UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

J.S.M., *et al.*, Plaintiffs, v. NEW YORK CITY DEPARTMENT OF EDUCATION, *et al.*, Defendants.	Case No. 20-cv-705-EK-RLM

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND AWARD OF ATTORNEYS' FEES

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PRELIMINARY STATEMENT

After over four years of intensive litigation and arm's-length negotiations, Plaintiffs,[1] on behalf of themselves and members of the certified Class, have reached a Stipulation of Settlement (the "Settlement" or "Stipulation of Settlement") with Defendants the New York City Department of Education ("NYCDOE"), the Chancellor of the NYCDOE (together with NYCDOE, "City Defendants"), the New York State Education Department ("NYSED"), and the New York State Commissioner of Education (together with NYSED, "State Defendants"), that resolves all of the Class's claims in exchange for relief designed to bring Defendants into compliance with the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq*. Defendants consent to the final approval of the Settlement (although the views expressed in this Memorandum of Law are solely those of Plaintiffs).

This Court preliminarily approved that Stipulation of Settlement on December 3, 2025. (Dkt. No. 196.) Pursuant to the Court's preliminary approval order, NYCDOE then provided notice to thousands of Class Members via the same process used at the class certification stage, and Class Counsel maintained a telephonic hotline and email address to manage communications and any objections from Class Members. (Dkt. Nos. 39, 196.) The Notice Period ended on March 3, 2025. (*See* Dkt. No. 196.) In total, Class Counsel received 16 inquiries in response to the

[1] J.S.M., by her parent, E.M.; E.M., individually and on behalf of J.S.M.; B.M., by his parents, M.C. and L.M.; M.C. and L.M., individually and on behalf of B.M.; C.G., by his parent, L.G.; L.G., individually and on behalf of C.G.; P.W., by his parents, T.F. and P.R.W.; T.F. and P.R.W., individually and on behalf of P.W.; Q.T., by his parents, W.J.T. and W.H.T.; W.J.T. and W.H.T., individually and on behalf of Q.T.; A.N., by her parent, T.N.; T.N., individually and on behalf of A.N.; A.S., by his parent, T.T.; T.T., individually and on behalf of A.S.; K.M.E., by her parent, E.N.; E.N., individually and on behalf of K.M.E.; S.F., by her parent, A.F.; A.F., individually and on behalf of S.F.; S.S., by her parent, D.C.; D.C., individually and on behalf of S.S.; and W.W., by her parent, S.J.; S.J., individually and on behalf of W.W. (together, "Named Plaintiffs").

notice, nearly all of which posed clarifying questions about the case or the Settlement, or were from Class Members seeking counsel for their individual Due Process Complaints.

Plaintiffs respectfully request that, following the April 11, 2025 Fairness Hearing, the Court enter the Proposed Final Approval Order attached as Exhibit 6 to the Supplemental Tarantolo Declaration ("Supp. Tarantolo Decl."), granting final approval to the Stipulation of Settlement attached as Exhibit 4 to the Supp. Tarantolo Decl. ("Modified Stipulation of Settlement"). As explained below, this version of the Settlement is slightly modified from the one submitted with the Preliminary Approval Motion, because Class Counsel received two submissions raising objections about certain Settlement provisions, and the parties considered it prudent to revise the Settlement to address those concerns.[2] The proposed Final Approval Order would confirm the Court's previous determination that the relief to the Class is fair, reasonable, and adequate, and provide for attorneys' fees, as agreed to by all Defendants, to Class Counsel, the New York Legal Assistance Group ("NYLAG") and Sullivan & Cromwell LLP.

As the Court is aware, this action has challenged systemic delays in Defendants' administration of the hearing system that adjudicates the Due Process Complaints ("DPCs") filed by parents of New York City schoolchildren with disabilities seeking the free and appropriate public education ("FAPE") to which they are entitled under the federal IDEA, 20 U.S.C. § 1400 *et seq*. For many years leading up to this lawsuit, that hearing system systematically delivered decisions on these DPCs long after federal timelines for such decisions had expired. Through the Settlement, Defendants have committed to reducing these delays, in conjunction with the voluntary changes Defendants have commenced during the pendency of this action. The changes set forth in

[2] A redline showing the Modified Stipulation of Settlement's changes to the original Stipulation of Settlement is attached as Exhibit 5 to the Supplemental Tarantolo Declaration.

the Settlement principally take the form of phased compliance benchmarks that will allow Defendants to come into compliance with the IDEA without intruding on their discretion and without the need for substantial judicial oversight. The Settlement also provides for a limited number of changes designed to improve Defendants' technological and management systems to ensure that Defendants' IDEA compliance is sustainable. The Settlement also establishes a complaint mechanism for Class Members to raise concerns about delays and have those concerns addressed; establishes an information-sharing regime between Defendants and Plaintiffs so Class Counsel (and Defendants themselves) can monitor the system's progress towards compliance; and provides for a limited sunset period.

The Settlement is "fair, reasonable, and adequate," satisfying all requirements of Federal Rule of Civil Procedure 23(e)(2). Specifically, Named Plaintiffs and Class Counsel have adequately represented the class, Fed. R. Civ. P. 23(e)(2)(A); the Settlement was negotiated at arm's length, *id.* 23(e)(2)(B); the relief provided for the Class is adequate, *id.* 23(e)(2)(C); and the proposal treats all Class members equitably, *id.* 23(e)(2)(D). As the Court has observed, resolution of this matter by settlement is "strongly preferred." (Dkt. No. 181 (May 14, 2024 Hearing Tr.) 6:2–4); *see Clark* v. *Ecolab, Inc.*, 2009 WL 6615729, at *3 (S.D.N.Y. Nov. 27, 2009) (courts should give "proper deference to the private consensual decision of the parties . . . [and] should keep in mind the unique ability of class and defense counsel to assess the potential risks and rewards of litigation" (cleaned up)).

In addition, Class Counsel's request for stipulated attorneys' fees pursuant to the IDEA's fee shifting provision, 20 U.S.C. § 1415(i)(3)(B), is reasonable, as the requested fees are vastly below Class Counsel's lodestar and reflect the thousands of hours that Class Counsel spent diligently applying their experience and expertise to reach this Settlement for the Class's benefit.

For the reasons set forth below, Plaintiffs respectfully request that the Court grant final approval of the Settlement after the Fairness Hearing.

BACKGROUND

I. ALLEGATIONS IN THE COMPLAINT

As described in detail in Plaintiffs' Memorandum of Law in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (Dkt. No. 193 ("Prelim. Mem." Or "Preliminary Approval Memorandum") 3-6), Plaintiffs' Amended Complaint (Dkt. No. 21 ("AC" or "Amended Complaint")) alleged that Defendants had failed to comply with their obligations under the IDEA to ensure that New York City schoolchildren and their families who filed DPCs received decisions on those DPCs within the short timelines required by the IDEA.[3] (AC ¶¶ 329–41.) At the time of filing, for example, the average case length of a DPC in New York City was 259 days, over three times the mandated time period. (*Id.* ¶¶ 4, 74; Prelim. Mem. 6.)

The Named Plaintiffs are minor children with disabilities who were enrolled in the New York City public school system, bringing claims by and through their families. (AC ¶¶ 14–24.) The Named Plaintiffs each experienced significant learning, behavioral, or other impairments, filed DPCs challenging NYCDOE's provision of a FAPE, and were harmed by the failures of NYCDOE and NYSED to ensure decisions on their DPCs within the IDEA's required timeframe. (*See* Prelim. Mem. 5–6 (citing Amended Complaint)). The Named Plaintiffs have actively participated in various aspects of this litigation, including discovery. (*See id.* at 26.)

II. LITIGATION AND SETTLEMENT PROCESS

In June 2020, the Court certified a stipulated class defined as: "Individuals who file or have

[3] The IDEA allows for a maximum of 75 days between the filing of a DPC and a final decision on the DPC, absent a valid extension requested by either or both of the parties. *See* 20 U.S.C. § 1415(f)(1)(B); 34 C.F.R. §§ 300.33, 300.515(a); *see also* 8 N.Y.C.R.R. § 200.5.

filed due process complaints, and the children on whose behalf due process complaints are filed, when the due process complaints are unresolved and the decisions on such complaints have not been timely provided under applicable federal and New York State law." The Court also appointed NYLAG and Sullivan & Cromwell as Class Counsel. (Dkt. No. 33.) Notice was provided to Class Members via the email addresses provided to the New York City Impartial Hearing Office in connection with Class Members' pending DPCs. (*See* Dkt. No. 39.)

The parties engaged in extensive discovery, including production of over 40,000 documents, 119 document requests, and 40 interrogatories, over the course of approximately one year. (*See* Prelim. Mem. 7.) Plaintiffs retained experts at Stout, a global advisory firm, to analyze the data received in discovery. (*Id.*) Following the close of discovery, Plaintiffs and State Defendants both moved for partial summary judgment on IDEA liability. (Dkt. Nos. 122, 135.) These motions are currently held in abeyance. (Sept. 6, 2023 Order.)

From the beginning of this action and throughout the discovery and summary judgment processes, the parties have been engaged in active settlement negotiations. These negotiations included many hundreds of hours spent in comprehensive discussions, weekly working sessions, meetings with nonparties including the New York City Office of Impartial Trials and Hearings ("OATH") and the New York City Comptroller, and dozens of mediation sessions with the Honorable James C. Francis (Ret.), as well as additional sessions, early in the case, with Magistrate Judge Roanne Mann. The parties also jointly engaged an education consulting firm, Thru Consulting, to inform the parties' settlement efforts by evaluating NYCDOE's processes for settling and resolving DPCs. (*See* Prelim. Mem. 8–9; Dkt. No. 194 ("Tarantolo Decl.") ¶¶ 9–16.)

III. STIPULATION OF SETTLEMENT AND NOTICE TO CLASS MEMBERS

Following four years of intensive settlement negotiations, the parties reached the Stipulation of Settlement. (Dkt. No. 194-1.) As described in detail in the Preliminary Approval

Memorandum, (Prelim. Mem 9–23), the Stipulation of Settlement provides a roadmap to ensure that Defendants come into compliance with the timeline obligations of the IDEA, and stay in compliance. Critically, the Stipulation of Settlement:

- Creates a series of phased compliance benchmarks that, over time, require Defendants to bring the DPC hearing system into substantially full compliance with federal timelines;
- Creates complaint processes so families with concerns related to DPC delays can raise those concerns and have Defendants address them;
- Establishes processes designed to enhance compliance, such as commitments to technological upgrades, and to mitigate harm to New York City schoolchildren while the system comes into compliance;
- Ensures information sharing so Class Counsel (and Defendants themselves) can monitor the system's progress; and
- Sets a defined sunset period of four years following implementation with a very limited role for the Court.

On December 3, 2024, following a hearing, the Court preliminarily approved the Stipulation of Settlement. (Dkt. No. 196.) Pursuant to the Court's preliminary approval order, and consistent with the practice used at the class certification stage, the parties provided notice of the Settlement to all Class Members at the email addresses provided to the New York City Impartial Hearing Office in connection with Class Members' pending DPCs. That notice provided Class Members with two options to raise objections to Class Counsel, via a hotline phone number and via email. (*See id.* ¶ 4.)

In total, Class Counsel received 16 inquiries in response to the notice. (Supp. Tarantolo Decl. ¶ 12.) Of this outreach, only two expressed objections. The other 14 people who contacted Class Counsel did so to ask questions about the case and settlement or to inquire whether NYLAG could represent them in their individual DPC. (*Id.*)

The first objection received by Class Counsel was from attorneys Jesse Cole Cutler of the Law Offices of Regina Skyer & Associates, LLP, and Alexandra Hindes of the Law Offices of

Neal H. Rosenberg ("Skyer Objection").[4] (Supp. Tarantolo Decl. Ex. 2.). The Skyer Objection raises three specific concerns: (i) the Stipulation of Settlement's provision regarding "Rapid Resolutions" could be read to "waive[]" and "water[] down" NYCDOE's legal obligations to hold and prepare for timely resolution sessions for cases seeking tuition (*id.* at 4); (ii) the Settlement's provision regarding mediation improperly required only NYSED, and not NYCDOE, to use best efforts to expand the categories of relief available through mediation (*id.* at 5); and (iii) the provision regarding pre-hearing disclosures by NYCDOE could be read to "permit[] the NYCDOE to misrepresent their case and mislead Hearing Officers and parents" at such conferences (*id*. at 5). The Skyer Objection requested the opportunity to speak at the Fairness Hearing. (*Id.* at 2.)

The second objection received by Class Counsel was from the Law Office of Elisa Hyman, P.C. and Robbins Geller Rudman & Dowd LLP on behalf of the class in *M.G., et al.* v. *New York City Dep't of Educ., et al.*, 13-cv-4639 (SHS) (RWL) (S.D.N.Y.), and the Law Office of Elisa Hyman, P.C.'s individual clients ("Hyman Objection"). (Supp. Tarantolo Decl. Ex. 3.) The Hyman Objection raises six specific concerns: (i) the Stipulation of Settlement's release provision contains vague wording that could be read broadly to release claims for which the Settlement does not provide relief, including claims in one of Ms. Hyman's other cases (*id.* at 7–11); (ii) the definition of "Parent's Advocate" could be read not to cover both attorneys and non-attorneys (*id.* at 11); (iii) the pre-hearing disclosure provision presents substantively the same concerns raised in the

[4] Ms. Hindes and Mr. Cutler did not identify any individual Class Members on whose behalf they were objecting in this action. Although "[n]onparties to a settlement generally do not have standing to object to a settlement of a class action," *Cent. States Se. & Sw. Areas Health & Welfare Fund* v. *Merck-Medco Managed Care, L.L.C.*, 504 F.3d 229, 244 (2d Cir. 2007), *see also In re LIBOR-Based Financial Instruments Antitrust Litig.*, 327 F.R.D. 483, 499 (S.D.N.Y. 2018) ("The objector . . . has the burden of demonstrating her standing."), the objection stated as a general matter that Mr. Cutler and Ms. Hindes represent Class Members in their DPC proceedings (*see* Skyer Objection 2), and the parties have engaged in good faith with the Skyer Objection.

Skyer Objection (*id.* at 11–17; *see also* Skyer Objection 5); (iv) the provision stating that cases for which data shows "retroactive" extensions shall not be considered timely could be read to prohibit or discourage consensual *nunc pro tunc* extensions desired by families (*id.* at 17–20); (v) the Stipulation of Settlement includes certain provisions regarding resolution sessions and mediation that could be read to waive or release other claims challenging deficiencies in those systems (*id.* at 20–22); and (vi) the harm mitigation provision for schoolchildren whose cases have become untimely is unclear as to its treatment of children in pendency placements (*id.* at 22–23). The Hyman Objection also sought the opportunity to speak at the Fairness Hearing. (*Id.* at 23.)

Class Counsel promptly provided these objections to Defendants' counsel, consistent with the Court's preliminary approval order. (Suppl. Tarantolo Decl. ¶ 13.) The parties then worked collaboratively to address the concerns raised by the objections, including by clarifying certain provisions and striking others. This process resulted in the Modified Stipulation of Settlement. (Suppl. Tarantolo Decl. ¶¶ 14–18; *see also id.* Ex. 4 (Modified Stipulation of Settlement).) The specific revisions to the Stipulation of Settlement are described in detail below.

Class Counsel shared proposed modifications to the original Stipulation of Settlement with the objectors, and discussed the revisions with each of them. Upon reviewing the proposed changes now reflected in the Modified Stipulation of Settlement, counsel who submitted the Skyer Objection indicated that, if the proposed changes reflected in the Modified Stipulation of Settlement are finalized and approved, the Skyer Objection is withdrawn. (*See* Suppl. Tarantolo Decl. ¶ 17.) Further, upon reviewing the proposed changes now reflected in the Modified Stipulation of Settlement, counsel who submitted the Hyman Objections indicated that, if the proposed changes now reflected in the Modified Stipulation of Settlement are finalized and approved, they would resolve all of the concerns raised in the Hyman Objection save one, as

discussed below, and that subject to further discussions, the Hyman Objection may be withdrawn. (*See id.* ¶ 18.) Class Counsel understand from Defendants' counsel that NYSED and NYCDOE are each prepared to seek final agency approval to execute the Modified Stipulation of Settlement. (*Id.* ¶ 19.)

IV. ATTORNEYS' FEES AND COSTS

The parties have engaged in extensive negotiations over a proposed award to Plaintiffs of attorneys' fees and costs pursuant to the IDEA's fee shifting provision, 20 U.S.C. § 1415(i)(3)(B). Plaintiffs respectfully request that the Court, pursuant to Fed. R. Civ. P. 23(h) and 54(d)(2) and, as provided in the Modified Stipulation of Settlement, approve a final award of attorneys' fees and costs following the Fairness Hearing. The Modified Stipulation of Settlement provides for attorneys' fees in the amount of $399,000 to be paid by NYSED, and $984,000 to be paid by NYCDOE, which will be split between co-counsel the New York Legal Assistance Group and Sullivan & Cromwell LLP. (Modified Stipulation of Settlement XIV.) Sullivan & Cromwell has committed that, after recovering its out-of-pocket costs, it will donate the remainder of the fee award to NYLAG and other charitable endeavors. (Declaration of William Monahan ("Monahan Decl.") ¶ 14.) These fee amounts are vastly below Class Counsel's lodestar, as detailed below.

ARGUMENT

I. THE COURT SHOULD GRANT FINAL APPROVAL OF THE STIPULATION OF SETTLEMENT

There is a "strong judicial policy in favor of settlements, particularly in the class action context." *In re Painewebber Ltd. P'ships Litig.*, 147 F.3d 132, 138 (2d Cir. 1998). Under Federal Rule of Civil Procedure 23(e), a court should approve a class action settlement if it finds, in its discretion, that it is "fair, adequate, and reasonable, and not a product of collusion." *Joel A.* v. *Giuliani*, 218 F.3d 132, 138 (2d Cir. 2000); Fed. R. Civ. P. 23(e)(2); *City of Detroit* v. *Grinnell*

Corp., 495 F.2d 448, 463 (2d Cir. 1974) ("*Grinnell*"), *abrogated on other grounds by Goldberger* v. *Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000) (setting forth factors for Court to consider in determining whether settlement is fair, reasonable, and adequate).

Under Fed. R. Civ. P. 23(e)(2), this Court must approve the Settlement before it can become binding on the parties. "The District Court determines a settlement's fairness by examining the negotiating process leading up to the settlement as well as the settlement's substantive terms." *D'Amato* v. *Deutsche Bank*, 236 F.3d 78, 85–87 (2d Cir. 2001). The Court should give "proper deference to the private consensual decision of the parties . . . [and] should keep in mind the unique ability of class and defense counsel to assess the potential risks and rewards of litigation." *Clark*, 2009 WL 6615729, at *3 (internal quotation marks and citations omitted).

In assessing a settlement, courts must consider whether: (a) the class representatives and class counsel have adequately represented the class; (b) the proposal was negotiated at arm's length; (c) the relief provided for the class is adequate; and (d) the proposal treats class members equitably relative to each other. *See* Fed. R. Civ. P. 23(e)(2). In addition, the Second Circuit has established nine factors courts use to aid in conducting this analysis (the "*Grinnell* factors"):

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Grinnell Corp., 495 F.2d at 463 (internal citations omitted).[5] No one factor is dispositive, and

[5] *See Hyland* v. *Navient Corp.*, 48 F.4th 110, 121 (2d Cir. 2022) ("To evaluate the fairness, reasonableness, and adequacy of a class settlement, courts employ the nine factors set out in *City of Detroit* v. *Grinnell Corp.*"); *In re Namenda Direct Purchaser Antitrust Litig.*, 462 F. Supp. 3d 307, 310–11 (S.D.N.Y. 2020) (explaining that after the 2018 amendments to Fed R. Civ. P. 23(e), "[t]he factors set forth in Rule 23(e)(2) have been applied in tandem with the Second Circuit's

courts "should consider the totality of these factors in light of the particular circumstances." *In re Global Crossing Securities & ERISA Litig.*, 225 F.R.D. 436, 456 (S.D.N.Y. 2004).

Here, all of the factors enumerated in Fed. R. Civ. P. 23(e)(2) and all of the *Grinnell* factors either weigh in favor of approving the Settlement or are neutral.

a. Class Representatives have more than adequately represented the Class.

Rule 23(e)(2)(A) directs the Court to consider whether "the class representatives and class counsel have adequately represented the class." This is a "procedural" inquiry, and "the focus . . . is on the actual performance of counsel acting on behalf of the class." Fed. R. Civ. P. 23(e)(2)(A–B) advisory committee's note to 2018 amendment. As set forth in Plaintiffs' Preliminary Approval Memorandum and the accompanying Tarantolo and Monahan Declarations, Class Counsel performed thousands of hours of work on this litigation, and the Named Plaintiffs worked fully and openly with Class Counsel to advance the litigation and settlement. (Prelim. Mem. 26.) This factor weighs in favor of final approval of the Settlement.[6]

b. The Stipulation of Settlement was negotiated at arm's length.

Rule 23(e)(2)(B) requires that "the proposal [be] negotiated at arm's length." As set forth in detail in Plaintiffs' Preliminary Approval Memorandum, the negotiating process leading up to the settlement was highly contested, spanned approximately four years, involved the exchange of

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Grinnell factors and focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal" (internal quotation marks and citation omitted)).

[6] Plaintiffs interpreted the Skyer Objection's concern that Named Plaintiffs do not adequately represent the Class (at 6) as relating to the adequacy of the Settlement, which is addressed *infra*. Plaintiffs also note that NYLAG's Special Education Unit, which includes counsel of record on this case, routinely represents families in individual due process complaints. For instance, during the past year, NYLAG's Special Education Unit handled, directly and in partnership with pro bono counsel it supervised, nearly two hundred and fifty cases.

scores of proposals, and entailed the detailed involvement of two third-party mediators and an expert consultant. (Prelim. Mem. 27; Tarantolo Decl. ¶¶ 9-16.) This factor also weighs in favor of final approval of the Settlement.

c. The relief provided to the Class is more than adequate.

Rule 23(e)(2)(C)(i) asks the Court to consider the "costs, risks, and delay of trial and appeal," and overlaps with a number of *Grinnell* factors, which guide the Court's application of the Rule. (*See* Prelim. Mem. at 27–28 (citing *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 693 (S.D.N.Y. 2019).)) As discussed at length in Plaintiffs' Preliminary Approval Memorandum (at 27–33), these factors all strongly favor approval of the Settlement.

Complexity, expense and likely duration of the litigation (Factor 1). Continued litigation of this complex class action would entail substantial costs, and meaningful risk, as described in Plaintiffs' Preliminary Approval Memorandum. These include, but are not limited to, costs associated with additional (likely extensive) discovery, including depositions; costs associated with a trial and any appeals; and costs associated with the remedial phase. (*See* Prelim. Mem. at 28–30.) This factor weighs in favor of approval.

Reaction of the Class (Factor 2). When assessing the "reaction of the class" to a settlement, courts consider both the quantity and relative quality of any objections received. *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, 2019 WL 6875472, at *17 (E.D.N.Y. Dec. 16, 2019) ("In evaluating this factor, the Court considers the substantive objections."). With regard to the quantity of objections received, "[i]f only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement." *Wal-Mart Stores, Inc.* v. *Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir. 2005); *see also, e.g.*, *Sykes* v. *Harris*, 2016 WL 3030156, at *12 (S.D.N.Y. May 24, 2016) ("The small number of exclusions, declinations and objections relative to the size of the class in this case supports approval . . . .").

With regard to the relative quality of objections received, courts have discretion to overrule objections on their merits, including if the objections are deemed "frivolous." *See, e.g.*, *In re Petrobras Securities Litig.*, 2018 WL 4521211, at *6 (S.D.N.Y. Sept. 21, 2018) (overruling objections as "frivolous"). Courts may also consider whether the parties to the settlement have already addressed any objections received after preliminary approval by voluntarily modifying or amending the settlement. *See, e.g.*, *Lopez* v. *Delta Funding Corp.*, 2004 WL 7196763, at *7, *15 (E.D.N.Y. Aug. 9, 2004) ("In light of the defendants' agreement to modify settlement terms to [modify] the scope of the release, the thrust of the objection to the release is blunted.").

Here, the reaction of the Class has been overwhelmingly positive. Following the Court's preliminary approval of the Settlement, NYCDOE sent approximately 1,752 Notices to Class Members and their representatives, reaching approximately 10,070 Class Members. Out of the Class Members who received notice, Class Counsel received only 16 responses, 14 of which were to ask questions about the case or Settlement, or requests for assistance in their individual cases. (Supp. Tarantolo Decl. ¶ 12.) Several Class Members were pleased with the terms of the Settlement and expressed gratitude to Class Counsel for achieving those results.

There were only two objections to the Settlement. As explained above, "[t]he small number of exclusions, declinations and objections relative to the size of the class in this case supports approval of the settlement." *Sykes*, 2016 WL 3030156, at *12. Where, as here, there are only a de minimis number of objections to a preliminarily approved settlement, this factor "strongly supports approval." *Simerlein* v. *Toyota Motor Corp.*, 2019 WL 2417404, at *19 (D. Conn. June 10, 2019); *see also D'Amato*, 236 F.3d at 86–87 ("[O]f the 27,883 notices sent … seventy-two persons requested exclusion from the settlement and [the district court] received eighteen written objections and comments. The District Court properly concluded that this small number of

objections weighed in favor of the settlement." (internal citation omitted)).

Moreover, from a substantive standpoint, neither objection raised issues that stand as a barrier to approval of the Modified Stipulation of Settlement. As discussed below, Class Counsel and Defendants have considered these objections carefully and are proposing minor modifications to the Settlement that would address the objections without impairing Class Members' rights or otherwise materially altering the terms of the Settlement. And, the parties who filed objections indicated that the revisions resolved virtually all of their concerns, as described above and below. (Supp. Tarantolo Decl. ¶¶ 17–18.) Thus, this factor weighs in favor of approval.

Stage of the proceedings and amount of completed discovery (Factor 3). This factor addresses whether the plaintiffs have a sufficient factual understanding to assess their claims and the adequacy of the settlement. *See In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d at 699. As Plaintiffs have explained, Plaintiffs developed a detailed factual understanding through both discovery and settlement negotiations. (Prelim. Mem. 30.) This factor weighs in favor of approval.

Risks of establishing liability and entitlement to relief (Factors 4 and 5). Both liability and remedy have been hotly contested. Plaintiffs moved for partial summary judgment on the basis that New York City's impartial hearing system is indisputably in violation of the IDEA's requirements for timely hearing decisions. (*See* Dkt. No. 123.) Both Defendants vigorously opposed this Motion, and State Defendants cross-moved for partial summary judgment. (Dkt. Nos. 129, 136.) Defendants declined the Court's invitation to stipulate to liability and expressly disclaim liability in the Settlement. Without settlement, Plaintiffs would continue to face uncertainty, delays, and challenges in their ability to prove Defendants are liable. In addition, Plaintiffs also face a risk that they could prevail on liability but nonetheless achieve relief that is significantly more limited than what is achievable with Defendants' cooperation and agreement

via this Settlement. (Prelim. Mem. 30-31.) These factors thus strongly weigh in favor of approval.

The risks of maintaining the class action through the trial (Factor 6). The sixth *Grinnell* supports approval where "it is likely that defendants would oppose class certification" if the case were to be litigated. *Garland* v. *Cohen & Krassner*, 2011 WL 6010211, at *8 (E.D.N.Y. Nov. 29, 2011). The Class was certified by stipulation and approved by this Court. (Dkt. Nos. 22, 24, 25, 33.) However, as courts have recognized, "in the absence of settlement, there is no guarantee that defendants will not challenge the maintenance of the class as certified." *In re Med. X-Ray Film Antitrust Litig.*, 1998 WL 661515, at *5 (E.D.N.Y. Aug. 7, 1998). This factor thus weighs in favor of approval.

Ability of the defendant to withstand a greater judgment (Factor 7). This factor weighs in favor of approval because, as public agencies, NYCDOE and NYSED are limited by their approved budgets. While a government entity "can theoretically always withstand greater judgment," any greater judgment, as well as further protracted litigation costs and costs to effect compliance with any ultimate injunctive remedy, would draw from those same budgets. *See Furlong* v. *United States*, 132 Fed. Cl. 630, 634 (Fed. Cl. 2017). The parties have worked extensively to fashion a meaningful remedy that provides relief to the Class as quickly as is feasible and operationally achievable for NYCDOE and NYSED. (*See* Prelim. Mem. 32.)

Range of reasonableness of the settlement in light of the best possible recovery and attendant risks of litigation (Factors 8 and 9). These two factors, which "are often combined for the purposes of analysis," weigh strongly in favor of approval. *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, 2024 WL 3236614, at *26 (E.D.N.Y. June 28, 2024), As Plaintiffs described in their Preliminary Approval Memorandum, the Settlement offers valuable relief. (*See* Prelim. Mem. 32–33.) Specifically, the Settlement provides a path for Defendants to

come into compliance with the timelines of the IDEA expeditiously, outlines system changes to ensure that this compliance is sustainable, and provides for monitoring to allow Plaintiffs to assess Defendants' compliance while the Stipulation is in effect.

In response to the concerns raised by the two objections, Plaintiffs and Defendants have conferred over proposed modifications to the Settlement that would address the objectors' concerns and/or clarify the terms of the Settlement. Certain of the objectors' concerns flagged arguable ambiguity in the language of the Settlement. In response, the parties have made minor adjustments to the Settlement to clarify the parties' intent and eliminate ambiguity. (*See* Suppl. Tarantolo Decl. Ex. 5 (Redline of Modifications to Stipulation of Settlement).) Specifically:

- *Section II.AA*: To respond to the concern regarding the definition of "Parent's Advocate," (Hyman Objection 11) the parties revised the definition of "Parent's Advocate" to mean "a lawyer or non-lawyer advocate representing a Class Member," as follows:[7]

  > "Parent's Advocate" means ~~an~~ a lawyer or non-lawyer advocate representing a Class Member.

- *Section II.KK*: To respond to the concern regarding the scope of the release provision (Hyman Objection 7–11), and to ensure that the release covers only systemic claims for which this settlement provides direct relief, the parties revised the definition of "Settled Claims" as follows:

  > "Settled Claims" means any and all claims for Systemic Relief that have been or could have been asserted by the Releasing Parties against any of the Released Parties ~~arising~~; that arise out of, ~~relating~~ relate to, or are based upon the acts, transactions, occurrences, or omissions that are described, alleged, or contained in the allegations in the Complaint or the Amended Complaint; and that ~~relate to~~ challenge the alleged failure to ~~timely resolve DPCs~~ deliver Timely DPC decisions as defined in paragraph II.NN, except that the Settled Claims do not include any of the Reserved Claims, that is, claims seeking individualized relief that is not Systemic Relief, as that term is defined in paragraph XIII.A.1(a) of this Stipulation.

  And the parties also clarified, in the dismissal provision (Section XII.D), that only the Settled Claims were dismissed with prejudice (that is, not any other claims that could have been

[7] Text with strikethrough indicates text that has been struck, and underlined text indicates text that has been added. A comparison of the original Stipulation of Settlement and the Modified Stipulation of Settlement is attached as Exhibit 5 to the Suppl. Tarantolo Decl.

asserted in the Amended Complaint, or claims arguably related to allegations in the Amended Complaint that did not directly concern the timely delivery of DPC decisions), as follows:

> Upon the Effective Date, the First Amended Complaint, the Action, and ~~all claims asserted therein~~ Settled Claims, are hereby dismissed, with prejudice, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), without payments, attorneys' fees, costs, disbursements, or expenses other than, in addition to, or in excess of the amounts specified in Section XIV of this Stipulation.

The modifications to the definition of "Settled Claims" in Section II.KK and the dismissal provision clarifies that the *only* claims that are released, waived, dismissed with prejudice, or otherwise compromised are claims for Systemic Relief (defined in the Modified Stipulation of Settlement as "relief that is designed to effectuate a change in the City Defendants' or State Defendants' policies, practices, and procedures for individuals other than the individual asserting the claim") that challenge the failure to deliver DPC decisions that are timely under federal law. In other words, Settled Claims do not cover—and thus the Modified Stipulation of Settlement does not release, waive, dismiss with prejudice, or otherwise compromise—either individualized claims or claims for systemic relief that challenge other alleged violations of federal or state law. These unreleased and uncompromised systemic claims would include, for example, those that address issues in the due process complaint hearing system but that do not specifically challenge the timeliness of due process complaint decisions, or those that address other parts of the special education system, including the provision of services to students. While the Settled Claims are dismissed with prejudice and cannot be brought by any parties while the Settlement remains in effect, and the *J.S.M.* action will be closed with prejudice, all other claims remain unaffected by the Settlement.

As noted, counsel who submitted the Hyman Objection indicated a concern that the releases and dismissal provisions in the original Stipulation of Settlement could be subject to an interpretation that could affect claims asserted in the Fifth Amended Complaint in an ongoing case being litigated by that counsel, *M.G. v. New York City Dep't of Educ.*, 13 Civ. 4639 (S.D.N.Y.), and indicated to Class Counsel that the Modified Stipulation of Settlement did not fully address this concern. Based on Plaintiffs' understanding of the *M.G.* action, and Plaintiffs' reading of the releases and dismissal provisions in the Modified Stipulation of Settlement, Plaintiffs are confident that the Modified Stipulation of Settlement can have no effect on the claims asserted in *M.G.*, and that any interpretation of the Modified Stipulation of Settlement to waive or compromise the claims in *M.G.* would be inconsistent with the language of the Modified Stipulation of Settlement and with the *J.S.M.* parties' intent.

- *Section III.A.1.b*: To respond to the concern that the Settlement could be read to limit an IHO's ability to grant lawful extensions and limit the use of *nunc pro tunc* extensions sought by families (Hyman Objection 17–20), the parties (a) agreed to strike the provision providing that extensions recorded as retroactive by NYSED's data system, IHRS, could not be tolled; and (b) added a provision clarifying that the Settlement could not be used to limit any IHO's discretion with respect to lawful extensions, as follows:

> Any period of an Extension, except for an Extension that (i) IHRS reflects was granted by an IHO simultaneously with another Extension (regardless of when the Extension

was entered into IHRS); (ii) IHRS reflects was ~~granted by an IHO retroactively (regardless of when the Extension was entered into IHRS); (iii) IHRS reflects was~~ a Waitlist Extension; or (~~iv~~ iii) NYSED determines was invalid, under the processes set forth in Section IX or through any other means. For the avoidance of doubt, nothing in this Stipulation shall be used as a basis on which to limit any IHO's discretion with respect to lawful Extensions.

- *Section X.A.1*: To respond to the concern that the harm mitigation provision was unclear about which children would be eligible for the relief (Hyman Objection 22–23), the parties made certain clarifications consistent with their intent that this provision cover the categories of children flagged in the objection, as follows:

  1. For a Class Member seeking evaluations whose DPC (i) was filed on or after the Effective Date; and (ii) is not considered Timely for purposes of measuring compliance with the benchmarks set forth in this Stipulation (*see* Section III.A above); ~~and (iii) for which the student is not in a Pendency placement or entitled to Pendency services covering all the relief sought by the DPC,~~ as a remedy for the DPC falling out of compliance, NYCDOE will, with respect to relief sought in the DPC:

     a. ~~For Class Members seeking evaluations:~~ For Class Members seeking occupational therapy, physical therapy, speech/language, assistive technology, and/or vocational evaluations, functional behavioral assessments, or neuropsychological evaluations, NYCDOE shall fund the evaluation. If there is a dispute about the rate of the evaluation, NYCDOE shall fund the evaluation at the rate requested by the Parent.

     b. For all other types of evaluations, NYCDOE shall arrange for an immediate review of the request and determination of whether to agree to provide the evaluation(s) or to contest the request for the evaluation(s). If NYCDOE chooses to contest the request for the evaluation, a~~n~~ prompt ~~expedited~~ Hearing on the issue shall be held at the Class Member's election. If no DPC Decision has been issued within seventy-five (75) days of the date on which the DPC was filed, excluding valid Extensions, NYCDOE shall fund the evaluation consistent with paragraph X.A.1(a)(i) above.

     c. These provisions (concerning evaluations) shall not apply to DPCs that seek funding for an independent evaluation that has (or evaluations that have) already been conducted.

  2. For a Class Member~~s~~ seeking compensatory services or compensatory education ~~who prevail~~ whose DPC (i) was filed on or after the Effective Date; and (ii) is not considered Timely for purposes of measuring compliance with the benchmarks set forth in this Stipulation (*see* Section III.A above); and who prevails on those claims at Hearing or for whom NYCDOE subsequently agrees to a DPC Settlement for those claims, there will be a presumptive entitlement to receive additional relief to cover the Delay Period.

- *Section XII.C.1*: To address general suggestions that certain language in the Settlement could be read to impose obligations on Class Members in connection with their DPCs, the parties added a provision stating: "Nothing herein shall be read to impose obligations on Class Members beyond what is required by federal and state law."

The objectors also raised concerns that certain specific, minor provisions of the Settlement—which were intended to provide ancillary additional protections to Class Members—could be misread or have unintended consequences that might outweigh their potential marginal value. The parties therefore made the following modifications to the Settlement:

- *Section VII.B1*: To respond to the concern that this provision could be construed to abrogate NYCDOE's legal obligation to convene timely resolution sessions (Skyer Objection 4), the parties struck this provision.

- *Section VIII.A.1 and B.3*: To respond to concerns regarding the categories of DPCs that proceed to mediation and the nature of the relief offered in mediation (Skyer Objection 5; Hyman Objection 21–22), the parties struck Section VIII.A.1. The parties also struck the middle clause of Section VIII.B.3, as follows:

> NYCDOE shall ensure that the DPC Digitalization interface allows a Parent or Parent Advocate to ~~identify DPCs as belonging to categories that NYCDOE has deemed appropriate for Mediation, and to~~ indicate their consent to Mediation.

- Section IX.D.3: To respond to concerns regarding NYCDOE's practices with respect to pre-hearing disclosures (Hyman Objection 11–17; Skyer Objection 5–6), the parties struck this provision. [8]

None of these modifications operate to constrain Class Members' rights under the Settlement or applicable law—in fact, the modifications benefit Class Members by clarifying that their rights (including with respect to extensions, pre-hearing disclosures, and non-released claims)

[8] In addition, in reviewing the Stipulation of Settlement closely, the parties determined to make a small number of additional clarifications unrelated to any of the concerns raised in the objections. These clarifying edits do not materially alter any of the Settlement's terms. Specifically, these non-substantive modifications include: (1) clarifying the data that NYCDOE is required to provide regarding resolution sessions (Section IX.A.1.b, g); (2) including two additional data fields that NYSED is required to provide to Class Counsel as part of its ongoing monitoring (Section X.A.4); and (3) clarifying that "due process complaints" is limited to complaints filed pursuant to 20 U.S.C. § 1415(b)(6)–(7) and 34 C.F.R. § 300.507(a)(2)," that is, does not include complaints filed solely under New York law (Sections I.C and II.H).

are expressly preserved. As discussed above, the parties provided these proposed revisions to the objectors. Thereafter, counsel who submitted the Skyer Objection indicated that the revisions fully addressed the concerns in that Objection, and counsel who submitted the Hyman Objection indicated that the revisions addressed all of her concerns save the one described above.

These modifications "blunt[]" the "thrust of the objection[s]", *Lopez*, 2004 WL 7196763, at *15, do not materially alter the terms of the settlement, and preserve all of the core provisions providing valuable relief to Class Members. *See Keepseagle* v. *Vilsack*, 102 F. Supp. 3d 306, 313 (D.D.C. 2015).[9] None of the objections raised or the minor modifications made to address them disturb the Court's preliminary finding that the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). And, the parties who filed objections indicated that the revisions resolved virtually all of their concerns. (Supp. Tarantolo Decl. ¶¶ 17–18.) And in any event, the Modified Stipulation of Settlement easily falls within the "range of reasonableness" for a settlement of this nature. *In re Payment Card*, 2024 WL 3236614, at *26.

d. The proposal treats Class Members equitably relative to each other.

The Settlement is fair and treats Class Members equitably relative to each other. This factor examines "whether the apportionment of relief among class members takes appropriate account of differences among their claims." *D'Angelo* v. *Hunter Bus. Sch., Inc.*, 2023 WL 11845607, at *14 (E.D.N.Y. Jan. 24, 2023) (quoting Fed. R. Civ. P. 23(e)(2)(D) advisory committee's note to 2018 amendment). Here, as described above, the Settlement treats all Class Members identically: The

[9] Nor does approval of the Modified Stipulation of Settlement trigger any additional notice requirement, since it "merely provide[s] many additional benefits" to the class and "no legal right" of the class "was adversely affected." *Keepseagle*, 102 F. Supp. 3d at 313 (cleaned up and citation omitted); *see also id.* at 313 (amendments to stipulation of class action settlement "require[] supplemental notice only when it would have a material adverse effect on the rights of class members" (quotation omitted)); *Copley* v. *Bactolac Pharm.*, 2023 WL 4490286, at *3 (E.D.N.Y. May 23, 2023) (similar).

compliance benchmark provisions ensure Class Members' claims are adjudicated timely, and the process improvements and harm mitigation provisions apply equally to every member of the Class. (*See* Modified Stipulation of Settlement § III, X.) "Because the injunctive and declaratory relief affects all class members equally, this factor is not relevant." *Sourovelis* v. *City of Philadelphia*, 515 F. Supp. 3d 343, 358 (E.D. Pa. 2021). This factor is neutral or weighs in favor of approval.

Because all the factors in Fed. R. Civ. P. 23(e)(2) and all of the *Grinnell* factors weigh in favor of approving the Settlement (or are neutral), the Court should approve the Settlement.

II. THE COURT SHOULD APPROVE THE STIPULATED ATTORNEYS' FEES AND COSTS AWARD

Under the Settlement, the parties have agreed to awards of attorneys' fees from State and City Defendants to Class Counsel. *See* 20 U.S.C. § 1415(i)(3)(B)(i)(I) (fee-shifting under IDEA); *see also* 29 U.S.C. § 794a (Rehabilitation Act); 42 U.S.C. § 1988 (§ 1983); and 42 U.S.C. § 12205 (Americans with Disabilities Act). As memorialized in the Stipulation of Settlement, State Defendants have agreed to pay $226,795 to NYLAG and $172,205 to Sullivan & Cromwell; and City Defendants have agreed to pay $558,305 to NYLAG and $425,695 to Sullivan & Cromwell. (Modified Stipulation of Settlement § XIV.) Notably, these amounts are vastly lower than counsel's lodestar for the work actually performed. And a substantial portion of the award will go towards supporting NYLAG's ongoing work to assist New Yorkers, including students with disabilities and their families, who cannot afford private attorneys. Indeed, Sullivan & Cromwell has agreed since the outset of the case to donate any fees it recovers to NYLAG and other charities, foundations, or legal services providers, after recovering its out-of-pocket costs incurred in connection with this matter. (Monahan Decl. ¶ 14.) Plaintiffs move for approval of this award in connection with approval of the Settlement, under Fed. R. Civ. P. 23(h) and 54(d)(2).

Under Rule 23(h), the Court must determine whether the amount of a fee award in a class

action settlement is "reasonable under the circumstances." *Goldberger* v. *Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000) (quotations omitted). To do so, courts consider the following six factors: (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of the representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations. *Id.* at 50; *see also Meredith Corp.* v. *SESAC, LLC*, 87 F. Supp. 3d 650, 668 (S.D.N.Y. 2015); *Fero* v. *Excellus Health Plan, Inc.*, 2022 WL 1292133, at *2 (W.D.N.Y. Apr. 29, 2022) (applying *Goldberger* factors in case "primarily for injunctive relief"). All these factors support approval of the award here.

***Time and labor expended (Factor 1)*:** Class Counsel expended tremendous time and effort on this litigation over the course of over five years. This complex case involved extensive litigation, discovery, and settlement work performed over thousands of hours, including:

- Conducting extensive pre-filing investigation, including interviewing and collecting documents from the Named Plaintiffs (Supp. Tarantolo Decl. ¶ 27; Monahan Decl. ¶ 3);
- Drafting and filing a detailed and comprehensive Complaint and Amended Complaint (Supp. Tarantolo Decl. ¶ 27; Monahan Decl. ¶ 4);
- Conducting extensive discovery, including production of over 40,000 documents, 119 document requests, and 40 interrogatories, over the course of approximately one year (*See* Supp. Tarantolo Decl. ¶ 27; Monahan Decl. ¶ 4);
- Litigating State Defendants' motion to dismiss, seeking partial summary judgment, opposing State Defendants' cross motion for partial summary judgment, and engaging in extensive substantive letter briefing before the Court (Supp. Tarantolo Decl. ¶ 27; Monahan Decl. ¶ 4);
- Engaging the *pro bono* services of Stout to assist with parsing the extensive and complicated data Plaintiffs obtained from Defendants regarding the New York City DPC system (Supp. Tarantolo Decl. ¶ 27; Monahan Decl. ¶ 4);
- Engaging in hundreds of hours of settlement negotiations with Defendants, including multiple mediation sessions with Magistrate Judge Roanne Mann and dozens of mediation sessions with Honorable James C. Francis (Ret.), and exchanging dozens of drafts of the Stipulation of Settlement (Supp. Tarantolo Decl. ¶ 28; Tarantolo Decl. ¶¶ 9–16; Monahan Decl. ¶ 4);
- Participating in multiple conversations with the New York City Office of Impartial Trials and Hearings ("OATH") and the New York City Comptroller (Tarantolo Decl. ¶ 13);

- With Defendants, jointly engaging an education consulting firm, Thru Consulting, to inform the parties' settlement efforts by evaluating NYCDOE's DPC resolution and settlement processes (Tarantolo Decl. ¶ 15); and

- Seeking and obtaining preliminary approval of the Stipulation of Settlement and the subsequent notice process, including speaking with Class Members who had questions about the case or settlement and engaging with objectors to address their limited objections (*See* Supp. Tarantolo Decl. ¶¶ 14–16, 28).

This factor weighs strongly in favor of approving Plaintiffs' unopposed request for attorneys' fees.

***Magnitude and complexity of the litigation (Factor 2)*:** Litigating this case through class certification, discovery, and summary judgment was legally and factually complex. (*See* Supp. Tarantolo Decl. ¶¶ 26–27.) Likewise, negotiating the Stipulation of Settlement was an enormous, complicated task requiring substantial expertise and time. (*See id*. ¶ 28; Tarantolo Decl. ¶¶ 9–16.) Thus, this factor supports an award of attorneys' fees.

***Risk of the litigation (Factor 3)*:** As described above, liability and remedy have been hotly contested, creating meaningful risk with respect to Plaintiffs' success. Moreover, NYLAG is a nonprofit legal services organization, and devoted substantial resources to this action with substantial risk that it would never recover attorneys' fees of the type that supports its work.

Sullivan & Cromwell likewise undertook this representation on a *pro bono* basis. Courts have acknowledged "the wisdom of a fee-shifting statute that accounts for and rewards pro bono representation, because unprofitability is a significant disincentive for most attorneys to take cases like this one." *Heng Chan* v. *Sung Yue Tung Corp.*, 2007 WL 1373118, at *7 (S.D.N.Y. May 8, 2007); *see also Erler* v. *Erler*, 2018 WL 4773414, at *5 (N.D. Cal. Apr. 11, 2018) ("One purpose of allowing attorneys' fees to be recovered in pro bono matters is to encourage firms to take cases on pro bono, where they would be less likely to do so if there was no possibility of recovering fees."), *aff'd*, 2018 WL 3421911 (N.D. Cal. July 16, 2018). This factor weighs in favor the award.

***Quality of the representation (Factor 4)*:** "To determine the quality of representation,

courts review, among other things, the recovery obtained and the backgrounds of the lawyers involved in the lawsuit." *Raniere* v. *Citigroup Inc.*, 310 F.R.D. 211, 221 (S.D.N.Y. 2015) (quotation omitted). Here, the recovery obtained is significant and will substantially benefit the Class. The NYLAG and Sullivan & Cromwell attorneys are highly experienced with complex and class action litigation, and are highly qualified. (Supp. Tarantolo Decl. ¶¶ 36–39; Monahan Decl. ¶ 2.) This factor, too, supports an award of attorneys' fees.

***The requested fee in relation to the settlement (Factor 5)*:** Where, as here, the relief the settlement provides is injunctive, not monetary, courts do not assess a request for attorney's fees as a percentage of the total settlement amount because such an approach is not possible. *See, e.g.*, *Jermyn* v. *Best Buy Stores, L.P.*, 2012 WL 2505644, at *11 (S.D.N.Y. June 27, 2012). Instead, courts look to whether the lodestar is reasonable. *See id.* (where injunctive-only settlement "mandat[ed] important changes" and provided benefits to class members, and "the requested fee does not reduce or affect the relief provided to the class," fee request was reasonable); *see also Berni* v. *Barilla G. e R. Fratelli, S.p.A.*, 332 F.R.D. 14, 36 (E.D.N.Y. 2019), *vacated and remanded sub nom. Berni* v. *Barilla S.p.A.*, 964 F.3d 141 (2d Cir. 2020) ("Where the settlement relief is injunctive-only, the award of class counsel's lodestar as attorney's fees appears reasonable."). This factor supports the requested fee award.

***Public policy considerations (Factor 6)*:** Public policy considerations strongly support awarding the stipulated fees to Class Counsel. "Public policy favors the award of reasonable attorneys' fees in class action settlements." *Jermyn*, 2012 WL 2505644, at *12. This is particularly true for statutes like the IDEA, which provides for fee-shifting in order to incentivize qualified lawyers to take on the claims of students with disabilities who may be unable to afford private attorneys. A fee award to NYLAG, a non-profit legal services organization, would support ongoing

work on behalf of individuals in need. (Supp. Tarantolo. Decl. ¶¶ 20–24, 34.) A fee award to Sullivan & Cromwell would be donated to NYLAG and other charities, foundations or legal services providers, after the firm recovers out-of-pocket costs. (Monahan Decl. ¶ 14.)

***Cross-check with the lodestar*:** The Second Circuit "encourage[s]" District Courts to review Class Counsel's lodestar as a "'cross check' on the reasonableness of the requested" fee awarded. *Goldberger*, 209 F.3d at 50. "[W]here used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court"; rather, "the reasonableness of the claimed lodestar can be tested by the court's familiarity with the case." *Id.*

As set forth in the attached declarations, Class Counsel's lodestar exceeds the award here by many multiples. (Supp. Tarantolo Decl. ¶¶ 29–33; Monahan Decl. ¶¶ 5–6, 9–10.) Class Counsel calculated that lodestar as of January 2024, when the parties began negotiations over attorneys' fees. (Suppl. Tarantolo Decl. ¶¶ 30–31.) At that time, NYLAG had performed approximately 3,330 total hours of work. (*Id.* ¶ 30.) This total excludes the work of many professionals at NYLAG who contributed to the litigation. As of that time, Class Counsel Sullivan & Cromwell had performed approximately 4,240 total hours litigating this case. (Monahan Decl. ¶ 8.) This total likewise reflects work performed by some, but not all, of the professionals who contributed to the litigation. (*Id.* ¶ 9.) And the totals do not include the hundreds of additional hours of work performed in the past fourteen months (and to be performed to see the Settlement through). To put Class Counsel's lodestar into perspective, even using the discounted total hours, if Sullivan & Cromwell's time alone were billed at the firm's standard rates from 2020 (not accounting for any rate increases since then), the bill would be over $4.5 million—over three times the total award to all counsel here. (Monahan Decl. ¶ 10.) Because all six *Goldberger* factors and the lodestar cross-check support an award of attorney's fees, the Court should grant Class Counsel's unopposed request.

CONCLUSION

For the reasons stated herein, Plaintiffs respectfully request that this Court, following the April 11 Fairness Hearing: (1) approve the Modified Stipulation of Settlement; (2) approve Class Counsel's request for attorneys' fees and costs; (3) enter the proposed Final Approval Order; and (4) award such other and further relief as this Court deems just and proper.

Dated: New York, New York
March 28, 2025

Respectfully submitted,

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