreement is fair, adequate and reasonable, and should be approved. **[Dial-in or Zoom information if hearing will be held remotely]**. If there are objections, the Court will consider

If you have questions or would like to get a copy of the full Settlement Agreement, please call Disability Rights Advocates at (212) 644-8644, email at rsa@dralegal.org, or visit dralegal.org.

them. The Judge will listen to people who have properly submitted requests to speak at the hearing. After the hearing, the Judge will decide whether to approve the Settlement.

15. Do I have to attend the hearing?

No. The lawyers from Disability Rights Advocates will attend the hearing and answer any questions the Judge may have about the case. You are welcome to attend the hearing if you would like, but you must pay for your own travel to the hearing if it is held in person or provide your own internet access if the hearing is held remotely.

If you sent an objection letter, you are not required to come to the hearing to talk about your letter. All you have to do to properly object is to have sent your written letter by the deadline. If you have your own lawyer, you may also pay your lawyer to be at the hearing, but that is up to you.

16. Am I allowed to speak at the hearing?

You can ask the Court for permission to speak at the Fairness Hearing. Please note that any costs incurred for attending the hearing will be at your own expense. To request to speak at the hearing, you must send a letter saying that it is your intention to appear in *M.G. v. New York City Department of Education*, Case No. 17-cv-05692-PGG-KNF. Make sure to include your name, address, telephone number, and signature, and list any witnesses you may call to testify and exhibits you intend to introduce into evidence at the hearing. You may also want to provide the Court with the information needed to contact you electronically.

Your letter must be postmarked no later than [DEADLINE] and be sent to the following addresses:

Clerk of Court
United States District Court for the Southern District of New York
Daniel Patrick Moynihan
U.S. Courthouse
500 Pearl Street
New York, NY 1007

Stuart Seaborn
Disability Rights Advocates
2001 Center Street, Fourth Floor
Berkeley, CA 94704

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

If you have questions or would like to get a copy of the full Settlement Agreement, please call Disability Rights Advocates at (212) 644-8644, email at rsa@dralegal.org, or visit dralegal.org.

17. What if I do not do anything?

You do not need to do anything to receive the future protections of this Settlement.

GETTING MORE INFORMATION

18. Are there more details about the Settlement?

This notice summarizes the Settlement. There are more details in the Settlement Agreement itself. To the extent that this notice varies from the Agreement, the terms of the Agreement are correct.

You can access a copy of the Agreement by visiting the Disability Rights Advocates website at dralegal.org. You can also request a copy of the Agreement or ask questions about the Agreement by calling (212) 644-8644 or emailing rsa@dralegal.org.

You can access the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://pacer.uscourts.gov/> or by visiting the office of the Clerk of the Court for the United States District Court for the Southern District of New York at Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

Please do not call the Court or the Court Clerk's office to ask about this Settlement.

This Notice is also available in Spanish. To obtain copies of this Notice in Spanish or in alternative accessible formats, please email rsa@dralegal.org.

Este Aviso también está disponible en español. Para obtener copias de este Aviso en español o en formatos accesibles alternativos, envíe un correo electrónico a rsa@dralegal.org.

If you have questions or would like to get a copy of the full Settlement Agreement, please call Disability Rights Advocates at (212) 644-8644, email at rsa@dralegal.org, or visit dralegal.org.

**PROPOSED SHORT FORM
NOTICE**

**YOU OR YOUR CHILD MIGHT BE AFFECTED BY A
PROPOSED CLASS ACTION SETTLEMENT
ABOUT SERVICES FOR STUDENTS WITH DISABILITIES AT
PUBLIC SCHOOLS IN THE BRONX**

You or your child might be a member of a proposed settlement class if you or they are:

- A current student at a DOE school in the Bronx who had one or more related services (like occupational therapy, speech therapy, or counseling) on their IEP between July 27, 2015 and today.
- A former Bronx DOE student who had one or more related services on their IEP between July 27, 2015 and today, was issued a related service authorization (“RSA”) voucher for one or more of those services, and did not receive those services between July 27, 2015 and March 13, 2020.

In 2017, a lawsuit called *M.G. v. New York City Department of Education* was filed against the New York City Department of Education (DOE). The case claimed that the DOE failed to provide related services (like occupational therapy, speech therapy, or counseling) to some Bronx students who had related services listed on their IEPs and whose families received related service authorization (“RSA”) vouchers.

In 2021, the DOE settled the lawsuit by agreeing to take steps to improve the way related services are provided to Bronx students, including how the DOE supports families who have received an RSA voucher for services. The DOE also agreed to provide make-up services for students who have missed related services in relation to receiving an RSA.

**TO LEARN MORE, OR TO GET A COPY OF THE FULL
SETTLEMENT NOTICE OR AGREEMENT, VISIT
DRALEGAL.ORG, EMAIL rsa@dralegal.org
OR CALL (212) 644-8644.**

This Notice is also available in Spanish. To obtain copies of this Notice in Spanish or in alternative accessible formats, please email rsa@dralegal.org.

Este Aviso también está disponible en español. Para obtener copias de este Aviso en español o en formatos accesibles alternativos, envíe un correo electrónico a rsa@dralegal.org.