

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-SJB

STIPULATION OF SETTLEMENT
AS TO ALL CLAIMS
AGAINST ALL DEFENDANTS

This Stipulation of Settlement as to All Claims Against All Defendants (the “Stipulation”) is made and entered into pursuant to Rule 23 of the Federal Rules of Civil Procedure and contains the terms of a settlement (the “Settlement”) by and among the plaintiffs, J.S.M., by her parent, E.M.; E.M.; B.M., by his parents, M.C. and L.M.; M.C. and L.M.; C.G., by his parent, L.G.; L.G.; P.W., by his parents, T.F. and P.R.W.; T.F. and P.R.W.; Q.T., by his parents, W.J.T. and W.H.T.; W.J.T. and W.H.T.; A.N., by her parent, T.N.; T.N.; A.S., by his parent, T.T.; T.T.; K.M.E., by her parent, E.N.; E.N.; S.F., by her parent, A.F.; A.F.; S.S., by her parent, D.C.; D.C.; W.W., by her parent, S.J.; and S.J. (collectively, the “Named Plaintiffs”) and the Plaintiff Class¹ (together with Named Plaintiffs, “Plaintiffs”); Defendants the New York City Department of Education (“NYCDOE”) and David C. Banks, in his official capacity as Chancellor of the New York City Department of Education (collectively, the “City Defendants”); and Defendants the New York State Education Department (“NYSED”) and Betty A. Rosa, in her official capacity as Commissioner of Education of the State of New York (collectively, the “State Defendants,” and

¹ All capitalized terms herein shall have the meanings stated in Section II below, or as otherwise defined in this Stipulation.

with the Plaintiffs and the City Defendants, the “Parties”), in the above-captioned action (the “Action”), by and through their respective undersigned counsel.

I. WHEREAS:

A. On February 7, 2020, Named Plaintiffs filed a Complaint in the above-captioned Action against Defendants;

B. On March 20, 2020, Named Plaintiffs filed an Amended Complaint;

C. The Amended Complaint alleges that thousands of New York City children with disabilities or children suspected of being children with disabilities are being denied the free appropriate public education to which they are entitled under federal and state law due to pervasive delays in receiving hearings and decisions on “due process complaints,” that is, complaints filed pursuant to 20 U.S.C. § 1415(b)(6)–(7) and 34 C.F.R. § 300.507(a)(2),” challenging the adequacy and appropriateness of the special education services offered to them;

D. On May 28, 2020, Named Plaintiffs, City Defendants, and State Defendants stipulated to the certification of a Class, which the Court entered on June 18, 2020;

E. The Parties have engaged in extensive discovery in connection with litigation of the Action;

F. Counsel for the Parties have engaged in extensive and good faith discussions regarding the possibility of settling this Action and have reached, by means of arm’s-length and extended negotiations, an agreement concerning the proposed settlement of the Action as set forth below;

G. Class Counsel, having made a thorough investigation of the facts, have concluded that the terms and conditions of this settlement are fair, reasonable, and adequate and in the best interests of the Plaintiffs and the Class;

H. The State Defendants maintain that the Individuals with Disabilities Education Act (the “IDEA”) does not contain a private right of action against the State Defendants and expressly preserve this and all other defenses and objections to the Amended Complaint;

I. Plaintiffs maintain that they have brought this Action pursuant to the express private right of action contained in the IDEA and that this cause of action may be asserted against any party that has violated the IDEA, including a state educational agency;

J. Defendants have expressly denied and continue to deny all allegations of wrongdoing and liability as set forth in the Amended Complaint;

K. By entering into this Stipulation, Defendants expressly deny any wrongful conduct or liability, or violation of any federal, state, or local statute, ordinance, or law in this matter whatsoever;

L. Plaintiffs maintain that the allegations set forth in the Amended Complaint accurately describe wrongful conduct, liability, and violations of law by all Defendants, and that Plaintiffs would prevail if this case were litigated to judgment; and

M. Plaintiffs and Defendants wish to resolve this Action and any and all other disputes relating to the subject matter of the litigation, between them, fully and voluntarily, without further litigation and without admission of fault or liability.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the Parties, that this Action should be settled on the following terms subject to approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure:

II. DEFINITIONS

A. “Class” means the class defined by the Court in this Action on June 18, 2020:

Individuals who file or have 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.

B. “Class Counsel” means New York Legal Assistance Group and Sullivan & Cromwell LLP.

C. “Class Member” means any individual member of the Class.

D. “Comptroller” means the Office of the New York City Comptroller.

E. “CSE” means Committee on Special Education.

F. “Defendants” means the State Defendants and the City Defendants.

G. “Delay Period” means, for any DPC in which a DPC Decision is not issued Timely, the period between the last date on which the DPC Decision could have been Timely issued and the date on which the DPC Decision is issued.

H. “DPC” means a “Due Process Complaint” filed pursuant to 20 U.S.C. § 1415(b)(6)–(7) and 34 C.F.R. § 300.507(a)(2).

I. “DPC Decision” means a decision issued by an IHO that resolves a DPC.

J. “DPC Digitalization” means the technological system that NYCDOE is implementing to permit the filing of DPCs via an online portal, rather than solely via email or in hard copy. DPC Digitalization may or not be part of the IHMS Module.

K. “DPC Settlement” means the settlement of claims asserted in a DPC via stipulation of settlement entered by the Parent and NYCDOE.

L. “Due Process Hearing” or “Hearing” means a hearing regarding a DPC conducted by an IHO.

M. “Effective Date” means the date on which the terms and conditions of this Stipulation shall be deemed effective, and the Parties’ obligations, rights and responsibilities hereunder shall commence. That date shall occur only upon an order or judgment approving this Stipulation becoming final. “Final,” for purposes of the order or judgment approving this Stipulation in accordance with Rule 23(e) of the Federal Rules of Civil Procedure, shall mean (i) the thirty-first day after such order or judgment is entered, if no notice of appeal is timely filed; or (ii) if any such notice of appeal is timely filed, then the first day on which the order or judgment is not subject to further judicial review or appeal, either by reason of affirmance by a court of last resort or by reason of lapse of time, provided that this Stipulation or order approving this Settlement Stipulation is not reversed or modified upon such judicial review or appeal. In the event an order or judgment approving this Stipulation is reversed or modified upon judicial review or appeal, this Stipulation shall be voidable by election of Class Counsel or Defendants, which election shall be provided to counsel for all other Parties and the Court in writing.

N. “Extension” means an enlargement of the time in which a DPC Decision may be issued. 34 C.F.R. § 300.515(c); 8 N.Y.C.R.R. § 200.5(j)(5)(i).

O. “FAPE” means a “free appropriate public education.” 20 U.S.C. §§ 1401(9), 1414(d).

P. “IEP” means an “Individualized Education Program.” 20 U.S.C. §§ 1401(14), 1414(d)(1)(A).

Q. “IDEA” means the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.*

R. “IHMS Module” means the data system currently in development in which, upon the system’s completion, NYCDOE will store data about DPCs and the Hearing system.

S. “IHO” means “Impartial Hearing Officer.” 20 U.S.C. § 1415; 8 N.Y.C.R.R. § 200.5.

T. “IHRIS” means the data system maintained by NYSED to store data about DPCs and the Hearing system.

U. “IHS” means the data system currently maintained by NYCDOE to store data about DPCs and the Hearing system.

V. “Independent IHOs” means IHOs hired as independent contractors by NYSED and paid by NYCDOE under the Hearing system in existence in New York City at the time the Amended Complaint was filed.

W. “Mediation” means the process by which parties may voluntarily resolve disputes involving any matter for which a DPC may be brought, including matters arising prior to the filing of a DPC, pursuant to 8 N.Y.C.R.R. § 200.5(h).

X. “OATH” means the New York City Office of Administrative Trials and Hearings.

Y. “OATH IHOs” means IHOs employed within the Special Education Hearings Division within OATH.

Z. “Parent” means the legal guardian of a Class Member who is a student.

AA. “Parent’s Advocate” means a lawyer or non-lawyer advocate representing a Class Member.

BB. “Pendency” means an automatic injunction under the IDEA whereby a student is maintained in the last agreed-upon special education placement while the student’s DPC is adjudicated. *See generally* 20 U.S.C. § 1415(j).

CC. “Rapid Resolutions” means the process by which NYCDOE makes written offers of resolution for certain DPCs on an expedited basis.

DD. “Released Parties” means any and all of the City Defendants and the State Defendants, as well as their predecessors, successors and/or assigns and all past or present officials, employees, representatives and/or agents of the City Defendants, the State Defendants, and the State of New York.

EE. “Releasing Parties” means the Named Plaintiffs and Class Members, on behalf of themselves and their past or present administrators, representatives, attorneys, heirs, successors, and assigns.

FF. “Reporting Period” means each six-month period following the Effective Date.

GG. “Resolution” means an agreement reached pursuant to the process set forth in 20 U.S.C. § 1415(f)(1)(B).

HH. “Resolution Case Manager” means the NYCDOE staff person who is primarily responsible for the NYCDOE’s Resolution process for a DPC.

II. “Resolution Period” means the 30-day period during which NYCDOE must convene a meeting with the Parent pursuant to 20 U.S.C. § 1415(f)(1)(B) and 34 C.F.R. § 300.510(a).

JJ. “Review Group” means the group of DPCs that will be reviewed pursuant to Section IV.A.

KK. “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; that arise out of, 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 challenge the alleged failure to 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.

LL. “Settlement Term” means the period between the Effective Date and four years from the Effective Date.

MM. “Systemic Relief” means 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.

NN. “Timely” means a DPC that is closed (that is, a DPC Decision is issued, the DPC is withdrawn or dismissed, or the DPC is otherwise closed) within the timeframe set forth in 20 U.S.C. § 1415(f)(1)(B)(ii) and 34 C.F.R. § 300.515(a). A pending DPC shall also be considered Timely if it would be Timely if closed on the day its timeliness is measured. To determine whether DPCs closed due to DPC Settlement are Timely, those DPCs shall be considered closed on the date on which the parties execute the settlement stipulation, the DPC is withdrawn, or the DPC is dismissed by the IHO, whichever date is first.

OO. “Thru” means “Thru Consulting LLC,” an educational consulting firm retained by the Parties to advise on aspects of this Stipulation.

PP. “Waitlist Extension” means an Extension granted by NYSED when an IHO is appointed to a DPC that is not Timely, including, but not limited to, an Extension entered into IHS and/or IHRS with Extension Code 9, “Waitlisted Case – New Appointment.”

III. INJUNCTIVE RELIEF – BENCHMARK COMPLIANCE

A. Measuring Compliance

1. For purposes of measuring compliance with the benchmarks set forth in this Section, a DPC shall be considered Timely if it is closed (that is, a DPC Decision is issued, the DPC is withdrawn or dismissed, or the DPC is otherwise closed) within seventy-five (75) days of the filing of the DPC, except that the following periods may be tolled:

a. Any period of time that a DPC is in Mediation when the parties have agreed in writing to continue the Mediation. This period of time will stop when either the Parent or the NYCDOE withdraws from the Mediation process.

b. 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 a Waitlist Extension; or (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.

B. Benchmarks for the Issuance of Timely DPC Decisions

1. DPCs Filed After the Effective Date

a. Within one year of the Effective Date, for DPCs filed after the Effective Date, at least 50% of DPC Decisions issued and DPCs that are otherwise closed within each Reporting Period, and DPCs that have been pending for seventy-five (75) days or more and

remain pending at the close of each Reporting Period, shall be Timely. Pending DPCs shall be considered Timely for purposes of this benchmark if they would have been Timely had they been closed on the last day of the Reporting Period.

b. Within two years of the Effective Date, for DPCs filed after the Effective Date, at least 75% of DPC Decisions issued and DPCs that are otherwise closed within each Reporting Period, and DPCs that have been pending for seventy-five (75) days or more and remain pending at the close of each Reporting Period, shall be Timely. Pending DPCs shall be considered Timely for purposes of this benchmark if they would have been Timely had they been closed on the last day of the Reporting Period.

c. Within three years of the Effective Date, for DPCs filed after the Effective Date, at least 95% of DPC Decisions issued and DPCs that are otherwise closed within each Reporting Period, and DPCs that have been pending for seventy-five (75) days or more and remain pending at the close of each Reporting Period, shall be Timely. Pending DPCs shall be considered Timely for purposes of this benchmark if they would have been Timely had they been closed on the last day of the Reporting Period.

d. A DPC that is pending and not Timely at the end of one Reporting Period shall be included in timeliness calculations for subsequent Reporting Periods, whether the DPC is closed in the Reporting Period or remains pending at the end of the Reporting Period. However, NYCDOE's reporting on these DPCs will differentiate between not Timely DPCs which were untimely in a prior Reporting Period and DPCs which are not Timely for the first time in the Reporting Period. If a DPC that was deemed to be not Timely had one or more lawful Extensions that were not entered or otherwise known at the close of one Reporting Period, that DPC will be

considered Timely in any subsequent reporting period(s) and any reporting period in which the DPC was recorded as not Timely will be corrected.

IV. PRE-EFFECTIVE DATE CASES

A. Process

1. The Review Group will include all pending DPCs filed before July 1, 2022, and all pending DPCs filed after July 1, 2022 but before the Effective Date that are not Timely as of the Effective Date.

2. Within thirty (30) days after the Effective Date, NYSED will identify for NYCDOE any DPCs in the Review Group which NYSED believes, based on the information available to it (including, but not limited to, information arising from complaints received from Parents, Parent Advocates, or NYCDOE) falls into one of the following categories: (i) DPCs in which the record has closed, but a DPC Decision has not issued; and (ii) DPCs in which a Hearing on the merits of the DPC has begun but not yet concluded (“NYSED Initial Review”). These DPCs will be removed from the NYCDOE Initial Review, as set forth *infra*.

a. For DPCs in which the record has closed but a DPC Decision has not issued, immediately upon conclusion of the NYSED Initial Review described in paragraph IV.A.2, NYSED will use best efforts to ensure that the IHO issues a DPC Decision within fourteen (14) days.

b. For DPCs in which a Hearing on the merits of the DPC has begun but not concluded, NYSED will promptly use best efforts to ensure that the IHO schedules a Hearing on the merits of the DPC (that is, selects a date that is agreeable to the parties on which to hold the Hearing) within fourteen (14) days, and NYSED will follow up with the IHO to request

that the Hearing conclude and the IHO issue a DPC Decision within forty-five (45) days of NYSED's outreach, excluding valid Extensions.

3. NYCDOE will review all pending DPCs filed before July 1, 2022, and all pending DPCs filed after July 1, 2022 but before the Effective Date that are not Timely, and assess the DPC for DPC Settlement ("NYCDOE Initial Review"), pursuant to the terms set forth below:

i. Immediately following the Effective Date, NYCDOE will commence a NYCDOE Initial Review of at least one third of all pending DPCs that (i) were filed before July 1, 2022 and (ii) do not have pendency orders ("Tranche 1"), subject to the following deadlines:

1. For DPCs which NYCDOE determines are either (i) DPCs in which the record has closed, but a DPC Decision has not issued, or (ii) DPCs in which a Hearing on the merits of the DPC has begun but not yet concluded, NYCDOE will, if the assigned IHO is an OATH IHO, notify the IHO and OATH administration, copying NYSED at spcedih@nysed.gov, that the Hearing should be concluded and a Decision issued within the same time periods set forth above in paragraphs IV.A.2(a) and 2(b). If the assigned IHO is an Independent IHO, NYCDOE will notify NYSED, and NYSED will take the steps noted above in paragraphs IV.A.2(a) and 2(b). These DPCs will be removed from the NYCDOE Initial Review.

2. For DPCs that NYCDOE determines are not appropriate for DPC Settlement, within ninety (90) days of the Effective Date, NYCDOE will, on a rolling basis, notify the Parent/Parent's Advocate and will, on a rolling basis, if the assigned IHO is an OATH IHO, notify the IHO and OATH administration, copying NYSED at spcedih@nysed.gov, that DPC Settlement is not proceeding and therefore the DPC should proceed to a Hearing and Decision within the timeframes set forth in applicable law, excluding valid Extensions. If the assigned IHO is an Independent IHO, NYCDOE will notify NYSED, and NYSED will promptly contact the Independent IHO and remind the Independent IHO of the obligation to promptly hold a Hearing on the merits of the DPC, and NYSED will follow up with the Independent IHO to request that the Hearing conclude and the Independent IHO issue a DPC Decision within forty-five (45) days, excluding valid Extensions.

3. For DPCs in which NYCDOE determines that it needs further documents to assess whether the DPCs are appropriate for DPC Settlement, NYCDOE will request those documents within ninety (90) days of the Effective Date. Within thirty (30) days of receiving the

requested documents, NYCDOE will either apply for Comptroller authority, or notify the Parent/Parent's Advocate that DPC Settlement is not proceeding. For DPCs in which DPC Settlement is not proceeding, if the assigned IHO is an OATH IHO, NYCDOE will notify the IHO and OATH administration, copying NYSED at specedih@nysed.gov, that DPC Settlement is not proceeding and therefore the DPC should proceed to a Hearing and Decision within the timeframes set forth in applicable law, excluding valid Extensions. If the assigned IHO is an Independent IHO, NYCDOE will notify NYSED, and NYSED will promptly contact the Independent IHO and remind the Independent IHO of the obligation to promptly hold a Hearing on the merits of the DPC, and NYSED will follow up with the Independent IHO to request that the Hearing conclude and the Independent IHO issue a DPC Decision within forty-five (45) days, excluding valid Extensions.

4. For DPCs where additional documents are not needed, NYCDOE, within one hundred twenty (120) days of the Effective Date, will either apply for Comptroller authority or notify the Parent/Parent's Advocate that DPC Settlement is not proceeding. For DPCs in which DPC Settlement is not proceeding, if the assigned IHO is an OATH IHO, NYCDOE will notify the IHO and OATH administration, copying NYSED at specedih@nysed.gov, that DPC Settlement is not proceeding and therefore the DPC should proceed to a Hearing and Decision within the timeframes set forth in applicable law, excluding valid Extensions. If the assigned IHO is an Independent IHO, NYCDOE will notify NYSED, and NYSED will promptly contact the Independent IHO and remind the Independent IHO of the obligation to promptly hold a Hearing on the merits of the DPC, and NYSED will follow up with the Independent IHO to request that the Hearing conclude and the Independent IHO issue a DPC Decision within forty-five (45) days, excluding valid Extensions.

5. For DPCs in which the Comptroller does not grant settlement authority, NYCDOE will, within fourteen (14) days of notification of the Comptroller's determination, notify the Parent/Parent's Advocate that DPC Settlement is not proceeding. For DPCs in which DPC Settlement is not proceeding, if the assigned IHO is an OATH IHO, NYCDOE will notify the IHO and OATH administration, copying NYSED at specedih@nysed.gov, that DPC Settlement is not proceeding and therefore the DPC should proceed to a Hearing and Decision within the timeframes set forth in applicable law, excluding valid Extensions. If the assigned IHO is an Independent IHO, NYCDOE will notify NYSED, and NYSED will promptly contact the Independent IHO and remind the Independent IHO of the obligation to promptly hold a Hearing on the merits of the DPC, and NYSED will follow up with the Independent IHO to request that the Hearing conclude and the Independent IHO issue a DPC Decision within forty-five (45) days, excluding valid Extensions.

6. For DPCs that the Comptroller approves for DPC Settlement, NYCDOE shall make a formal offer to the Parent within fourteen (14) days of receiving Comptroller approval.

7. For DPCs in which the Parent accepts NYCDOE's offer, or where agreement is reached after further negotiation, the parties will negotiate and promptly execute a settlement stipulation.

8. For DPCs in which the Parent rejects NYCDOE's offer, or where agreement is not ultimately reached, upon the parties' agreement that the negotiations are at an impasse, if the assigned IHO is an OATH IHO, NYCDOE will notify the IHO and OATH administration, copying NYSED at spcedih@nysed.gov, that DPC Settlement is not proceeding and therefore the DPC should proceed to a Hearing and Decision within the timeframes set forth in applicable law, excluding valid Extensions. If the assigned IHO is an Independent IHO, NYCDOE will notify NYSED, and NYSED will promptly contact the Independent IHO and remind the Independent IHO of the obligation to promptly hold a Hearing on the merits of the DPC, and NYSED will follow up with the Independent IHO to request that the Hearing conclude and the Independent IHO issue a DPC Decision within forty-five (45) days, excluding valid Extensions.

9. For DPCs in which the Parent/Parent's Advocate does not respond to NYCDOE's request for documents or DPC Settlement offer for a period exceeding sixty (60) days, if the assigned IHO is an OATH IHO, NYCDOE will notify the IHO and OATH administration, copying NYSED at spcedih@nysed.gov, that DPC Settlement is not proceeding and therefore the DPC should proceed to a Hearing and Decision within the timeframes set forth in applicable law, excluding valid Extensions. If the assigned IHO is an Independent IHO, NYCDOE will notify NYSED, and NYSED will promptly contact the Independent IHO and remind the Independent IHO of the obligation to promptly hold a Hearing on the merits of the DPC, and NYSED will follow up with the Independent IHO to request that the Hearing conclude and the Independent IHO issue a DPC Decision within forty-five (45) days, excluding valid Extensions.

ii. Any of the timelines set forth in this paragraph IV.A.3 may be extended by agreement of the Parent and the NYCDOE.

4. Within four months after the Effective Date, NYCDOE will commence a NYCDOE Initial Review of another third of all pending DPCs that were filed before July 1, 2022, and do not have Pendency orders ("Tranche 2"). Review of Tranche 2 DPCs will proceed pursuant

to the terms set forth in paragraph IV.A.3 above, except that the timeframes shall begin four months after the Effective Date.

5. Within eight months after the Effective Date, NYCDOE will commence a NYCDOE Initial Review of all remaining pending DPCs that were filed before July 1, 2022, and do not have Pendency orders (“Tranche 3”). Review of Tranche 3 DPCs will proceed pursuant to the terms set forth in paragraph IV.A.3 above, except that the timeframes shall begin eight months after the Effective Date.

6. Within one year after the Effective Date, NYCDOE will commence a NYCDOE Initial Review of all pending DPCs that were filed after July 1, 2022 and before the Effective Date that are, or have been, untimely, and do not have Pendency orders (“Tranche 4”). Review of Tranche 4 DPCs will proceed pursuant to the terms set forth in paragraph IV.A.3 above, except that the timeframes shall begin one year after the Effective Date.

7. Within sixteen (16) months after the Effective Date, NYCDOE will commence a NYCDOE Initial Review of at least one third of all pending DPCs that were filed before July 1, 2022 and have Pendency orders (“Tranche 5”). Review of Tranche 5 DPCs will proceed pursuant to the terms set forth in paragraph IV.A.3 above, except that the timeframes shall begin sixteen (16) months after the Effective Date.

8. Within twenty (20) months after the Effective Date, NYCDOE will commence a NYCDOE Initial Review of at least another third of all pending DPCs that were filed before July 1, 2022, and have Pendency orders (“Tranche 6”). Review of Tranche 6 DPCs shall proceed pursuant to the terms set forth in paragraph IV.A.3 above, except that the timeframes shall begin twenty (20) months after the Effective Date.

9. Within two years after the Effective Date, NYCDOE will commence a NYCDOE Initial Review of all remaining pending DPCs that were filed before July 1, 2022, and have Pendency orders (“Tranche 7”). Review of Tranche 7 DPCs will proceed pursuant to the terms set forth in paragraph IV.A.3 above, except that the timeframes shall begin two years after the Effective Date.

10. Within twenty-eight (28) months after the Effective Date, NYCDOE will commence a NYCDOE Initial Review of all remaining pending DPCs that were filed after July 1, 2022 but before the Effective Date that are, or, to the extent it can be determined from available data, have been, untimely, and have Pendency orders (“Tranche 8”). Review of Tranche 8 DPCs will proceed pursuant to the terms set forth in paragraph IV.A.3 above, except that the timeframes shall begin twenty-eight (28) months after the Effective Date.

V. TECHNOLOGICAL UPGRADES

A. Implementation of Technological Upgrades

1. NYCDOE will implement DPC Digitalization and IHMS technological upgrades.

2. In the process of designing and implementing these upgrades, NYCDOE will address the following objectives:

a. moving document and communication management for related processes into the DPC Digitalization and IHMS Module;

b. improving caseload and workflow management for users within NYCDOE;

c. increasing visibility and accessibility for *pro se* Parents and Parent Advocates into the status of their DPCs;

d. capturing data in the DPC Digitalization and IHMS Module so that tasks and processes can be automated and simplified, such as using data to populate templates or automating reporting or inter-system and inter-office data sharing; and

e. integrating the IHMS Module, DPC Digitalization, and legacy systems to leverage data, and simplify visibility across NYCDOE offices into a DPC's data.

3. Specifically, in the process of designing and implementing these upgrades to DPC Digitalization, NYCDOE will seek to advance the following objectives:

a. Taking account of feedback from Parent and Parent Advocates;

b. Capturing data that facilitates streamlined intake and review of DPCs by NYCDOE;

c. Making available timely, and accurate, consistent information to *pro se* Parents and Parent Advocates regarding the receipt, review, identifying case information, and status of DPCs;

d. Clearly soliciting *pro se* Parents and Parent Advocates to identify the relief requested; and

e. Flagging cases that may be appropriate for mediation and allows *pro se* Parents and Parent Advocates to easily indicate interest in mediation.

4. Specifically, in the process of designing and implementing these upgrades to the IHMS Module, NYCDOE will seek to advance the following objectives:

a. Consolidating and centralizing all data and documents relevant to Resolution and DPC Settlement for each case, including from previous years' filings where relevant;

b. Ensuring access by all NYCDOE staff who deal with Resolution and DPC Settlement to appropriate and necessary documents and data captured in the system, so that those processes can be streamlined;

c. Leveraging data contained within the system to prepopulate template and draft documents used in these processes, where appropriate and feasible, and to generate communications with Parents and Parent Advocates;

d. Centralizing case tracking, processing, and reporting for DPC-related processes, including Resolutions and DPC Settlements;

e. Leveraging technology and automation to streamline assignment of DPCs to appropriate NYCDOE staff for Resolution and DPC Settlement processes;

f. Maintaining assignments and caseloads information for Resolutions Case Managers and NYCDOE staff responsible for DPC Settlements;

g. Capturing all Resolution offers, outcomes, meeting dates, deadlines, and copies of final agreements;

h. Incorporating communications and calendaring technologies to schedule meetings, request documents, confirm submissions, and the like;

i. Providing reminders and notifications for Resolutions Case Managers and NYCDOE staff responsible for DPC Settlements;

j. Communicating to *pro se* Parents and Parent Advocates when documents relevant to DPC Settlements are needed, have been received, and are under review;

k. Incorporating document management for stipulations memorializing DPC Settlements;

l. Integrating with data systems related to implementation of Resolutions and Settlements; and

m. Integrating with NYSED's data systems.

5. Representatives of NYCDOE who are knowledgeable about the DPC Digitalization and IHMS Module technological upgrades will meet with Class Counsel, Representatives of NYSED, and Thru once per quarter to describe the progress of the DPC Digitalization and IHMS Module technological upgrades, including specifically the progress relevant to achieving the technological upgrades described in this Section.

6. If, during the process of implementing the DPC Digitalization or IHMS Module upgrades, NYCDOE becomes aware of new information that causes NYCDOE to believe that any of the technological upgrades cannot or should not be implemented, NYCDOE will immediately notify Class Counsel in writing. The Parties will meet and confer regarding whether to modify or remove the obligation. The Parties will memorialize any resulting changes in writing. If the Parties are unable to agree on whether or how to modify or remove the obligation, the Parties will utilize the dispute procedure in paragraph XII.A.3 below.

7. NYCDOE will use best efforts to implement the DPC Digitalization technological upgrade within one year of the Effective Date. NYCDOE will use best efforts to implement the IHMS Module technological upgrade within two years of the Effective Date. If NYCDOE determines that the DPC Digitalization will not be complete within one year of the Effective Date, or the IHMS Module technological upgrades related to administration of the DPC Hearing system will not be released within two years of the Effective Date, NYCDOE will immediately notify Class Counsel in writing. The Parties will meet and confer about alternative

timeframes for implementation. If the Parties are unable to agree on alternative timeframes, the Parties will utilize the dispute procedure in paragraph XII.A.3.

8. NYCDOE has sought Class Counsel's input with regard to DPC Digitalization. NYCDOE will continue to seek Class Counsel's input, and will notify Plaintiffs and NYSED (at Judy.Swierczewski@nysed.gov) either in writing or during the meetings described at Section XII.B, to the extent major changes to that interface are planned. With regard to any aspect of the IHMS Module technological upgrade that relates to the parent-facing interface for the e-filing of DPCs, NYCDOE will seek input from Class Counsel on those aspects sufficiently in advance of implementation to consider any reasonable changes proposed by Class Counsel.

B. Oversight of Technological Upgrades

1. NYCDOE will retain Thru to participate in implementation of the DPC Digitalization and IHMS Module technological upgrades in an effort to ensure that those upgrades are completed.

VI. CHANGED PRACTICES – DPC SETTLEMENTS

A. Written Procedures

1. NYCDOE will publish on its website an overview of the DPC Settlement process for Parents. NYCDOE will provide Class Counsel a draft of the public-facing materials before they are published and consider Class Counsel's feedback in good faith. These procedures will be available to the public on NYCDOE's website. NYCDOE will review and update these procedures, and all publicly available guidelines and procedure documents describing DPC Settlements, on an annual basis.

2. NYCDOE will continue to maintain a "DPC Settlements Operating Procedures Manual" or similar internal guidelines for staff regarding DPC Settlements.

3. NYCDOE will continue to train staff involved in DPC Settlements on the publicly available procedures, the internal procedures, and the requirements of this Stipulation related to DPC Settlements. NYCDOE will train all new staff responsible for DPC Settlements on the same requirements within two months of hiring, and will annually retrain its staff on these requirements.

B. Complaint Process

1. NYCDOE will implement an expedited complaint procedure by which Parents and Parent Advocates can report concerns about the DPC Settlement process.

C. Existing Practices

1. NYCDOE's proposed stipulations of settlement shall continue to contain uniform language for standard stipulation provisions, subject to revisions by the parties to each DPC proceeding.

2. NYCDOE shall develop and make publicly available a standardized settlement document list enumerating documents that are generally required from parents, schools, and providers in order to make DPC Settlement offers and obtain Comptroller approval for common categories of DPCs, *e.g.*, requests for private school tuition and requests for evaluations. Proof of a parent's financial circumstances (*i.e.*, "proof of need") shall not be required.

VII. CHANGED PRACTICES – RESOLUTIONS

A. Rapid Resolutions

1. NYCDOE will use best efforts to continue to utilize the Rapid Resolutions process to provide written Resolution offers where appropriate in certain categories of DPCs.

2. NYCDOE shall ensure that the DPC Digitalization interface allows a Parent or Parent's Advocate to identify DPCs as belonging to categories that NYCDOE has deemed

appropriate for Rapid Resolutions. Where NYCDOE determines that a Resolution offer is appropriate prior to a Resolution meeting, NYCDOE shall ensure that Rapid Resolution offers are made in all DPCs so indicated.

B. Written Procedures

1. NYCDOE will issue a bulletin to Parents and Parent Advocates describing Rapid Resolutions within thirty (30) days of the Effective Date, and will post the bulletin on its website.

2. NYCDOE will publish on its website an overview of the Resolutions process for families. NYCDOE will provide Class Counsel and the State Defendants a draft of the public-facing materials before they are published and consider Class Counsel's and the State Defendants' feedback in good faith. These procedures will be available to the public on NYCDOE's website. NYCDOE will review and update these procedures, and all publicly available guidelines and procedure documents describing Resolutions, on an annual basis.

3. NYCDOE will maintain a "Resolutions Operating Procedures Manual" or similar internal guidelines for staff regarding Resolutions.

4. Within two months of the Effective Date, NYCDOE will train staff involved in Resolutions on the publicly available procedures, the internal procedures, and the requirements of this Stipulation related to Resolutions. NYCDOE will train all new staff involved in Resolutions on the same requirements within two months of hiring, and will annually retrain its staff on these requirements to incorporate any workflow updates. NYCDOE will ensure that this training aims to reduce backlogs in the Resolution process.

C. Complaint Process

1. NYCDOE will implement an expedited complaint procedure by which Parents and Parent Advocates can report concerns about the Resolution process.

VIII. CHANGED PRACTICES – MEDIATIONS

A. Expanding Utilization of Mediations

1. Within one year of the Effective Date, NYSED shall conduct training designed to expand the number of DPCs mediated yearly in New York City.

B. Public-Facing Procedures

1. NYCDOE will issue a bulletin to Parent Advocates describing Mediations within thirty (30) days of the Effective Date, and will post the bulletin on its website to build awareness of the Mediation option to Parents, including the benefits of Mediations available to Parents prior to the filing of a DPC.

2. NYCDOE will publish public-facing guidance for families regarding the availability of Mediation. Class Counsel and the State Defendants will review the public-facing materials before they are published. These procedures will be available to the public on NYCDOE's website. NYCDOE will review and, if necessary, update these procedures, and all publicly available guidelines and procedure documents describing Mediations, on an annual basis. NYCDOE will maintain a "Mediation Operating Procedures Manual" or similar internal guidelines for staff regarding mediations.

3. NYCDOE shall ensure that the DPC Digitalization interface allows a Parent or Parent Advocate to indicate their consent to Mediation.

4. NYCDOE shall maintain, at all times, a Mediation liaison. If that position becomes vacant, NYCDOE shall make best efforts to fill the position with a qualified individual as quickly as possible.

C. Complaint Process

1. NYSED will ensure that a complaint procedure by which Parents and Parent Advocates can report concerns about the Mediation process is available and that information about the procedure is publicized to Class Members.

IX. INJUNCTIVE RELIEF TO INCREASE THE EFFICIENCY OF DUE PROCESS HEARINGS

A. Extensions

1. NYSED shall direct IHOs that Extensions may only be granted consistent with applicable regulations. NYSED shall review any complaints, informal or formal, as described below in paragraph IX.A.4(e), and conduct the reviews and oversight described below in paragraphs IX.A.4(b)-(c).

2. NYSED will direct IHOs to inform the parties when an Extension has been granted.

3. Nothing in this Stipulation shall:

a. Preclude NYSED from using Waitlist Extensions or any other data entry tool to monitor an IHO's compliance with IDEA-mandated timelines when that IHO accepts assignment of a DPC that is not Timely when assigned; or

b. Preclude entry of any Extension where that Extension complies with all applicable legal standards.

4. Oversight of Extensions

a. NYSED will maintain an Extension Recording Application ("ERA") to work with IHRS so that IHOs can input their own Extensions into ERA.

b. NYSED, or an individual or entity working at NYSED's direction, will conduct the following regular reviews:

i. Regular (at least quarterly) review of IHRS to identify DPCs that exceed the compliance deadline based on information available in IHRS.

ii. Regular (at least quarterly) review of the 25 DPCs that have been pending for the longest time periods, that is, regardless of Extensions (valid or invalid) that have been entered unless there are no DPCs that would have been pending for more than seventy-five (75) days total.

iii. Regular (at least quarterly) review of available information for the purpose of identifying IHOs who may have issued improper Extensions. NYSED shall conduct this review by (1) reviewing complaints made by Class Members; and (2) other methods, if any, that NYSED determines are useful for identifying such IHOs.

c. Oversight of IHOs in Connection with Extensions

i. NYSED shall provide regular (at least annual) training/retraining to all IHOs on proper use of Extensions. This requirement may be satisfied by the use of “news blast” emails or the like sent to all IHOs.

ii. NYSED, or an individual or entity working at NYSED’s direction, shall conduct outreach and provide training and/or retraining to individual IHOs regarding potentially invalid Extensions, including, at a minimum, the following:

1. Individual outreach to IHOs whose Extensions have been identified as potentially improper as a result of NYSED’s review as set forth above at paragraph IX.A.4(b)(iii).

2. Individual or small group trainings to IHOs identified by NYSED’s review as set forth above at paragraph IX.A.4(b)(iii).

3. Consider issuing a Commissioner’s Order as appropriate for IHOs who persistently fail to follow appropriate procedures with respect to Extensions.

4. Consider decertification for IHOs who continue to enter invalid Extensions after steps (1) through (3) above.

d. To the extent NYSED’s reviews and oversight identify issues with respect to potentially invalid Extensions that NYSED deems to be systemic, NYSED will take action it deems appropriate to address those issues.

e. NYSED will maintain at least the following methods by which Class Members, Parents, and Parents' Advocates may report complaints about IHOs' entry of Extensions or other issues that relate to Hearing delays. NYSED shall publish each of these available methods in a prominent location on its website. NYSED shall timely address all complaints submitted through these methods:

i. Formal complaint process, as set forth in 8 N.Y.C.R.R. § 200.21(b).

ii. A dedicated email address, such as spcedih@nysed.gov. Class Members, Parents, and Parents' Advocates shall be permitted to submit complaints via this email address without sharing the Class Members', Parents', or Parents' Advocates' identity with the relevant IHO, and NYSED will use these anonymous complaints as an additional means to identify IHOs that may need retraining and/or outreach as outlined in paragraph IX.A.4 above. NYSED will not be obligated to conduct any investigations based on anonymous complaints.

B. Other IHO Oversight

1. NYSED shall ensure that all newly certified IHOs, including IHOs hired by OATH, receive training that is substantially similar in content, duration, and rigor to training historically provided to Independent IHOs.

C. IHO Availability

1. NYSED will monitor the number of certified IHOs who are available to take DPCs to evaluate whether there are an adequate number of IHOs to permit compliance with the benchmarks set forth in Section III.B. If there is not an adequate number, or if compliance with the benchmarks set forth in Section III.B is not achieved for any Reporting Period, and NYSED determines that a cause of non-compliance is an insufficient number of available IHOs, NYSED will take steps to recruit, train, and certify potential candidates to serve as IHOs.

D. Disclosures

1. NYCDOE will provide guidance to Hearing representatives, at least once per year, regarding the disclosure requirements set forth in 8 N.Y.C.R.R. § 200.5(j)(3)(xii).

2. NYSED will issue guidance to IHOs regarding the disclosure requirements set forth in 8 N.Y.C.R.R. § 200.5(j)(3)(xii).

X. HARM MITIGATION FOR CLASS MEMBERS DENIED TIMELY DPC DECISIONS

A. Remedies for Class Members Denied Timely DPC Decisions

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); 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 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 prompt 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 seeking compensatory services or compensatory education 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.

3. Disputes related to the entitlement to and scope of the remedies set forth in paragraphs X.A.1(a)–(b) in connection with DPCs will be adjudicated by the IHO assigned to the Class Member’s DPC.

4. Any provision of funding or services pursuant to this Section shall not constitute a recommendation by the NYCDOE, shall not be considered the last agreed upon placement, and shall not create an entitlement, or be relied upon by any party to create an entitlement, for the purposes of Pendency or the “stay put” provision of the IDEA.

5. The effect of these provisions (set forth in Section X.A) shall terminate when 90% compliance with the benchmarks set forth in Section III.B is reached for two consecutive Reporting Periods.

B. Relief for Urgent Cases

1. Defendants shall ensure that DPCs seeking relief for which a student does not have Pendency are appointed to an IHO or assigned to an OATH IHO on a priority basis, pursuant to the applicable regulations, and pursuant to a waitlist prioritization scheme if one is

being utilized. If Defendants seek to substantially revise or eliminate the existing waitlist prioritization scheme, Defendants will provide Class Counsel a proposed revised scheme and consider Class Counsel's feedback in good faith.

2. NYSED shall identify and publicize a procedure by which Class Members may request expedited adjudication of a DPC if, in the Class Member's view, the student urgently requires adjudication of the DPC or an ancillary issue. NYSED shall ensure that such applications are reviewed promptly and, if NYSED determines that expedited adjudication is warranted, use best efforts to ensure that the adjudication is expedited.

XI. MONITORING

A. Monitoring Procedures

1. Within thirty (30) days of the close of each Reporting Period, NYCDOE will provide a report to Class Counsel that includes the following data for DPCs filed after the Effective Date:

- a. The number of DPCs filed during the Reporting Period;
- b. The number of DPCs filed during the Reporting Period in which a Resolution session was scheduled within fifteen (15) days of the filing of the initial or, if applicable, amended DPC, and the session was held;
- c. The number of DPCs mediated during the Reporting Period;
- d. The number of DPC Decisions issued during the Reporting Period;
- e. The number of DPCs otherwise closed during the Reporting Period;
- f. Of the DPCs closed during the Reporting Period, the average number of days those DPCs were open;

g. Of the DPCs closed during the Reporting Period, the number of DPCs closed within thirty (30) days of filing of the initial or, if applicable, amended DPC;

h. The number of DPCs that have been pending for seventy-six (76) days or more and remain pending at the close of the Reporting Period; and

i. The number of DPCs reported in paragraphs XI.A.1(d), (e), and (h) that are Timely. For the avoidance of doubt, a DPC shall be considered Timely for purposes of this report if it is considered Timely pursuant to paragraph III.A. For each Reporting Period, NYCDOE may separately identify the number of DPCs that were not Timely in prior Reporting Periods and the number of DPCs that are not Timely for the first time in the relevant Reporting Period.

2. Within thirty (30) days of the start date for each Tranche described in paragraphs IV.A.3(i)(1)-(10), NYCDOE will provide a report to Class Counsel identifying:

a. The number of DPCs pending as of the Effective Date that were filed before July 1, 2022;

b. The number of DPCs pending as of the Effective Date that were filed before July 1, 2022 that have Pendency;

c. The number of DPCs pending as of the Effective Date that were filed before July 1, 2022 for which either NYSED or NYCDOE has determined that a merits Hearing has begun;

d. The number of DPCs pending as of the Effective Date that were filed after July 1, 2022 but before the Effective Date that are not Timely;

e. The number of DPCs pending as of the Effective Date that were filed after July 1, 2022 but before the Effective Date that are not Timely and that have Pendency;

f. The number of DPCs pending as of the Effective Date that were filed after July 1, 2022 but before the Effective Date that are not Timely and for which either NYSED or NYCDOE has determined that a merits Hearing has begun; and

g. The number of DPCs NYCDOE assigned to each of the eight Tranches described in paragraphs IV.A.3(i)(1)-(10).

3. Within thirty (30) days of the start date for each Tranche described in paragraphs IV.A.3(i)(1)-(10) except for Tranche 1, NYCDOE will provide a report to Class Counsel identifying the following information for the preceding Tranche:

a. The number of DPCs that NYCDOE reviewed;

b. The number of DPCs for which NYCDOE notified a Parent or Parent's Advocate that the DPC was not appropriate for DPC Settlement, and of those DPCs, the number for which such notification was provided within ninety (90) days of the beginning of the Tranche;

c. The number of DPCs for which NYCDOE requested further documents to assess whether the DPC was appropriate for DPC Settlement, and of those DPCs, (i) the number for which such request was made within ninety (90) days of the beginning of the Tranche; (ii) the number for which NYCDOE applied for Comptroller authority within thirty (30) days of receiving the requested documents; and (iii) the number for which NYCDOE notified the Parent or Parent's Advocate that the DPC was not appropriate for DPC Settlement within thirty (30) days of receiving the requested documents;

d. The number of DPCs for which NYCDOE did not request further documents;

e. The number of DPCs for which NYCDOE did not request further documents and for which NYCDOE applied for Comptroller authority, and of those DPCs, the number for which such application was made within one hundred twenty (120) days of the beginning of the Tranche;

f. The number of DPCs for which NYCDOE did not request further documents and for which NYCDOE notified the Parent or Parent's Advocate that the DPC was not appropriate for DPC Settlement, and of those DPCs, the number for which such notification was provided within one hundred twenty (120) days of the beginning of the Tranche;

g. The number of DPCs for which Comptroller authority was sought but not granted, and of those DPCs, the number for which NYCDOE notified the Parent or Parent's Advocate that the DPC must proceed to Hearing within fourteen (14) days;

h. The number of DPCs for which Comptroller authority was granted, and of those DPCs, the number for which NYCDOE made a formal settlement offer to the Parent within fourteen (14) days of receiving Comptroller authority; and

i. The number of DPCs in which a Parent or Parent's Advocate did not respond to NYCDOE's request for documents or settlement offer for a period exceeding sixty (60) days.

4. Within thirty (30) days of the close of each Reporting Period, NYSED will provide a report to Class Counsel that includes the following data for DPCs open on or filed after the Effective Date:

- a. AMEND_DATE: Date of DPC amendment, if any.
- b. CASE_ID: Identification number.
- c. CACL_CODE: Reason DPC was closed.

- d. CASE_CLOSED_DATE: Date DPC was closed.
- e. CASE_CLOSURE_TYPES: DPC closure option descriptions.
- f. CASE_TYPE: CSE or Committee on Preschool Special Education DPC.
- g. EXRE_CODE: Reason Extension was granted.
- h. EXTENSION_DECISION_DATE: Date Extension was granted.
- i. EXTENSION_REASON: Extension reason option descriptions.
- j. GRANTED and DELETED (within Extensions table): Whether Extension was granted or deleted.
- k. HEARING_DATE and HELD (within Hearings table): Identifies whether and when Hearing was held.
- l. IHO_ID: Assigned IHO ID.
- m. PREV_COMP_DATE: Previous compliance deadline.
- n. REQUEST_DATE: Date DPC was filed.
- o. ORIG_COMP_DATE: Compliance deadline at time of DPC filing, absent Extensions.
- p. RES_COMP_DATE: Date Resolution Period scheduled to end at time of DPC filing.
- q. RES_END_DATE: Date Resolution Period in fact ended.
- r. Within thirty (30) days of the close of each Reporting Period, NYSED will provide a written certification to Class Counsel that the regular reviews set forth in paragraph IX.A.4(b) have been conducted, and will provide a report to Class Counsel that includes the following data:

- i. The number of Independent IHOs;
- ii. The number of OATH IHOs;
- iii. On an anonymized basis, for each IHO, (i) the number of DPCs assigned and open as of the close of the Reporting Period; and (ii) the number of DPCs closed during the Reporting Period; and
- iv. The range of number of days pending for the longest-pending DPCs subject to review under paragraph IX.A.4(b)(ii).

5. Within thirty (30) days of the close of each Reporting Period, NYSED will provide to Class Counsel:

- a. Information summarizing the volume and content of, or anonymized copies of, complaints by Class Members regarding allegedly improper Extensions, in any reasonable format that conveys adequate information to permit a review of the efficacy of the complaint process; and other information consulted, if any, as part of the reviews set forth in paragraph IX.A.4(b)(iii).

- b. If NYSED has undertaken any material, substantive efforts or changes with regard to IHO recruitment, continuation of the Independent IHO system, or technological systems that materially affect NYSED's responsibilities under this Stipulation, a summary of those efforts or changes.

6. Within thirty (30) days of the close of each Reporting Period, NYCDOE will provide a written certification to Class Counsel that the remedies described in Section X.A have been provided, and will provide a report to Class Counsel that includes the following data:

- a. The number of DPCs for which NYCDOE provided relief pursuant to paragraph X.A.1(a), as well as the mean and median number of days after the respective Compliance Date for each such DPC that the relief was provided; and

b. The number of DPCs for which NYCDOE provided relief pursuant to paragraph X.A.1(b), as well as the mean and median number of days after the respective Compliance Date for each such DPC that the relief was provided.

7. Within thirty (30) days of the close of each Reporting Period, NYCDOE will provide data regarding the prioritization of DPCs for IHO assignment under Section X.B, similar in content and form to the data provided to Class Counsel on May 10, 2023.

8. All reports, data, information, and certifications provided by one Defendant to Class Counsel pursuant to this Settlement Agreement will also be provided to the other Defendants.

B. Monitoring of Changed Practices

1. As part of each report provided under Section XI.A, NYCDOE will provide:

a. Information summarizing the volume and content of, or anonymized copies of, complaints by Class Members under paragraphs VI.B.1 and VII.D.1, in any reasonable format that conveys adequate information to permit a review of the efficacy of the complaint process.

b. A spreadsheet containing the data points set forth below for completed DPC Settlements recorded under a Ten-Day Notice or DPC that were filed or submitted during the prior Reporting Period:

- i. Date Filed/Submitted
- ii. Date Recommended for Settlement
- iii. Date Settlement Documents Received From Parents
- iv. Date Settlement Authority Requested
- v. Date Settlement Authority Granted
- vi. Date Agreement in Principle Reached

vii. Date Signed Stipulation Received from Parent

viii. Date Stipulation of Settlement Executed/Countersigned

c. For the avoidance of doubt, the obligation to provide confidential data pursuant to this paragraph is separate and distinct from other NYCDOE obligations set forth elsewhere in this Stipulation, and shall not be used in support of a claim of systematic violation of any obligation set forth in this Stipulation, nor shall it form the basis of any motion made pursuant to Section XII of this Stipulation.

C. Public Reporting

1. NYCDOE shall maintain a public website that includes the following information, updated at least within thirty (30) days of the close of each Reporting Period:

a. The number of DPCs pending as of the close of each Reporting Period, including identifying the school years in which the pending DPCs were originally filed;

b. The number of DPCs that were closed in the prior Reporting Period that were Timely when closed;

c. The number of DPCs that were closed in the prior Reporting Period that were not Timely when closed;

d. The number of DPCs filed during the Reporting Period for which Resolution sessions were neither waived by the Parent nor scheduled within fifteen (15) days of the date the DPC was filed; and

e. The number of DPCs where the selection process to assign an IHO was not commenced within two (2) business days of the date the DPC was filed during the Reporting Period.

D. Sampled DPCs

1. At the end of each Reporting Period, NYCDOE will provide Class Counsel with an anonymized, random sample of IHS Case Detail Reports, including Extension Information, Resolution History, IHO Assignment Information, Hearing History, Decision, and Withdraw data, for 200 DPCs.

E. Confidentiality of Reports

1. Unless otherwise indicated, the information and documents provided to Class Counsel pursuant to this Section shall be provided in anonymized form, with all personally identifying information of Class Members redacted. All information and documents provided pursuant to this Section shall be confidential, and will be marked “Confidential – Attorneys’ Eyes Only.” All such information and documents will remain subject to all agreements made and Court orders entered during the course of the Action relating to the confidentiality of information.

XII. ENFORCEMENT

A. Jurisdiction

1. The District Court will retain jurisdiction during the Settlement Term to enforce the terms of this Stipulation upon the filing of an appropriate motion by any party. The Parties to this Stipulation will endeavor in good faith to informally resolve any differences regarding compliance and interpretation of this Stipulation prior to application to the Court and the jurisdiction of the Court will be limited to the purpose of enforcing the terms of this Stipulation.

2. Any motion arising under or to enforce any part of this Stipulation shall be made only in this Court and the Court retains continuing and exclusive jurisdiction to adjudicate issues relating to this Stipulation.

3. During the time prior to the end of the Settlement Term, in no event shall Plaintiffs seek any intervention by the Court with regard to Defendants' obligations under this Stipulation unless Plaintiffs have submitted a written notification to Defendants regarding any purported basis for seeking such intervention and have met and conferred with Defendants regarding such purported basis. If Class Counsel believes that one or more Defendants have failed to comply with the terms of this Stipulation, after ascertaining such purported noncompliance and the Party responsible for such purported noncompliance, Class Counsel shall notify all Defendants' counsel in writing of the nature and specifics of the alleged failure to comply. Unless otherwise resolved, counsel for the Parties shall meet within thirty (30) days following notice to Defendants' counsel in an attempt to arrive at a resolution of the alleged issue. The Parties shall thereafter promptly attempt in good faith to resolve the matter without the need for judicial intervention. Plaintiffs may not seek judicial enforcement under this paragraph unless they can show that the non-complying Party engaged in a pattern and practice of systematic violation of one or more of its obligations under this Stipulation (as opposed to occasional, isolated, or individualized violations).

4. Without further action by the Parties or the Court, this Stipulation shall expire four years from the Effective Date.

B. The Six-Month Review Meetings

1. During the Settlement Term, counsel for the Parties shall meet and confer to discuss issues related to this Stipulation on a six-month basis (the "Review Meeting"), during which Defendants will provide Plaintiffs updates on implementation of the Stipulation and the Parties may raise any concerns regarding implementation of the Stipulation.

2. Plaintiffs and Defendants may also raise concerns and propose remedial action for consideration by the other Parties at any time during the Settlement Term. In raising concerns or proposing remedial action, any party may request a meeting with counsel for all Parties. In the event a party requests such a meeting, counsel for Plaintiffs and Defendants shall meet and confer to discuss any concerns or proposed remedial action in good faith within thirty (30) days of the submission of any such concern or proposal in writing.

C. Procedural Matters

1. Nothing herein shall alter NYSED's obligations under federal and state law to oversee NYCDOE. Nothing herein shall be read to impose obligations on Class Members beyond what is required by federal and state law. Any conflict between the terms of this Stipulation and federal and state law shall be resolved in favor of federal and state law.

D. Dismissal of This Action with Prejudice

1. Upon the Effective Date, the First Amended Complaint, the Action, and 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.

XIII. RELEASES

A. Release and Individual Relief

1. In consideration of the relief set forth herein, the Releasing Parties hereby release and forever discharge the Released Parties from all Settled Claims, and such Settled Claims are dismissed with prejudice. However, the Settled Claims do not include any of the following Reserved Claims which are, to the extent asserted in this Action, dismissed without prejudice, and are not being settled, released and/or waived:

a. Claims seeking individualized relief that is not Systemic Relief, brought by an individual Class Member and/or his or her Parent or Parent Advocate, under any federal or state law and/or regulation, including Section 504, the ADA, 42 U.S.C. § 1983 and the IDEA, and including, but not limited to, a claim that NYCDOE failed to provide the individual Class Member a FAPE and/or seeking any and all other individual relief, including, without limitation, declaratory relief, injunctive and other equitable relief, damages, compensatory education, make-up services, reimbursement or prospective funding relief, independent and/or NYCDOE evaluations, procedural relief, Pendency, enforcement of individual Hearing orders, stipulations and Resolution agreements, and/or attorneys' fees relating to those individual claims.

2. In no instance prior to the end of the Settlement Term shall the Releasing Parties file any new action or proceeding against any of the Defendants, in this or with any other court, entity, or tribunal, asserting any of the Settled Claims.

3. The Releasing Parties agree not to sue the Released Parties prior to the end of the Settlement Term on any Settled Claims in any and all manner of actions, injuries, proceedings, causes of action, grievances, suits, debts, obligations, dues, sums of money, accounts, contracts, controversies, agreements, promises, damages, judgments, claims, and demands whatsoever, direct or indirect, known or unknown, discovered or undiscovered.

XIV. MISCELLANEOUS

A. Attorneys' Fees from State Defendants

1. For and in consideration of Plaintiffs' execution of this Stipulation, their agreement to be bound by its terms, and their undertakings as set forth herein, including, but not limited to, the dismissal of the Action with prejudice and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the State of New York, on behalf of the State

Defendants, shall pay the total sum of Three Hundred and Ninety-Nine Thousand Dollars (\$399,000), for which the Office of the New York State Comptroller shall issue any and all appropriate Internal Revenue tax forms (“State Fee Payments”), in full and complete satisfaction of any and all claims, allegations, or causes of action for attorneys’ fees, costs, disbursements, and expenses incurred by Plaintiffs or Class Counsel for any and all counsel who have at any time represented or assisted Plaintiffs in the Action, or in connection with any other proceeding, administrative, judicial, or otherwise and any other claim or action arising from, related to, based upon, or alleging any of the acts, transactions, occurrences, or omissions asserted or purportedly asserted in the Action, except as provided in paragraph VIII.A.1.a. The State Fee Payments shall be made as follows:

<u>Organization</u>	<u>Amount</u>
New York Legal Assistance Group 100 Pearl Street, 19th Fl. New York, New York 10004 Attn: Danielle Tarantolo	\$226,795
Sullivan & Cromwell LLP 125 Broad Street New York, New York 10004 Attn: William B. Monahan	\$172,205

2. The State Fee Payments are conditioned upon and subject to the approval of all appropriate State officials in accordance with N.Y. Pub. Off. Law § 17. Plaintiffs and Class Counsel agree to execute and deliver all necessary and appropriate vouchers and other documentation requested with respect to obtaining such approval and effectuating payment. In the event that the State Fee Payments have not been made by the one hundred twentieth (120th) day after the Effective Date, together with all other documentation required under paragraph XIV.A.1, interest on any part of the settlement amount not paid by the one hundred twentieth (120th) day

shall accrue at the statutory rate prescribed by 28 U.S.C. § 1961, commencing on the one hundred twenty-first (121st) day after the Effective Date.

3. It is understood and agreed that any taxes, or interest or penalties on taxes, which may attach to the payments specified in paragraph XIV.A.1, by operation of law or otherwise, shall be the sole and complete responsibility of Plaintiffs and Class Counsel, and that Plaintiffs and Class Counsel shall have no claim, right or cause of action against the State Defendants or the State of New York (including, but not limited to, any and all present and former agencies, departments, divisions, subdivisions, subsidiaries, administrators, principals, officers, employees, directors, members, agents, attorneys, insurers, and assigns, whether in an individual or official capacity) on account of such taxes, interest or penalties. Plaintiffs and Class Counsel agree that they will defend, indemnify, and hold harmless State Defendants and the State of New York (including, but not limited to, any and all present and former agencies, departments, divisions, subdivisions, subsidiaries, administrators, principals, officers, employees, directors, members, agents, attorneys, insurers, and assigns, whether in an individual or official capacity), in any claim, proceeding, action, or demand brought in any forum or manner, judicial, administrative or otherwise, to satisfy or for the satisfaction of any such tax or interest or penalty on such tax.

4. It is understood and agreed that any liens, setoffs, deductions, or recoupments of any kind (including, but not limited to, any and all workers' compensation, tax, Medicare, Medicaid, unemployment compensation or benefits, or child support liens) which may attach to the payments specified in paragraph XIV.A.1 of this Stipulation, by operation of law or otherwise, shall be the sole and complete responsibility of Plaintiffs and Class Counsel, and that Plaintiffs and Class Counsel shall have no claim, right or cause of action against State Defendants or the State of New York (including, but not limited to, any and all present and former agencies,

departments, divisions, subdivisions, subsidiaries, administrators, principals, officers, employees, directors, members, agents, attorneys, insurers, and assigns, whether in an individual or official capacity) on account of such taxes, interest or penalties. Plaintiffs and Class Counsel agree that they will defend, indemnify, and hold harmless State Defendants and the State of New York (including, but not limited to, any and all present and former agencies, departments, divisions, subdivisions, subsidiaries, administrators, principals, officers, employees, directors, members, agents, attorneys, insurers, and assigns, whether in an individual or official capacity), in any claim, proceeding, action, or demand brought in any forum or manner, judicial, administrative or otherwise, to satisfy or for the satisfaction of any such any liens, setoffs, deductions, or recoupments.

5. Nothing contained in this Stipulation shall be deemed to be an agreement or an admission by the State Defendants as to the reasonableness of the number of hours spent or the particular hourly rates claimed by Class Counsel, or the entitlement of Plaintiffs or Class Counsel to any attorneys' fees, costs, disbursements or expenses in connection with this Action, and the State Defendants do not waive any defenses to any and all future application by Plaintiffs or Class Counsel therefor.

6. The Parties reserve their rights to seek attorneys' fees and costs in connection with bringing or defending against a contempt or enforcement motion brought in connection with this Stipulation. Nothing herein shall preclude State Defendants from raising any defense to any and all future fees applications made by Plaintiffs and Class Counsel. Any such application for attorneys' fees and/or costs shall not operate so as to extend any obligation, period, or Settlement Term described in this Stipulation.

7. Plaintiffs are not entitled to any attorneys' fees or costs from the State Defendants in connection with monitoring compliance or enforcing the terms of this Stipulation. However, should NYSED not fulfill its obligations under this Stipulation, Plaintiffs' Counsel may seek from NYSED the reasonable fees and costs incurred in successfully moving to enforce NYSED's obligations as set forth in this Stipulation. Plaintiffs' Counsel will submit any such request to NYSED's Counsel for such reasonable fees and costs only in connection with any motion for enforcement no later than March 1st of each calendar year for the duration of the Stipulation and within sixty (60) days following the Settlement Term. If NYSED and Plaintiffs cannot agree within forty-five (45) days of Plaintiffs' requests for such fees and costs, unless another date is agreed upon by NYSED and Plaintiffs, Plaintiffs may move the Court for an award of attorneys' fees and costs. NYSED shall have thirty (30) calendar days to respond and oppose any such motion. Plaintiffs' Counsel shall then have (10) calendar days to reply in further support of the motion. State Defendants retain all rights and defenses in opposing any such motion.

B. Attorneys' Fees from City Defendants

1. Plaintiffs and Class Counsel represent that all claims for attorneys' fees, expenses, and costs remain with Plaintiffs and Class Counsel and have not been and will not be assigned and/or transferred to any parties other than Plaintiffs and Class Counsel.

2. The City of New York, on behalf of the NYCDOE, hereby agrees to pay counsel to Plaintiffs, within ninety (90) days of the later of the Effective Date of this Stipulation or City Defendants' receipt of the releases and other documents referred to herein, the sum of \$984,000, by check made payable as follows, as attorneys for Plaintiffs, in full and final satisfaction of all claims for costs, expenses and attorneys' fees in connection with the Action except as expressed in paragraph 7 below:

<u>Organization</u>	<u>Amount</u>
New York Legal Assistance Group 100 Pearl Street, 19th Fl. New York, New York 10004 Attn: Danielle Tarantolo	\$558,305
Sullivan & Cromwell LLP 125 Broad Street New York, New York 10004 Attn: William B. Monahan	\$425,695

3. In consideration for payment of these sums and other good and valuable consideration described herein, Plaintiffs, Class Members, and Class Counsel agree to and hereby release the City Defendants as well as their predecessors, successors and/or assigns and all past or present officials, employees, representatives and/or agents of the City Defendants from any and all claims for attorneys' fees, costs, and expenses that they have or had in connection with the Action from the beginning of time through and including the Effective Date of this Agreement.

4. In the event that any taxing authority or a court determines that the payments set forth in paragraph XIV.B.2 are subject to any taxes, interest, or penalties, such tax, interest, and/or penalties shall be the sole responsibility of Plaintiffs and/or Class Counsel, as applicable.

5. Class Counsel shall execute and deliver to City Defendants' attorney all documents necessary to effect this settlement, including, without limitation, releases identical to the terms of paragraphs XIV.B.3 above and a NYC Substitute W-9 form. The payments set forth above are subject to and conditioned on delivery of such documents to Defendants' undersigned attorneys.

6. Class Counsel will have the sole responsibility to satisfy any lien or claim, whether known or unknown, asserted against the settlement proceeds or arising from the settlement. If any lien, claim, or action is brought against the City Defendants or their

predecessors, successors and/or assigns and all past or present officials, employees, representatives and/or agents arising from the settlement or asserted against the settlement proceeds, Plaintiffs' counsel will hold harmless any and all such parties and all their related entities, agents, servants, faculty, trustees, and employees.

7. Plaintiffs are entitled to seek reasonable counsel fees and reimbursement of expenses from NYCDOE for time spent monitoring and enforcing NYCDOE's compliance with the terms of this Agreement, including for dispute resolution. Class Counsel will submit a request to City Defendants' counsel for these fees no later than March 1 of each calendar year prior to the end of the Settlement Term, and within sixty (60) days following the end of the Settlement Term. If City Defendants and Plaintiffs cannot agree within ninety (90) days of Plaintiffs' request for fees and expenses under this paragraph, City Defendants and Plaintiffs may agree to extend the ninety (90) day period in further efforts to reach an agreement or to seek assistance from a private mediator, or Class Counsel may, within thirty (30) days following the expiration of the ninety day period (and any extension thereof) apply to the Court for an award of counsel fees and reimbursement of expenses. City Defendants 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. The City shall issue the payment for each year of monitoring fees within ninety (90) days of receiving all necessary paperwork from Plaintiffs, including, if applicable, an appropriate release of claims for the requested fees and expenses, and a NYC Substitute W-9 form.

C. Notice Procedures

1. Any notices given by one Party to another in connection with this Stipulation shall be provided by email as follows (or at such other email address as may be provided in writing by a Party to all other Parties):

If to State Defendants, then to:

Judy Swierczewski
Supervising Attorney
Office of Counsel
New York State Education Department
89 Washington Avenue
Albany, NY 12234
Judy.Swierczewski@nysed.gov

and

Elyce N. Matthews
Assistant Attorney General
New York State Attorney General
28 Liberty Street
New York, NY 10005
Elyce.Matthews@ny.ag.gov

If to City Defendants, then to:

Emily Minarcik
Executive Deputy Counsel – Special Education Litigation
52 Chambers Street
New York, New York 10007
EMinarcik@schools.nyc.gov

Eric Hiatt
Assistant Corporation Counsel
100 Church Street, Room 2-191
New York, New York 10007
erhiatt@law.nyc.gov

If to Plaintiffs, then to:

Danielle Tarantolo
New York Legal Assistance Group

100 Pearl Street, 19th Floor
New York, New York 10004
dtarantolo@nylag.org

and

William B. Monahan
Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
monahanw@sullcrom.com

D. Execution

1. This Stipulation may be executed by the Parties hereto by facsimile or electronic means and any such signature should have the same force and effect as an original signature. Additionally, the Stipulation may be executed in separate counterparts, and all such counterparts taken together shall be deemed to constitute one and the same agreement.

2. This Stipulation shall be binding when signed by all Parties, but the settlement described herein shall be effective only upon occurrence of the Effective Date.

E. Best Efforts

1. The Parties, their successors and assigns, and their counsel agree to cooperate fully with one another in seeking Court approval of this Stipulation, and to use their best efforts to effect the prompt consummation of this Stipulation and the settlement described herein.

F. Modification and Entire Agreement

1. This Stipulation constitutes the entire agreement among the Parties pertaining to the Action, and fully supersedes any and all prior or contemporaneous understandings, representations, warranties, and agreements among the Parties pertaining to the Action. No representations, oral or written, are being relied on by any Party in executing this Stipulation other than the express representations of this Stipulation.

2. This Stipulation may not be amended or modified after the settlement has been submitted for preliminary approval from the Court. Prior to submission for preliminary approval, this Stipulation may be amended or modified, or any of its provisions waived, only by a written instrument signed by counsel for all Parties or their successors-in-interest.

G. Construction

1. This Stipulation has been negotiated and drafted by all of the Parties and their respective counsel and shall not be construed in favor of, or against, any Party on the basis of its having been drafted by that Party. Each Party agrees that, in interpreting and applying the terms and provisions of this Stipulation, no Party shall be deemed the drafter of any provision, no presumption shall exist or be implied for or against any Party as a result of who drafted any provision, and any uncertainty or ambiguity in this Stipulation shall not be interpreted against any Party.

H. Governing Law

1. This Stipulation shall in all respects be interpreted, enforced, and governed under federal law, and when applicable, the laws of the State of New York.

I. No Admission of Liability

1. By entering into this Stipulation, Defendants in no way admit any violation of law or any liability whatsoever to the Named Plaintiffs or the Class, individually or collectively, all such liability being expressly denied. Defendants enter into this Stipulation to avoid further protracted litigation and to resolve and settle all disputes with Named Plaintiffs and the Class. The Parties understand and agree that this Stipulation is a settlement document and shall be inadmissible in evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce the terms of this Stipulation.

J. No Determination of the Merits

1. Defendants maintain that any actions taken pursuant to this Stipulation are made solely to avoid the burdens and expense of protracted litigation. This Stipulation and any and all actions taken pursuant thereto are not to be construed as constituting any determination on the merits of any claims which have been or could have been asserted in this Action or as constituting any admission of wrongdoing or liability on the part of Defendants. Defendants expressly deny any wrongdoing or liability. Nothing contained in this Stipulation shall be deemed to constitute a policy, practice, or custom of Defendants.

K. No Precedential Value

1. This Stipulation shall not in any manner be construed as determinative of the issues or claims raised, or which could have been raised, in this Action or any other proceeding, and shall have no precedential value. In addition, notwithstanding the provisions of any paragraph herein, this Stipulation shall not bind or collaterally estop Plaintiffs or Defendants in any pending or future actions or proceedings in which the same or similar issues are raised, from pursuing or defending against all claims raised in said actions or proceedings, or from advancing or raising any and all available defenses.

L. Severability

1. With the exception of paragraphs XII.D, XIII.A, XIV.A.2–3, XIV.B.4-6, XIV.I, and XIV.K, if any other provision of this Settlement Agreement shall be held by a court of competent jurisdiction to be invalid, void, or unenforceable in whole or in part, such decision shall not invalidate the remaining portion or affect its validity.

M. Termination

1. In the event this Stipulation is terminated before final approval by the Court, this Stipulation and all negotiations, proceedings, documents prepared, and statements made in connection with this Stipulation shall be without prejudice to any Party and shall not be admissible into evidence, and shall not be deemed or construed to be an admission or confession by any Party of any fact, matter or proposition of law, and shall not be used in any manner for any purpose, and all Parties to this Action shall stand in the same position as if this Stipulation had not been negotiated, made or filed with the Court.

N. Confidentiality

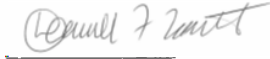
1. To the extent permitted by law, all agreements made and Court orders entered during the course of the Action relating to the confidentiality of information shall survive this Stipulation.

O. Representations and Warranties

1. All counsel signing this Stipulation represent and warrant that they have authority to sign this Stipulation on behalf of their clients and that they have authority to take appropriate action required or permitted to be taken pursuant to this Stipulation to effectuate its terms and conditions, and that this Stipulation shall be binding on such Party in accordance with its terms and conditions.


IN WITNESS WHEREOF, the Parties have caused this Stipulation, dated as of April 10, 2025, to be executed by their duly authorized attorneys.

Dated: April 10, 2025

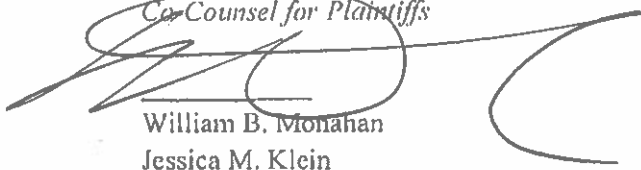


Danielle F. Tarantolo
Kate Fetrow
Jessica Selecky
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GROUP
100 Pearl St., 19th Fl.
New York, New York 10004
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NEW YORK STATE EDUCATION
DEPARTMENT


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