

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NO. 02 CV 5118 (ENV/MDG)

EB, LB 1, HG, KSG, AJ, IP, SM, JW, DR, on behalf of
themselves and all others similarly situated,

Plaintiffs,

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION;
NEW YORK CITY BOARD OF EDUCATION; JOEL
KLEIN, in his individual and official capacity as chancellor
of the New York City School District,

Defendants.

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STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (the “Stipulation”), dated as of May 13, 2015, is made and entered into pursuant to Rule 23 of the Federal Rules of Civil Procedure and contains the terms of a settlement, by and among “Lead Plaintiffs” EB, LB 1, HG, KSG, AJ, IP, SM, JW and DR, on behalf of themselves and members of the Class, as defined below, and Defendants New York City Department of Education, New York City Board of Education, and the Chancellor of the City School District of the City of New York (collectively, “DOE” or “Defendants,” and with Lead Plaintiffs, on behalf of the Class, as defined below, the “Parties”), of all claims raised in the above-captioned action (the “Action”) with the exception of the Reserved Claims noted in paragraph 2(q) concerning Settled Claims.

RECITALS

WHEREAS:

A. On September 20, 2002, Lead Plaintiffs filed their initial class action complaint in this Action.

B. On November 5, 2002, Lead Plaintiffs filed their First Amended Complaint.

C. On May 2, 2003, Lead Plaintiffs filed their Second Amended Complaint.

D. On July 15, 2003, Lead Plaintiffs filed their Third Amended Complaint (the "Complaint"), alleging violations of (1) the 14th Amendment right to procedural due process protected through 42 U.S.C. § 1983; (2) the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400, *et seq.* ("IDEA"); (3) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 ("Section 504"); and (4) the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, *et seq.* ("ADA"), and the regulations promulgated thereunder. The Lead Plaintiffs' claims under these federal constitutional and statutory provisions are herein collectively referred to as "Plaintiffs' Claims." The Complaint alleges that from 1999 to date, Defendants have violated and continue to violate the rights of Lead Plaintiffs and the purported class, by engaging in conduct that denies to class members access to a free appropriate public education as defined in 20 U.S.C. § 1401(a) ("FAPE") and due process before being excluded from school, and upon exclusion. Defendants deny these allegations in their entirety.

E. On July 25, 2003, Defendants filed a motion to dismiss the Complaint.

F. On October 3, 2003, Lead Plaintiffs filed a motion to certify the Action as a class action.

G. By Memorandum and Order dated January 26, 2004, the Court denied Defendants' motion to dismiss the Complaint.

H. By Corrected Memorandum and Order dated August 17, 2004, the Court granted Plaintiffs' motion for class certification and denied without prejudice their motion to certify subclasses.

I. On February 15, 2005, Defendants filed a motion to amend the Court's August 17, 2004 order, certifying and defining a Plaintiff class.

J. On April 18, 2005, Lead Plaintiffs filed a motion to certify subclasses.

K. By Memorandum and Order dated June 29, 2005 (the "Subclass Certification Order"), the Court granted Defendants' motion to amend the class definition in part, and granted Lead Plaintiffs' motion to certify subclasses consistent with the amended class definition.

L. In its Subclass Certification Order, the Court certified six Subclasses: (1) Superintendent's Suspensions and Expulsions Subclass; (2) Building Level Disciplinary Proceedings Subclass; (3) Informal Behavioral Exclusions Subclass; (4) Transfer and Discharge Subclass; (5) Class Members without IEPs Subclass; and (6) Section 504 Subclass.

M. The Parties have engaged in discovery relating to the claims and defenses concerning the underlying events alleged in the Complaint. Plaintiffs obtained document discovery from Defendants and took depositions of individuals at DOE.

N. Plaintiffs, by their counsel, have conducted significant discussions and arm's length negotiations with Defendants and their counsel with respect to a compromise and settlement of the Action with a view to settling the issues in dispute.

O. Based upon their investigation and pretrial discovery as set forth above, Lead Plaintiffs have concluded that the terms and conditions of this Stipulation are fair, reasonable, and adequate and in the best interests of the Class, and have agreed to settle all

claims raised in the Action, with the exception of the Reserved Claims of individual Class Members as defined in paragraph 2(q).

THEREFORE, without any admission or concession by Lead Plaintiffs of any lack of merit of the Action, and without any admission or concession of any liability or wrongdoing or lack of merit in their defenses by Defendants,

IT IS HEREBY STIPULATED AND AGREED, by and among the Parties to this Stipulation, through their respective attorneys, subject to approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, that all Settled Claims shall be compromised, settled, released, and dismissed with prejudice, upon and subject to the following terms and conditions:

I. GENERAL PROVISIONS

1. This Stipulation imposes obligations on all parties as set forth herein. It legally binds all parties, including all Class Members, individually and collectively.

II. DEFINITIONS

2. The following terms have the following meanings for purposes of this Stipulation only.

a. **School:** A school or Suspension Site, as defined below, operated by the DOE.

b. **Removal:** A removal occurs when a Class Member is removed or excluded from his or her current educational placement.

c. **Teacher Removal:** Removal of a Class Member from a DOE classroom by the Class Member's teacher for a violation of the DOE Discipline Code for up to four school days or a part of a school day (e.g., a particular class), with notice and an

opportunity to be heard.¹

d. **Principal's Suspension:** Removal of a Class Member from the Class Member's regularly scheduled class program at the School attended by the Class Member at the time of the imposition of the suspension, for a violation of the DOE Discipline Code, for up to five school days, by a Principal, with notice and an opportunity to be heard.²

e. **Superintendent's Suspension:** Removal of a Class Member from the Class Member's regularly scheduled class program at the School attended by the Class Member at the time of the imposition of the suspension for a violation of the DOE Discipline Code by the Chief Executive Officer of the Office of Safety and Youth Development ("CEO"), the CEO's designee, a Superintendent, or a successor of any of the preceding officers, if any (so long as the officer, designee or successor is not an employee of the School attended by the Class Member at the time of the imposition of the suspension), with notice and an opportunity to be heard.³

f. **Disciplinary Action:** A Teacher Removal, Principal's Suspension or Superintendent's Suspension. The movement of a removed or suspended Class Member from one site to another, for any reason, during the Teacher Removal, Principal's Suspension, or Superintendent's Suspension, when there is no increase in the amount of time that the Class Member is removed or suspended, does not constitute a new or separate Disciplinary Action.

¹ See Removal of Students from Classrooms by Teachers in Chancellor's Regulation A-443 issued March 5, 2004, at III.A,

² See Principal's Suspensions in Chancellor's Regulation A-443 issued March 5, 2004, at III.B.2.

³ See Superintendent's Suspensions in Chancellor's Regulation A-443 at III.B.3.

g. **Disciplinary Reason:** A reason that is in whole or in part based on the Class Member's behavior which is disruptive of order or discipline within the School.

h. **Informal Exclusion:** Removal of a Class Member from the DOE class or School that the Class Member is attending at the time of the imposition of the removal when the removal (a) is, in whole or in part, for a Disciplinary Reason as defined herein, and (b) either (i) is not a Teacher Removal, Principal's Suspension, Superintendent's Suspension, or (ii) does not result from a transfer or discharge effectuated pursuant to DOE procedures and the applicable procedures set forth in this Stipulation.

i. **Disciplinary Change in Placement:** The removal of a Class Member with an IEP from the DOE class or School attended by the Class Member, when the removal is the result of either (a) a Superintendent's Suspension that exceeds ten (10) consecutive school days in a school year, or (b) Disciplinary Actions that, in total, exceed ten (10) cumulative school days in a school year and constitute a Pattern of Removals as defined in paragraph 10 herein, provided however, that days of removal attributable to an adjournment of a suspension hearing at the request of a parent shall be excluded from any such calculation.⁴

j. **Manifestation Determination Review ("MDR"):** The review that is triggered by a Disciplinary Change in Placement to determine (a) if the conduct in question was caused by, or had a direct and substantial relationship to, the Class Member's disability, or (b) if the conduct in question was the direct result of DOE's failure to implement the Class Member's IEP.⁵

⁴ See 20 U.S.C. § 1415(k)(1); 34 C.F.R. § 300.536(a); 8 N.Y.C.R.R. § 201.2(e).

⁵ See 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1); 8 N.Y.C.R.R. § 201.4(a).

k. **Suspension Site:** An Alternative Learning Center (“ALC”), or successor site to which Class Members on Superintendent’s Suspensions are assigned.

l. **IEP:** An individualized education program as defined in the IDEA.

m. **Suspension Plan:** A plan developed by an IEP Team in accordance with paragraph 18.

n. **Class:** The class certified in this action by Memorandum Opinion and Order dated June 29, 2005. The “Class” is comprised of disabled New York City children from kindergarten through age twenty-one, who have been, will be, or are at risk of being excluded from School for Disciplinary Reasons without adequate notice and deprived of free appropriate education through suspensions, expulsions, transfers, discharges, removals, denials of access or other changes of educational placement.

o. **Class Member:** A member of the Class, as defined above, except that a student who has graduated with a Regents or local high school diploma is not a Class Member. The following six subclasses have been certified:

i. **Superintendent’s Suspensions and Expulsions Subclass:** Class Members with IEPs who have been, will be, or are at risk of being excluded for Disciplinary Reasons from the Schools they attend without adequate notice and denied a free appropriate public education as a result of a Superintendent’s Suspension or expulsion.

ii. **Building Level Disciplinary Proceedings Subclass:** Class Members with IEPs who have been, will be, or are at risk of being excluded for Disciplinary Reasons from the Schools they attend without adequate notice and

denied free appropriate public education as a result of a disciplinary measure imposed by a staff member at the School.

iii. **Informal Exclusions Subclass:** Class Members with IEPs who have been, will be, or are at risk of being excluded from School for Disciplinary Reasons from the Schools they attend without adequate notice and denied a free appropriate public education as a result of an informal exclusion based on behavior.

iv. **Transfer and Discharge Subclass:** Class Members with IEPs who have been, will be, or are at risk of being excluded for Disciplinary Reasons from the Schools they attend without adequate notice and denied a free appropriate public education as a result of a transfer or discharge.

v. **Class Members without IEPs Subclass:** Class Members without active IEPs, who have disabilities within the meaning of IDEA and who have been, will be, or are at risk of being excluded for Disciplinary Reasons from the Schools they attend without adequate notice and denied a free appropriate public education due to suspensions, expulsions, transfers, discharges, removals, denials of access, Informal Exclusions or other changes of educational placement.

vi. **Section 504 Subclass:** Class Members without active IEPs, who have a disability within the meaning of Section 504 of the Rehabilitation Act, who have been, will be, or are at risk of being excluded for Disciplinary Reasons from the Schools they attend without adequate notice and denied a free appropriate public education through suspensions, expulsions, transfers, discharges, removals,

denials of access, Informal Exclusions, and other changes of educational placement.

p. **Compensatory Relief:** Compensatory education or additional (make-up) special education services.

q. **Settled Claims and Reserved Claims:** Settled Claims are any and all claims that have been or could have been asserted in the Action or in any forum by Lead Plaintiffs or Class Members, against any of the Released Parties, which arise out of, relate to, or are based on the allegations, transactions, facts, occurrences, representations and/or omissions involved in, set forth in, or referred to in the Third Amended Complaint (“Action Claims”), except that a “Settled Claim” does not include a “Reserved Claim.” A Reserved Claim is any Action Claim asserted by or on behalf of an individual Class Member:

i. arising after the Effective Date, that the DOE failed to comply with any obligation of the DOE contained in this Stipulation as to that individual Class Member for individual relief, including injunctive relief and Compensatory Relief; or

ii. arising after the Effective Date, by which a Superintendent’s Suspension Subclass Member claims that the services in the Class Member’s Suspension Plan and/or the plan as implemented are not reasonably calculated to enable the Class Member to continue to participate in the general education curriculum while at a Suspension Site and to progress towards meeting the goals on the Class Member’s IEP. Plaintiffs expressly release and settle all claims that arise during the Stipulation Period or any extension of paragraph 18 that challenge

(a) the procedures in this Stipulation used to develop a Suspension Plan, (b) the use of a Suspension Plan in lieu of an IEP, provided the Suspension Plan is developed in accordance with this Stipulation, (c) a Suspension Plan that is developed using an out of date IEP, as set forth below in paragraphs 18(c), 19, 21, and 22, herein; and (d) a Suspension Plan program because it provides that it will be implemented and/or is implemented in classes or groups composed of general education students and students with disabilities, which differ from the classes and/or groups set forth in the DOE's Continuum of Services for Students with Disabilities (or superseding continuum) ("DOE Continuum") and/or on the Class Member's last IEP; or

iii. arising before the Effective Date that is for Compensatory Relief.

Applications by Class Counsel (i) for counsel fees, described in paragraphs 80-81 herein, or (ii) to enforce an enforceable provision of this Stipulation as provided in paragraphs 73-77, shall not be considered Settled Claims.

r. **Released Parties:** Defendants New York City Department of Education, New York City Board of Education, Joel Klein, Carmen Fariña, as well as their predecessors, successors and assigns, and all past and present officials, employees, representatives and agents of any or all of the Defendants.

s. **Effective Date:** the first school day of the first complete semester after this Stipulation is "so-ordered" and all appeals therefrom have been concluded or the appeal period has expired.

t. **Written Approval:** A written approval includes any approval set forth in writing, including an electronic or emailed approval.

III. DURATION, SCOPE AND EFFECT OF AND RELEASE OF CLAIMS UNDER THIS STIPULATION

3. The obligations set forth in Section IV (the “Injunctive Obligations”) will be in effect for six complete and continuous semesters beginning on the Effective Date and ending on the last school day of the sixth semester thereafter (the “Stipulation Period”). Notwithstanding the foregoing, the obligations set forth in paragraphs 5-13, 18-41, and 86 will remain in effect until 45 days after the delivery of the reports described in paragraphs 42-70 for the sixth semester of the Stipulation, at which time the Stipulation will terminate (the “Termination Date”), unless extended pursuant to paragraphs 73-77. Notwithstanding any of the foregoing, paragraphs 80 and 81 survive the Termination Date and extensions thereof.

4. The obligations incurred under this Stipulation shall be in full and final disposition of the Action and any and all Settled Claims as against all Released Parties. Except as provided in paragraph 2(q), upon the entry on the docket of the Court’s order approving this Stipulation, Plaintiffs, individually and on behalf of each Class Member, and on behalf of their past and present legal representatives, release and forever discharge with prejudice each and every Settled Claim, whether known or unknown, and are forever enjoined from prosecuting any Settled Claim against any Released Party. This Stipulation does not resolve Reserved Claims.

IV. INJUNCTIVE RELIEF

A. Superintendent’s Suspensions

5. When a principal or principal’s designee (collectively “Principal”) requests and receives approval for a Superintendent’s Suspension of a Class Member pursuant to any Group 1

infraction as set forth in Attachment A⁶, the Principal may request an immediate reassignment of the Class Member to a Suspension Site if the Principal believes that the Class Member poses a continuing danger to persons or property or an ongoing threat of disruption to the academic process at the School that the Class Member attends at the time of the imposition of the Disciplinary Action. In such a case, as part of the suspension approval request, the Principal must submit a written or electronic request to the superintendent, CEO or CEO's designee, explaining why the student poses a continuing danger or ongoing threat. Reassignment prior to the Class Member's scheduled suspension hearing and prior to the associated MDR, if necessary, may take place only after the Superintendent's Suspension and the request for immediate reassignment are approved in writing by the superintendent, the CEO or the CEO's designee, provided the individual approving the request is not an employee of the School that the Class Member attends.

6. When a Principal requests and receives written approval for a Superintendent's Suspension for a Group 2 infraction as set forth in Attachment A, the Class Member will be immediately reassigned to a Suspension Site prior to the scheduled suspension hearing and prior to the associated MDR, if any, unless the Principal believes that the Class Member does not pose a continuing danger to persons or property or an ongoing threat of disruption to the academic process at the School that the Class Member is attending. In such case, the Class Member may be permitted to remain therein prior to a suspension hearing and prior to the associated MDR, if any. The decision not to reassign rests solely within the discretion of the Principal.

7. When a Principal requests and receives written approval for a Superintendent's

⁶ Attachment A sets forth infraction codes listed in the Discipline Code for the 2013-2014 school year. If any subsequent changes to the Discipline Code alter one or more of the infractions or infraction codes listed in Attachment A, the parties shall update the attachment in accord with paragraph 86.

Suspension pursuant to a Group 3 infraction as set forth in Attachment A, the Class Member will be immediately reassigned to a Suspension Site prior to the scheduled suspension hearing and prior to the associated MDR, if any.

8. If the scheduled suspension hearing is adjourned at the request of the parent, the Class Member will remain in the pre-hearing placement. Upon the grant of a second adjournment at the parent's request, the principal has the discretion to seek approval to reassign a Class Member to a Suspension Site using the procedures set forth in paragraph 6 if the Class Member was not already assigned to a Suspension Site.

9. The following information will be maintained electronically by the DOE: (a) the number of days in the current school year that the Class Member has been removed from a DOE class or School as a result of a Disciplinary Action; and (b) the outcome of any MDRs that were conducted pursuant to paragraph 10 below. Schools will have access to this electronic information for the students on their respective registers. The DOE represents that it currently has a system for maintaining this information electronically and it will notify Plaintiffs if it changes to a new system during the Stipulation Period.

B. Manifestation Determination Reviews

10. An MDR must be conducted whenever the DOE seeks to impose a Disciplinary Change of Placement. To determine whether there has been a Disciplinary Change of Placement, a "Pattern of Removals" is established when either set of events outlined in subparagraphs 10(a) or 10(b) occurs:

a. The imposition of at least three Disciplinary Actions in a school year that results in the removal of the Class Member with an IEP for more than ten (10) cumulative school days within a forty (40) consecutive school day period within a school year ("11

in 40 Pattern”).⁷ Once an MDR is conducted, the 40-school day clock begins anew and any Disciplinary Action in any prior period is not counted going forward for purposes of determining an 11 in 40 Pattern.

b. The imposition of two or more Disciplinary Actions in a school year that results in the removal of a Class Member with an IEP for more than ten (10) cumulative school days within a school year, and the principal determines that these Disciplinary Actions constitute a pattern based on the substantial similarity of the behaviors upon which the Disciplinary Actions are based and (A) the length of prior Disciplinary Actions during the current school year; (B) the total amount of time the student has been removed from School during the current school year as a result of Disciplinary Actions; and (C) the temporal proximity to one another of the Disciplinary Actions under consideration.

11. If a student is subject to a removal for more than ten (10) cumulative school days within a school year, the principal must first determine whether the behavior for which the discipline is sought is substantially similar to the student’s behavior in prior Disciplinary Actions, including prior behavior that resulted in positive manifestation determinations during the current school year. If the behavior is substantially similar, the principal will consider the behavior and the factors in paragraph 10(b) to determine whether such a Pattern of Removals exists.

12. An MDR for a Pattern of Removals must be scheduled to occur as follows:

a. If the last Disciplinary Action that creates the Pattern of Removals is a Teacher Removal, the MDR must be scheduled to occur within five (5) school days of the imposition of the Teacher Removal.

⁷ In this situation, the DOE will electronically notify the School seeking to impose or imposing the Disciplinary Action that an MDR is required if the suspension is sustained.

b. If the last Disciplinary Action that creates the Pattern of Removals is a Principal's Suspension, the MDR must be scheduled to occur within five school days of the date scheduled for the Principal's Suspension conference. If the Class Member with an IEP was not removed before the date scheduled for the conference, the suspension may not be imposed until after the MDR is held.

c. If the last Disciplinary Action that creates the Pattern of Removals is a Superintendent's Suspension, the MDR must be scheduled to occur within five school days of the suspension hearing or if the Class Member with an IEP enters a plea of no contest, within five school days of the scheduled date of the hearing. If the Class Member with an IEP was not removed prior to the suspension hearing or plea of no contest, the suspension may not be imposed until after the MDR is held.

d. An MDR is not required to be held for a Superintendent's Suspension when the charges are either withdrawn or not sustained. If a student was removed before the suspension hearing, but the charges are withdrawn or not sustained, the days for which the student was removed will be counted toward the determination of whether a Pattern of Removals has occurred in any subsequent Disciplinary Action.

13. For every MDR conducted as the result of the imposition of a Disciplinary Change of Placement, the MDR team must complete an MDR worksheet in the form of Attachment B ("MDR Worksheet"). The DOE may modify the MDR Worksheet by following the procedures in Paragraph 86.

14. The DOE will observe a total of 1350 MDRs, as described below. During the first year of the Stipulation Period, the DOE shall observe no fewer than 450 MDRs; during the second year of the Stipulation Period, the DOE shall observe no fewer than 350 MDRs. If the

Stipulation commences with the spring semester of a school year, the following adjustments with respect to observations shall be made: during the first semester of the Stipulation, the DOE shall observe no fewer than 200 MDRs. During the first complete school year of the Stipulation Period (2nd-3rd semesters), the DOE shall observe no fewer than 450 MDRs. The DOE shall observe no fewer than 250 MDRs during the second complete school year of the Stipulation Period (4th-5th semesters). Regardless of when the Stipulation commences, the DOE shall complete at least 1150 of the required 1350 observations by the end of the 5th semester of the Stipulation Period and no fewer than 85% of any remaining observations during the first 75 school days of the sixth semester.

15. The DOE will designate a team of observers (“Observer”), with a background in special education, which may include, but is not limited to, school psychologists, former CSE staff, and special education administrators (the “MDR Observation Unit”). In selecting the manager and deputy manager of the MDR Observation Unit, the DOE will prefer candidates with backgrounds in special education. If the DOE selects a manager or deputy manager without a background in special education, the DOE will ensure that the manager and/or deputy manager receive sufficient training in special education and MDRs. All Observers will receive professional development by the DOE in addressing behavioral issues concerning students with disabilities, including how to conduct an MDR and the protocols for observing an MDR prior to conducting an observation under this Stipulation. The DOE will provide Class Counsel with a copy of any written training materials for this professional development within 10 business days of the first use of these materials at a training session or, if the training occurs before the Effective Date, the materials will be provided in accordance with paragraph 72(a). The DOE will provide Class Counsel with the resume(s) and/or curricula vitae of the Manager and Deputy

Manager within 10 business days of the Effective Date or, if commencing in this position after the Effective Date, within 10 business days of commencement of this position, together with confirmation that the Manager and/or Deputy Manager received professional development if required. By no later than the date on which the DOE provides the MDR Report covering the time period during which an Observer started in this role, the DOE shall provide Class Counsel with the resume or curriculum vitae of the Observer and confirmation that the Observer received the professional development described in this paragraph.

16. The DOE will meet with Class Counsel before the Effective Date and thereafter before the start of each school year to discuss a methodology for selecting MDRs to observe and the anticipated number of MDR observations that will occur during that period.

17. With respect to MDR observations, the DOE will take the following steps:

a. Each Observer shall prepare an observation report for each observed MDR, in the form of Attachment C (“Observation Report”), and shall provide feedback to the MDR team following the MDR.

b. The Observation Report and any written and/or oral post-observation feedback provided by Observers is not admissible in this or any other litigation or proceeding, except that facts contained in written post-observation feedback provided by Observers and Observation Reports are admissible, where relevant, in a proceeding brought under paragraphs 74-77 to enforce the terms of this Stipulation.

c. The DOE may modify the form of the Observation Report by following the procedures in Paragraph 86.

d. Suspension Plans and IEP Team Meetings

18. A Suspension Plan shall be developed for each Class Member with an IEP who is

suspended for more than 10 consecutive school days and placed at a Suspension Site as a result of the imposition of a Superintendent's Suspension. Suspension Site staff serving Class Members with IEPs will be programmed and scheduled with the objective of implementing the Suspension Plans of Class Members with IEPs.

a. The Suspension Plan will include IEP goals, strategies, interventions, programs, supports, testing accommodations, modified promotional criteria, medical alerts and transportation needs, as appropriate; proficiency levels in the areas of math, listening, speaking, writing and reading English, and behavior; the special education program to be implemented at the Suspension Site (which may include related, supplementary and/or transition services, if appropriate); additional transportation support to the site beyond that in the IEP if needed; and the names of the persons participating in the creation of the Suspension Plan.

b. By no later than the tenth (10th) school day after the Class Member first attends the Suspension Site, an IEP team meeting will be held to develop a Suspension Plan for the Class Member unless the parent requests a postponement of the meeting.

c. If a Class Member's IEP is out of date at the time of the suspension, DOE will create a Suspension Plan using this IEP; any adjustments to the Suspension Plan will be made in accordance with Paragraphs 19 and 21.

d. Class Members retain the right to assert individual claims that the services actually provided under the Suspension Plan during the Stipulation Period did not enable the Class Member to participate in the general education curriculum and progress toward meeting the goals on the Class Member's IEP while suspended, except that the fact that a Class Member's IEP was out of date when the Suspension Plan was created is not a basis

for the Class Member to claim that DOE did not develop a plan of services that will enable the Class Member to continue to participate in the general education curriculum and progress toward meeting the goals on the Class Member's IEP while suspended and any claim based on such an allegation is waived and released. In addition, a Suspension Plan created in accordance with this Stipulation during the Stipulation Period may not be challenged for the following reasons: (i) it provides that it will be implemented and/or is implemented in classes or groups composed of general education students and students with disabilities, even if those classes or groups differ from those set forth in the DOE's Continuum and/or on the Class Member's last IEP; (ii) the Suspension Plan was developed using the procedures in the Stipulation; or (iii) the Suspension Plan is used while the student is suspended in lieu of an IEP. Any such claims are waived and released.

C. *Annual Reviews and Three Year Reevaluations*

19. If a Class Member with an IEP receives a suspension and is assigned to a Suspension Site for more than ten (10) school days and less than thirty-one (31) school days either after a hearing or entry of a no contest plea, and the Class Member's IEP is either out of date when he or she is placed at the Suspension Site or will become out of date during the time of the Class Member's suspension, the DOE is not required to conduct an annual review or three year reevaluation during the suspension period and the Suspension Plan may be developed based on the existing IEP. However, the school in which the Class Member is enrolled upon the conclusion of the suspension (the "Receiving School") will schedule an Annual Review and/or three year reevaluation to take place within fifteen (15) school days after the Class Member first attends the Receiving School after the conclusion of the suspension. If the three year reevaluation requires new assessments, the DOE shall have an additional fifteen (15) school days

to complete the assessments and schedule the IEP meeting for that reevaluation.

20. The timelines set forth in the preceding paragraph shall not apply if any of the following occurs:

a. the parent cancels or reschedules the IEP team meeting, in which case the meeting will occur on a mutually agreed-on date, which the DOE will attempt to reschedule within fifteen (15) school days of the last scheduled date; or

b. the parent or Class Member cancels or reschedules an assessment, when one is scheduled. If the assessment is rescheduled, the DOE will attempt to reschedule the IEP meeting within fifteen (15) school days of completion of the assessment; or

c. the parent requests an independent evaluation which is completed beyond the timelines set forth in paragraph 19.

21. If a Class Member with an IEP receives a suspension of thirty-one (31) school days or more after either a hearing or entry of a no contest plea, and the Class Member's IEP either is out of date when he or she is placed at the Suspension Site or will become out of date during the suspension, the DOE will schedule an annual review to take place (a) by the twentieth (20th) school day after the dispositional decision of the CEO, community superintendent, or designee following the suspension hearing or entry of the no contest plea, or (b) one year from the date of the last IEP, whichever is later. In addition, for such a Class Member, if the three year reevaluation coincides with the annual review, both will be conducted together to the extent possible. However, if the DOE and the parent agree in writing (including by email) that the three year reevaluation for the Class Member is unnecessary, it will not be done, but the annual review will go forward as outlined in this stipulation. Following the annual review, the Class Member's Suspension Plan will be adjusted, if necessary. If any of the events set forth in subparagraphs

20(a) to 20(b) occurs, the scheduling requirements set forth in those paragraphs shall apply and the timelines set forth in this paragraph shall not apply. If the parent requests an independent evaluation that is completed beyond the timelines set forth in this paragraph, the timelines set forth in this paragraph shall not apply.

22. If a Class Member with an IEP receives a suspension of thirty-one (31) school days or more after either a hearing or entry of a no contest plea and the Class Member's IEP becomes out of date during the last twenty (20) school days from the scheduled end of the suspension and the Class Member with an IEP is not granted early reinstatement, the DOE will schedule the annual review and if needed, the three year reevaluation, to occur no later than twenty (20) school days after the conclusion of the suspension. If the reevaluation requires new assessments, the DOE shall have an additional 15 school days to complete the assessments and schedule the IEP team meeting for that reevaluation. If any of the events set forth in subparagraphs 20(a) to 20(b) occurs, the scheduling requirements set forth in those paragraphs shall apply and the timelines set forth in this paragraph shall not apply. If the parent requests an independent evaluation that is completed beyond the timelines set forth in this paragraph, the timelines set forth in this paragraph shall not apply.

D. Transition from Suspension Sites

23. When a Class Member with an IEP goes to a Receiving School from a Suspension Site, the Suspension Site will transmit to the Receiving School the Class Member's Suspension Plan, most recent IEP, Behavior Intervention Plan, and any formal special education assessments maintained at the Suspension Site, if such documents are not accessible in the DOE's Special Education Student Information System program or any successor software or computer programs used by DOE. In addition, the Suspension Site should consider sending any additional documents that it considers relevant to the continuing educational development of the Class

Member with an IEP.

E. Involuntary Transfers and Informal Exclusions

24. A Class Member with an IEP cannot be involuntarily transferred for Disciplinary Reasons to a different school to receive the same program that he or she is receiving in his or her home school. If the DOE believes that such a Class Member needs a different special education program or different special education supports because the Class Member's behavior and/or academic record demonstrate that adjustment to school is unsatisfactory, the Class Member's home school should schedule and convene an IEP team meeting.⁸ Nothing in this Stipulation precludes the DOE from moving a Class Member from one Suspension Site to another during the period of suspension, provided the length of the period of suspension is not increased.

25. Class Members will not be subject to Informal Exclusions.

F. Transfers and Discharges

26. The DOE will take the steps outlined in Section IV(F) in furtherance of its policy not to discharge for Disciplinary Reasons students with IEPs, including Class Members with IEPs. Any transfer or discharge of a Class Member with an IEP thereafter is not a violation of this Stipulation and cannot be deemed to be a transfer or discharge for Disciplinary Reasons if done in accordance with the steps below applicable to the particular student.

27. A planning interview will be scheduled and held for a Class Member with an IEP prior to (a) the discharge of the student following twenty (20) consecutive school days of nonattendance, (b) the voluntary withdrawal of the Class Member under the age of 21 for reasons other than attendance at a school elsewhere or a move out of the City, or (c) a transfer of the Class Member under the age of 21 to a full-time or part-time high school equivalency program

⁸ Nothing in this Stipulation changes the parent's statutory right to request that an IEP meeting be convened.

(“High School Equivalency program”), except as set forth in paragraphs 34 and 35 below. If a Class Member with an IEP is discharged from a School through the planning interview process and subsequently reenrolls in the same School the student was attending prior to discharge, a discharge can be effectuated pursuant to this paragraph without another planning interview if the proposed discharge is to occur within the same marking period as the student’s re-enrollment.

a. The notice to parents to schedule a planning interview will contain the following additional language with respect to students with disabilities: “If you want a new assessment/evaluation -- even if you have previously declined one -- or an updated IEP, or you are waiting for an assessment/evaluation or IEP meeting to be completed or scheduled, please contact [DOE WILL INSERT CONTACT INFORMATION]. **If you do not call, your child may be discharged without an updated assessment/evaluation or IEP.**”

b. For a Class Member with an IEP that is out of date, the School must hold an IEP team meeting and update the IEP prior to scheduling the planning interview except as provided in subparagraph 27(c) below.

c. A planning interview may be scheduled and held for a Class Member with an IEP that is out of date under the following conditions:

- i. The Class Member has been absent for 20 or more consecutive school days, and
- ii. A new assessment (as determined by either the IEP team or the parent) is needed to develop an updated IEP, and
- iii. Either

(a) the parent rejects the proffer of an assessment, and the rejection is in writing if the parent had previously consented to the proffered assessment, or

(b) the Class Member fails to appear for the assessment, or

(c) the parent fails to respond to the request for consent to the assessment when consent is needed, and the School has documented that it made the outreach provided below to obtain parental consent:

(1) If the parent has a telephone: at least two attempts to reach the student's parent by telephone at different times of the school day and a follow-up letter mailed to the parent at home; or

(2) If the parent does not have a telephone: a letter mailed to the parent at home.

(3) if the parent and DOE agree, the written communication referenced in paragraph 27(c)(3)(iii)(c)(1) and (2) may be by email.

d. If the conditions set forth in paragraph 27 are met, Plaintiffs waive and release any claim challenging the discharge of the Class Member with an IEP for Disciplinary Reasons.

28. A planning interview may not be initiated by a School for a Class Member with an IEP during the first 20 school days following the completion of a Superintendent's Suspension.

29. Planning Interview Documents

a. The DOE will provide to Class Members a Planning Interview Information Packet as part of the Planning Interview Process. The Planning Interview Information Packet provided to a parent of a student with an IEP as part of the scheduling of a planning interview will contain the following language:

SPECIAL INFORMATION FOR STUDENTS WITH DISABILITIES

IF YOU ARE NOT ATTENDING SCHOOL OR ARE CONSIDERING LEAVING SCHOOL BECAUSE OF A PROBLEM WITH YOUR INDIVIDUALIZED EDUCATION PROGRAM (IEP), OR THE EDUCATIONAL SERVICES YOU ARE RECEIVING, YOU MAY REQUEST A MEETING TO REVIEW YOUR IEP.

AT THE MEETING, YOU CAN DISCUSS THE SPECIAL EDUCATION SERVICES YOU HAVE BEEN RECEIVING OR ADDITIONAL OR DIFFERENT SERVICES THAT MAY BE RECOMMENDED TO ASSIST YOU IN SCHOOL.

TO ASK FOR AN IEP MEETING, CONTACT YOUR SCHOOL.

YOU ALSO HAVE THE RIGHT TO CONTINUE ATTENDING SCHOOL THROUGH THE END OF THE SCHOOL YEAR IN WHICH YOU TURN 21, EVEN IF (A) YOU HAVE BEEN SUBJECT TO DISCIPLINE BY YOUR SCHOOL OR (B) ALTERNATIVE EDUCATIONAL OPTIONS, SUCH AS A HIGH SCHOOL EQUIVALENCY (FORMERLY CALLED GED) OR VOCATIONAL PROGRAM, HAVE BEEN SUGGESTED.

YOUR SCHOOL SHOULD WORK WITH YOU TO HELP ADDRESS ACADEMIC, BEHAVIORAL, AND OTHER ISSUES THAT ARE AFFECTING YOUR SCHOOL PARTICIPATION.

b. The Planning Interview Information Packet also will include the following written statement: “For a student with an IEP who is discharged from and thereafter re-enrolls in a DOE community school, the DOE will implement the student’s last DOE IEP pending a review, if appropriate.”

c. The DOE’s Planning Interview Procedures Manual will include a statement that the planning interview process is to be used to explore ways in which the academic and behavioral issues of a student can be addressed in a positive way to facilitate the student’s progress toward a high school diploma. In addition, that manual

will include the following information prominently: The planning interview process is not to be used as a mechanism to transfer/discharge the student for Disciplinary Reasons.

d. Planning Interview Forms. The following information shall be included prominently on the Planning Interview Form (“PIF”): The planning interview process is not to be used as a mechanism to transfer and/or discharge the student for Disciplinary Reasons.

30. Planning Interview Process

a. All staff participating in a planning interview of a Class Member with an IEP will be required to review the student’s planning interview form.

b. Prior to the planning interview for a Class Member with an IEP, the School must determine and indicate on the PIF whether the Class Member has been subject to Disciplinary Action during the current semester and/or the immediately preceding semester. If the Class Member has been subject to such Disciplinary Action, the School must include the following information on the PIF prior to the planning interview:

- i. the date of and length and grounds for the Disciplinary Action(s);
and
- ii. if applicable, each positive manifestation determination, including date and explanation of behavior found to be a manifestation; and
- iii. a description of how the Class Member’s behavior has affected his or her participation in the School in which the Class Member is enrolled at the time of the Planning Interview, and, when applicable, a description of the impact

of the Class Member's disability on his or her behavior and how these behaviors have been addressed to date at that school.

c. The planning interview should take into account the last two (2) years of educational experience and history of the Class Member with an IEP. If the Class Member was last enrolled for less than two (2) years at a School, DOE staff participating in the planning interview process should consider the last two (2) years of the Class Member's educational experience, wherever it occurred, to the extent that staff has such information and records. The DOE shall include this information on the PIF and in the planning interview procedures manual.

d. As part of the planning interview for a Class Member with an IEP, the participants shall (i) discuss how behavioral issues that impact the student's school participation can be addressed; and (ii) identify additional steps, if any, that can be taken by the School and/or the Class Member to facilitate the Class Member's continued participation in school and enter such information on the PIF. Additional steps may include referral for an IEP team meeting to review the Class Member's IEP.

e. A special education staff member must attend the planning interview for a Class Member with an IEP and review all sections of the Class Member's IEP and PIF. The special education staff member is not required to attend the planning interview when (i) the parent and/or student did not appear at the School for a planning interview and did not reschedule the planning interview; (ii) a home visit is conducted to verify the student's residence; and (iii) the planning interview occurs at the student's home during the course of the home visit.

f. If a special education staff member is not required to attend the planning interview for the reasons above, the special education teacher, after the planning interview and prior to discharge, shall review the IEP and the PIF to consider (i) how behavioral issues that impact the student's school participation can be addressed; (ii) whether there are additional steps that can be taken to facilitate the Class Member's continued participation in school; and (iii) whether discharge is appropriate. All other applicable provisions of this Stipulation regarding planning interviews must be followed.

g. A Class Member with an IEP, other than a Class Member who has been absent for 20 or more consecutive school days, may not be discharged without the consent of the parent and/or Class Member if emancipated.

31. Review of Planning Interviews for Class Members with IEPs

a. All completed PIFs for discharges described in paragraph 27 for Class Members with IEPs who have been subjected to Disciplinary Actions during the current or immediately preceding semester must be reviewed by and the discharge approved by a Reviewer (as specified in paragraphs 31(b)-(d)), before the discharge may be effectuated. The purpose of the PIF review is to ensure that the discharge of the Class Member is not due to Disciplinary Reasons or prior Disciplinary Actions.

b. The Reviewer shall be a DOE employee of the Children First Network, Cluster, or other successor structure for the School that completed the PIF. The Reviewer shall not be an employee of the School submitting the PIF or the last School attended by the Class Member. In reviewing such PIFs, the Reviewer shall consider the last two years of the Class Member's educational experience and history to the extent such information is available to the DOE. Such review shall include:

- i. The timing of the Disciplinary Actions;
 - ii. Prior actions taken by the School that completed the PIF to address the Class Member's behavior;
 - iii. Additional actions discussed at the planning interview meeting to address the Class Member's behavior; and
 - iv. The Class Member's age, credit accumulation, and current level of academic performance and abilities.
- c. If the Reviewer believes that the School is seeking a discharge of the Class Member due to Disciplinary Reasons or prior Disciplinary Action(s), the Reviewer will contact the School to discuss the particular Class Member and additional steps that can be taken to avoid discharge and help re-engage the Class Member in the School's educational programming. Following this conversation, if the discharge is not approved, the School will follow up with the Class Member.
- d. With respect to a Class Member with an IEP who has been subject to Disciplinary Action during the current or immediately preceding semester(s) and for whom a planning interview has been held in which the student indicates that he/she intends to enroll in a DOE High School Equivalency program, the PIF must be sent to the Reviewer for review.
 - i. If the Reviewer believes that the School is seeking a discharge of the Class Member due to Disciplinary Reasons or prior Disciplinary Action(s), the Reviewer will contact the School to discuss the particular Class Member and additional steps that can be taken to avoid discharge and help re-engage the Class Member in the School's educational programming.

ii. Following this conversation, if the Reviewer recommends additional efforts to engage the Class Member, the School will follow up with the Class Member.

iii. In no event shall a transfer to a High School Equivalency program pursuant to paragraph 34 be delayed based on the review of a PIF by the Reviewer, if the student seeks to enroll in a High School Equivalency program.

32. The DOE will develop written best practices regarding re-engagement of Class Members with IEPs whose behaviors adversely impact school participation and identify resources needed to support such best practices.

33. To assist special education staff members who participate in planning interviews to speak knowledgeably with the student and parents about options available inside and outside the DOE, the DOE will take the following actions:

a. The DOE will create a document containing information about services and appropriate contacts at the New York State Office of Adult Career and Continuing Education Services – Vocational Rehabilitation, or any successor.

b. The document described in paragraph 33(a) will be provided to DOE staff participating in planning interviews and parents and students attending planning interviews, and to Class Counsel.

34. Enrollment in a High School Equivalency Program

a. If a Class Member with an IEP goes to a DOE Referral Center for High School Alternatives or an entity with which the DOE contracts that enrolls students in a High School Equivalency program (collectively “Referral Center”), the Referral Center will conduct an intake session with the Class Member to determine whether enrollment in

the program is a voluntary choice of the Class Member. The intake session will include a review of the Class Member's academic history and discussion of whether a High School Equivalency program is a viable option for the student or whether the student prefers to return to high school. If the Class Member prefers to return to high school, the Referral Center will work with him or her to identify one or more appropriate high school placements. The Referral Center will provide the Class Member with the "Know Your Rights" notice, which includes contact information for the Class Member and/or parent to request a planning interview meeting. If the person conducting the intake session concludes that enrollment in a High School Equivalency program is not a voluntary choice by the Class Member, an appropriate District 79 staff member will be contacted.

b. The DOE will provide other non-DOE entities that enroll students in High School Equivalency programs with copies of the Know Your Rights notice and request that such entities provide the notice to students seeking enrollment.

35. The provisions concerning planning interviews set forth in paragraph 27 do not apply where a Class Member is transferred to a School program in a detention or jail setting or drug treatment program.

36. Nothing in this Stipulation shall be construed to impair the right of an eligible Class Member with an IEP, prior to the age of 21, to enroll in a High School Equivalency program or to be discharged from School.

G. *Child Find*

37. The Principal of a Suspension Site will refer a student for an initial evaluation pursuant to 20 U.S.C. § 1414(a)(1) ("Initial Evaluation") if the student: (i) is a general education student attending the Suspension Site; (ii) has not made adequate progress after an appropriate period of time of receiving services and interventions designed to maintain the student in general

education as discussed in the DOE's Continuum; and (iii) the lack of progress is suspected of being the result of a disability.

a. If Suspension Site staff determines that the student's need for referral for an Initial Evaluation is immediate, they are not required to wait for the results of pre-referral interventions, but may request that the principal or designee refer the student for an Initial Evaluation at that time.

38. Suspension Site staff will be given an annual reminder that they may request that the Principal refer a student for an Initial Evaluation and the circumstances under which such a request is appropriate.

39. Information about "child find" obligations will be included as part of annual professional development of staff at Suspension Sites.

H. Students on One-year Suspensions

40. The Suspension Sites will provide instruction in the four core subject areas to Class Members with IEPs on one-year suspensions. As appropriate, Class Members with IEPs will be provided supplemental instruction in reading intervention strategies including decoding and fluency instruction.

41. Suspension Sites serving Class Members with IEPs shall be staffed and programmed as follows:

a. Each Suspension Site serving Class Members with IEPs on one year suspensions will be staffed with at least (i) one Special Education teacher, (ii) one Paraprofessional, and (iii) one Guidance Counselor, social worker or school psychologist to provide appropriate services pursuant to Suspension Plans or for evaluations ("Special Education Staff"). DOE will use best efforts to fill vacancies in a timely manner.

b. Suspension Site staff serving Class Members with IEPs on one-year suspensions will be programmed and scheduled with the objective of implementing the Suspension Plans of Class Members with IEPs on one-year suspensions. In addition, the special education teacher will discuss such Class Member's progress and possible strategies to improve student progress with content area teachers and, as warranted, other Suspension Site personnel.

V. MONITORING

42. The DOE shall provide Class Counsel with the data, reports and documents described in paragraphs 43-70 (collectively the "Reports") for each semester covered by the Stipulation Period.

a. For the first five semesters of the Stipulation Period, the Reports described in paragraphs 43-68 will be provided on or before the August 31st (for the spring semester data) and on or before the March 31st (for the fall semester data) following the end of the relevant semester.

b. For the sixth semester of the Stipulation Period, (i) the Reports required by paragraph 43-62 and 68 shall be prepared or selected based on data covering the period through the first 70 school days of that semester and shall be provided to plaintiffs 20 calendar days after the last school day of that semester; and (ii) the Reports required pursuant to paragraph 63-67 shall be based on data covering the period through the end of the sixth semester and shall be provided 20 calendar days after the last school day of that semester.

A. *Semester Reports*

43. Defendants will prepare spreadsheets at the end of each semester with specific

data about Class Members with IEPs serving one-year suspensions as set forth below (“Semester Reports”).

a. For each Class Member with an IEP serving a one-year suspension, who starts a one-year suspension during the semester:

- Class Member’s Student ID Number
- Date of Suspension
- Suspending School
- Suspension Site
- Class Member’s Date of Birth
- Class Member’s Grade
- Date of Referral to Suspension Site
- Date the IEP was Received by Suspension Site, to the extent that the Suspension Site does not have access to SESIS
- Date of Suspension Plan

b. For each Class Member with an IEP serving a one-year suspension who completes the suspension and exits during the semester:

- Average attendance during the suspension period
- Statewide test scores
- Credits earned while on suspension (high school students only)
- Date left Suspension Site
- Receiving School

44. Defendants will provide Plaintiffs’ Counsel with the following documents for each Suspension Site that serves Class Members with IEPs on one-year suspensions for the

months of November and May for a random selection of 25% of those Class Members with IEPs on one-year suspensions who have not objected to the provision of statutorily protected information to Class Counsel in the context of this action: (a) suspension plans for each such Class Member; (b) class schedules for each such Class Member; (c) whether related services have been arranged to be provided for each such Class Member and, if so, whether “on site” or through the issuance of an RSA; and (d) the class schedule for each Suspension Site’s special education teacher. These documents shall be provided together with the Semester Report for the relevant semester.

B. Disciplinary Actions

45. Total number of students with IEPs or 504 plans who received Superintendent’s Suspensions, and the total number of Superintendent’s Suspensions for students with IEPs or 504 plans.

46. Total number of students with IEPs or 504 plans who received Principal’s Suspensions.

47. Total number of students with IEPs or 504 plans who received Teacher Removals.

48. The total number of Superintendent Suspensions of Class Members with IEPs with a proposed disposition after a hearing or plea of no contest in excess of 10 consecutive school days.

49. The total number of Patterns of Removal resulting from 11 in 40 patterns.

C. Immediate Exclusions

50. The total number of Superintendent’s Suspensions for Group 1 infractions of Class Members with IEPs or 504 Plans.

51. For Superintendent’s Suspensions for Group 1 infractions of Class Members with IEPs or 504 Plans, the number of requests for immediate reassignment, the number of requests

approved, and the number of requests rejected. In addition, the DOE shall produce to Class Counsel a random sample of 25% of the requests for immediate reassignment of such Class Members and the dispositions of those requests.

52. The total number of Superintendent's Suspensions for Group 2 infractions of Class Members with IEPs or 504 Plans.

53. For Superintendent's Suspensions for Group 2 infractions of Class Members with IEPs or 504 Plans, the number of Superintendent's Suspensions for which the student was immediately reassigned, and the number for which the student was not immediately reassigned.

54. The total number of Superintendent's Suspensions for Group 3 infractions of Class Members with IEPs or 504 Plans.

D. MDRs

55. The total number of MDRs conducted for Class Members with IEPs, the number of MDRs in which a manifestation was found, and the number of MDRs in which a manifestation was not found.

56. The number of MDRs of Class Members with IEPs resulting from Superintendent's Suspensions with proposed dispositions in excess of 10 consecutive school days.

57. The number of MDRs for Class Members with IEPs resulting from 11 in 40 Pattern determinations (as defined in paragraph 10(a)).

58. The number of Class Members with IEPs removed for more than 10 school days within a school year as a result of two or more disciplinary actions that is not an 11 in 40 Pattern, the number of determinations by principals that a Pattern of Removals did not exist, the number of determinations by principals that a Pattern of Removals did exist and the number of MDRs resulting from Patterns of Removals.

E. Suspension Plans, Annual Reviews and Triennial Reevaluations

59. (a) The total number of Suspension Plans developed during the reporting semester for Class Members with IEPs. (b) The DOE shall produce to Class Counsel 15% of those Suspension Plans (selected at random), and those students' corresponding IEPs.

60. The number of Suspensions Plans developed when the Class Member's IEP is more than one year old.

61. The number of annual reviews and three year reevaluations for Class Members with IEPs conducted pursuant to paragraph 21, and the number conducted at Suspension Sites.

62. The number of annual reviews and three year reevaluations for Class Members with IEPs conducted pursuant to paragraph 22.

F. Planning Interviews

63. The total number of Class Members with IEPs transferred and discharged for codes applicable to the following reasons: (a) twenty (20) consecutive school days of non-attendance; (b) the voluntary withdrawal of the Class Member under the age of 21 for reasons other than attendance at a school elsewhere or a move out of the City; and (c) a transfer of the Class Member under the age of 21 to a full-time or part-time High School Equivalency program. Such information shall be broken down by applicable transfer or discharge code.

64. The DOE shall provide Class Counsel with copies of the planning interview form and planning interview procedures manual effective as of that semester.

65. At the conclusion of each semester, for two schools selected by Class Counsel each semester, the DOE will provide the cover sheets completed by the PIF reviewers for those PIFs that were subject to review pursuant to paragraph 31, together with copies of the PIFs. These documents will be redacted of student identifying information. Plaintiffs shall advise the DOE of the identity of the selected schools by January 31 (for fall semester documents) and June

10 (for spring semester documents).

66. For the two schools identified in paragraph 65, the total number of students with IEPs discharged in that semester who had Disciplinary Actions in the past or current semester recorded in the electronic system described in paragraph 9.

67. The total number of Planning Interview Forms reviewed pursuant to paragraph 31, and the result of that review.

G. *Child Find*

68. The total number of students referred for initial evaluations by Suspension Site staff.

H. *MDR Observations*

69. The DOE MDR Observation Unit will prepare and provide reports about MDRs (“MDR Report”) as set forth below. The MDR Reports for the first two school years of the Stipulation Period will be made available to Class Counsel within thirty-five calendar days following the end of the last semester covered by the applicable school year’s MDR Report. The MDR Reports for the first two school years will be based on information from MDRs conducted and/or observed and pattern determinations made through the end of the last semester covered by that MDR Report. The MDR Report for the third school year of the Stipulation Period will be made available to Class Counsel no later than 20 calendar days following the end of the last semester covered by the third year’s MDR Report. That report will be based on information from MDRs conducted and/or observed and pattern determinations made through the first 75 school days of the last semester and will set forth the total number of observations conducted during each of the semesters of the entire third year. The MDR Reports will be based on aggregate data and information as set forth below. If the Stipulation commences with the spring semester of a school year, the following adjustments to this paragraph shall be made: The DOE shall provide

an MDR Report for the first semester of the Stipulation Period, the first complete school year (2nd-3rd semesters) of the Stipulation Period, the second complete school year (4th-5th semesters) of the Stipulation Period, and the 6th semester of the Stipulation Period. The first three reports shall be made available to Class Counsel within thirty-five calendar days of the end of the last semester covered by the report. The report for the sixth semester of the Stipulation Period shall be provided to plaintiffs no later than 20 calendar days after the end of the sixth semester. This report will be based on information from MDRs conducted and/or observed and pattern determinations made through the first 75 school days of the sixth semester and will set forth the total number of observations conducted during the entire semester. The MDR Report will:

- a. Evaluate the MDR process for Class Members with IEPs by reporting on:
 - i. For observed MDRs, using the MDR worksheets and associated observation reports:
 - (A) Who attended the MDR meeting and whether the parent and a district representative knowledgeable about the student and the interpretation of information about the child's behavior were present;
 - (B) Which documents were reviewed by the team and whether the team reviewed relevant documents/information about the student; and
 - (C) Whether the MDR team conducted the required analysis by addressing the questions on the worksheet and considered relevant information about the student and the incident in making its determination.

- ii. For unobserved MDRs, using the MDR worksheets:
 - (A) Who attended the MDR meeting and whether the parent and a district representative knowledgeable about the student and the interpretation of information about the child's behavior were present;
 - (B) Which documents were reviewed by the team and whether the team reviewed relevant documents/information about the student;
 - (C) Whether the team completed the MDR worksheet; and
 - (D) The extent to which the team addressed the questions on the MDR worksheet.

iii. For the MDR Reports for the second and third school years of the Stipulation Period [or, if the Stipulation begins in a spring semester, for the 2nd-3rd semester, 4th-5th semester, and 6th semester]: comparing the process followed for MDRs on a year-to-year basis.

- b. Evaluate and report on the pattern determination process as follows:
 - i. Where the behavior was found not to be substantially similar, analyzing the incident description data in OORS regarding the associated behavior(s);
 - ii. Where the behavior was found to be substantially similar, analyzing the data in SOHO regarding the length of the removals, the temporal proximity of the removals and the total number of days the student was removed;

iii. Describing any trends identified in pattern determinations, including but not limited to trends that result in a disproportionate number, or percentage, of “no pattern” determinations.

Such analysis will be conducted by reviewing 10% or 200 “no pattern” determinations in a school year, whichever is more, but in no event shall the DOE be required to review more than 300 such determinations for any MDR Report. If the Stipulation begins in a spring semester, the DOE will review 100 “no pattern” determinations for each of the 1st and 6th semester reports. The MDR Report will describe how the DOE selected pattern determinations to be analyzed.

c. Discuss and make recommendations as to areas or subject matters, with respect to both MDRs and pattern determinations, for improving the process, follow up action and/or for further professional development.

70. For each semester during the Stipulation Period, the DOE will provide to Class Counsel the following information (a) Observation Reports for 25% of the observations conducted together with the MDR Worksheets for these observed MDRs; (b) MDR Worksheets for an additional 100 randomly selected unobserved MDRs. All documents provided pursuant to this paragraph will be redacted of student identifying information. For the first five semesters, this information will be provided no later than thirty five calendar days following the conclusion of the semester. For the sixth semester of the Stipulation Period, these documents shall be provided to plaintiffs no later than 20 calendar days after the last day of the semester, and shall be randomly selected from MDRs conducted and/or observed for the entire sixth semester.

71. The Reports shall be confidential. However, Plaintiffs’ Counsel may publicly disclose their analysis of the Semester Reports and aggregate data, which shall not include or be

based on documents or information provided to plaintiffs pursuant to paragraphs 65, 69 and 70. Plaintiffs may not disclose publicly a category or a number in a category of data that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community who does not have personal knowledge of the relevant circumstances outside of the data produced, to identify the student with reasonable certainty, including, but not limited, a category which (a) contains between 1 and 9 students, or (b) if disclosed, would lead to the ability to determine the precise number of students between 1 and 9 in another category or categories of data. Plaintiffs may disclose to the Court any information produced by the Defendants pursuant to this Stipulation in a motion to enforce the Stipulation, but to the extent that any Reports containing confidential information are incorporated in any motion brought under this Stipulation, such Reports and any confidential information shall be filed under seal with the Court.

72. Production of certain documents.

a. Within 14 business days of the Effective Date, DOE will provide Class Counsel with the documents listed below:

- i. the Planning Interview Packet described in paragraph 29(a) and (b);
- ii. the Planning Interview Manual described in paragraphs 29(c) and 64;
- iii. the Planning Interview Form described in paragraphs 29(d) and 64;
- iv. the Scheduling Notice for Planning Interviews described in paragraph 27(a);

v. the Best Practices document for re-engaging students described in paragraph 32;

vi. the document created by the DOE containing information concerning the New York State Office of Adult Career and Continuing Education Services described in paragraph 33(a); and

vii. the annual reminder language concerning referrals for initial evaluations described in paragraph 38.

b. By the end of the first month of each subsequent school year of the Stipulation Period, the DOE will advise that there are no changes to the documents listed in paragraph 72(a), or provide updated documents. Within 14 business days of production of the document(s) by the DOE, Plaintiffs will identify each document that they believe is noncompliant with the requirements of the Stipulation and the basis for their belief.

c. Within 14 business days of receiving a resume of staff described in paragraph 15, Plaintiffs will identify to the DOE in writing if Plaintiffs believe that staff member does not meet the requirements of that paragraph.

d. Any objections to the contents of the documents listed in paragraph 72(a) or qualifications of staff described in paragraph 72(c) are waived if they not asserted in accordance with paragraph 72.

e. Together with the Reports⁹ due for each fall semester, the DOE shall provide Class Counsel with (i) a copy of the reminder described in Paragraph 38 applicable to that particular school year, (ii) confirmation that the information about

⁹ The Reports are defined in Paragraph 42.

“child find” obligations described in Paragraph 39 was provided to all Suspension Site staff as part of annual professional development, and (iii) any written materials included in the professional development described in Paragraph 39.

VI. JURISDICTION AND ENFORCEMENT

73. The administration and consummation of the Stipulation shall be under the authority of the Court. The Court’s jurisdiction over this Stipulation, including its power to enter orders concerning it and adjudicate any dispute or controversy between the Parties concerning the interpretation of the terms and/or conditions of the Stipulation or the enforcement of the Stipulation, shall end on the Termination Date, except as provided in paragraphs 74-77 and 80-81.

74. Except for a counsel fee motion, any motion to enforce or extend obligations under this Stipulation must be filed by the Termination Date.¹⁰ If plaintiffs’ motion is not made in accordance with the procedures set forth in paragraphs 74-77, the Stipulation and the Court’s jurisdiction shall terminate, except with respect to counsel fees and/or costs. In the event of a motion, the Court’s jurisdiction shall continue for the purpose of deciding such motion and any relief ordered thereunder. If Plaintiffs move to extend the Stipulation and such a motion is granted, the extension may not continue any Injunctive Obligation beyond two years after the last school day of the sixth semester of the Stipulation Period, and the Court’s jurisdiction with respect to the Injunctive Obligations shall terminate as of the last day of the extension. Any reports for the extension period shall be limited to the school years or semesters that are the subject of the extension. The final reports for the extension shall be due by 35 days following the last school day of the extension period and the Court’s jurisdiction with respect to the reports

¹⁰ Termination Date is defined in paragraph 3.

shall terminate upon the DOE's provision of the last reports required for the extension period. The Court's jurisdiction with respect to counsel fees and/or costs shall not terminate. Any application for counsel fees and/or costs, regardless of filing date, shall not extend any obligation, period or termination date described in this Stipulation or the Court's jurisdiction to enforce or interpret the Injunctive Obligations and reporting obligations contained in this Stipulation.

75. A motion by one or more Plaintiffs and/or the Plaintiff class for enforcement, contempt, extension, or further relief under the Stipulation on a classwide basis may be based only on DOE's alleged noncompliance with the obligations of this Stipulation. In such a motion, Plaintiff(s) bear the burden of establishing Defendants' noncompliance with the Stipulation for either of the following two reasons:

a. Defendants' omissions or failures to comply were not minimal or isolated, but were sufficiently significant, and widespread or recurring, so as to constitute systemic noncompliance ("Systemic Noncompliance"). Neither a single incident nor a series of incidents involving a single student shall constitute Systemic Noncompliance. Individual violations of this Stipulation shall not be a basis (i) for a finding of Systemic Noncompliance or that DOE has acted in contempt, or (ii) for a classwide motion for enforcement, contempt, extension or further relief based on Systemic Noncompliance. Nothing herein precludes the Plaintiffs from arguing that Systemic Noncompliance is based on Defendants' conduct from one reporting period and nothing herein limits Defendants' response; or

b. Defendants failed to comply with the obligations set forth in paragraphs 9, 14, 15, 16, 17(c), 29, 32, 33(a), 38, 39, 41(a), 42-72, and 86. Plaintiffs' sole remedies for

violations listed in this subparagraph are limited to specific performance and/or injunctive relief specifically designed to address the noncompliance.

c. Paragraph 75 does not pertain to Reserved Claims; such claims may be brought only in accordance with the procedures set forth in Paragraphs 78 and 79.

76. Prior to filing any motion concerning non-compliance, Plaintiff's Counsel shall provide written notice to DOE's in-house counsel and litigation counsel at the New York City Law Department assigned to this action of the nature and specifics of any alleged noncompliance of this Stipulation by the DOE and shall specify the evidence of the claimed violation(s) (the "Written Notice"). Service of the Written Notice on Defendants shall trigger a twenty (20) business day notice period, during which the parties shall meet to attempt to reach a resolution of the alleged noncompliance. The Written Notice may be provided to counsel (or their successors) by hand delivery or email during regular business hours at the following addresses:

New York City Department of Education
Office of Legal Services
Judy Nathan, Esq. and Deborah King, Esq.
52 Chambers Street, Room 308
New York, NY 10007
Email: jnathan@schools.nyc.gov
dking@schools.nyc.gov

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

Any obligations in this Stipulation that Plaintiffs do not raise in their Written Notice following the receipt of the Reports for the sixth semester will end and cannot be revived or reinstated.

77. If no resolution is reached by the end of the Notice Period, Plaintiffs may move this Court, based on the alleged noncompliance set forth in the Plaintiffs' Written Notice to DOE, to enforce the obligations under this Stipulation of which DOE is alleged to be in noncompliance consistent with paragraph 75 and/or for contempt and/or for further relief regarding the identified obligation(s). Except as set forth below, no motion for contempt,

enforcement or further relief shall be brought to remedy those violations that the parties agree have been or will be cured. In the event that the parties agree to a plan to cure an alleged violation and Plaintiffs believe that the violation has still not been cured, Plaintiffs must provide Written Notice as outlined above at least fifteen (15) business days before any motion is made for enforcement, further relief, or contempt to remedy those violations.

VII. INDIVIDUAL RELIEF

78. Nothing herein shall prevent Class Members from seeking relief for Reserved Claims in the appropriate forum. A Class Member asserting a Reserved Claim covered by paragraph 2(q) may bring an individual claim only. Reserved Claims must be asserted pursuant to applicable law, and shall be interpreted consistent with the terms of this Stipulation. Nothing in this Stipulation, the existence of this Action, or a student's status as a Class Member relieves a Class Member from any obligation under applicable law to exhaust a Reserved Claim.

79. The parties acknowledge that for purposes of enforcing the Reserved Claims, the parties' rights and obligations under this Stipulation shall be considered rights and obligations under the IDEA and Section 504 of the Rehabilitation Act and that Reserved Claims may be asserted in the same manner and in the same forum(s) as claims under the IDEA and Section 504 of the Rehabilitation Act. Nothing in this Stipulation shall be read to create any right for an individual Class Member to seek enforcement of an individual Reserved Claim in this Court in this litigation in the first instance. Nothing herein diminishes the rights of individual Class Members to obtain relief as part of a successful class-wide enforcement motion based on DOE's alleged noncompliance with its obligations under this Stipulation or constitutes a waiver of any applicable exhaustion requirement.

VIII. COUNSEL FEES AND COSTS

80. Defendants agree that Plaintiffs are entitled to counsel fees as though they are prevailing parties and agree not to contest Plaintiffs' entitlement to seek fees under 42 U.S.C. § 1988. The Parties agree to negotiate the amount of fees incurred as of December 31, 2012, and, if they are not able to do so within ninety (90) days of the Effective Date, Class Counsel may submit an application for counsel fees to the United States District Court for the Eastern District of New York, to which Defendants shall have an opportunity to respond consistent with the Federal Rules of Civil Procedure and Local Rules of this Court.

81. Plaintiffs also are entitled to reasonable attorneys' fees and reimbursement of expenses for time spent on this litigation from January 1, 2013 through the Effective Date as well as time spent executing, monitoring and enforcing the terms of this Stipulation. Class Counsel will submit a request to Defendants' Counsel for these fees no later than June 30 of each calendar year and within sixty (60) days following the end of the Stipulation Period and/or any extension thereof. If the Parties cannot agree within ninety (90) days of Plaintiffs' request for fees, Plaintiffs' Counsel will apply to the Court for an award of attorneys' fees and reimbursement of expenses. The DOE shall have thirty (30) calendar days to respond and oppose any such application.

IX. EFFECT OF NON-APPROVAL

82. In the event the Stipulation is not approved by the Court or the Court's approval of the Stipulation is appealed and reversed, the parties to this Stipulation shall be deemed to have reverted to their respective positions in the Action immediately prior to the execution of this Stipulation and the parties shall proceed in all respects as if this Stipulation and any related orders had not been entered.

X. SETTLEMENT PROCEDURES

83. The Parties agree to take all necessary steps, in the following sequence, to obtain Court approval of the settlement set forth in this Stipulation.

a. Promptly after this Stipulation has been fully executed, Class Counsel shall make a motion to the Court for entry of the Order for Notice and Hearing, substantially in the form annexed hereto as Attachment D, setting procedures and a date for a fairness hearing on the proposed settlement and approving the Settlement Notice.

b. Within ten (10) business days of the date of entry of the Court's order approving class certification for settlement purposes and the Notice and Hearing (Attachment D), DOE shall post a summary of the Settlement Notice, in substantially the same form as annexed hereto as Attachment E, in all Suspension Sites, DOE Pathways to Graduation sites, Referral Centers, DOE suspension hearing offices, and Committee on Special Education offices, and shall maintain those postings until the conclusion of the fairness hearing. DOE shall send copies of the Settlement Notice to the New York City Impartial Hearing Office, to all network and cluster leaders or any successor structure, to the Assistant for Special Education ("ASE") for each network or any successor structure, and to any CBO with which DOE has a contract to provide GED-related services to DOE high school students and request that they post the notice until the conclusion of the fairness hearing.

c. DOE shall cause notice to be published once in the New York Post and El Diario in substantially the form annexed hereto as Attachment E, as soon as practicable after the Settlement Notice has been posted as outlined in paragraph 83(b), but in no event more than ten (10) business days after the posting.

d. Class Counsel shall post the Settlement Notice in substantially the form annexed hereto as Attachment F on the website of Advocates for Children of New York, Inc., and DOE shall post a link on DOE's website to another website that will post the Settlement Notice.

e. DOE shall bear all the costs incurred in connection with subparagraphs 83(b) and 83(c) above.

f. Counsel and DOE's Counsel agree to cooperate fully with one another with respect to the Parties' seeking Court approval of this Stipulation; entry of the Order for Notice and Hearing; approval of the Settlement Notice; and approval of the newspaper notice; except that DOE reserves its right to oppose any motion for intervention; and all counsel agree to negotiate in good faith and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the settlement.

XI. MISCELLANEOUS PROVISIONS

84. Nothing contained herein shall be deemed to be an admission by any of the Defendants of liability or of the truth of any of the allegations set forth in the Third Amended Complaint, or that they have in any manner or way violated Plaintiffs' rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, the City of New York ("City"), or any other rules, regulations or bylaws of any department or subdivision thereof.

85. This Stipulation is solely for the purposes of settlement, and does not reflect the positions of the Defendants or the City in any other judicial or administrative action or proceeding, except for actions/proceedings that concern Class Members. It does not have

precedential value with respect to any obligation of the City or the Defendants. This Stipulation shall not be admissible in, nor is it related to, any other judicial or administrative action or proceeding or settlement negotiations, except that any party may use this Stipulation in connection with any subsequent action or proceeding brought to enforce the Stipulation. Nothing herein shall be deemed evidence of any wrongful act or omission of the City, DOE, or any of the Defendants, in their individual or official capacities.

86. Changes to DOE Rules and Regulations

a. To the extent this Stipulation conflicts with either Chancellor's Regulation A-443¹¹ or the DOE's Discipline Code¹², this Stipulation governs as provided herein. If the DOE intends to modify either Chancellor's Regulation A-443 or the DOE's Discipline Code during the term of this Stipulation in such a way as to diminish, reduce, or alter any protections afforded to a Class Member under the terms of this Stipulation, notice of such proposed modification will be provided to Advocates for Children of New York, Inc. and to Davis Polk & Wardwell LLP (collectively "Class Counsel"), c/o the undersigned attorneys or their successors, in accordance with applicable provisions of law.

b. Defendants also reserve their right to implement, change or otherwise alter or amend the procedures and requirements of this Stipulation if required by intervening changes in federal, state or City statutes, regulations or ordinances inconsistent with this Stipulation.

¹¹ Chancellor's Regulation A-443 refers to Regulation of the Chancellor A-443, currently entitled Student Discipline Procedures.

¹² The Discipline Code refers to DOE's Citywide Standards of Interventions and Discipline Measures for the 2013-2014 school year.

c. In connection with any such modification or change pursuant to (a) or (b), DOE shall provide written notice of such change and the statutory or regulatory basis for such change (where such basis exists) to Class Counsel in accordance with applicable law, but in any event, at least thirty (30) calendar days before any such change becomes effective. If DOE is required to implement such a modification or change in less than thirty (30) calendar days, DOE shall provide notice to Class Counsel no later than seven (7) business days after learning thereof.

d. If Plaintiffs object to any such modification or change that they believe alters any protection to a Class Member under this Stipulation, the Parties will negotiate in good faith in an attempt to resolve the dispute. Should the parties be unable to agree to any such modification or change, Plaintiffs may seek appropriate relief, including injunctive relief.

87. This Stipulation contains all the terms agreed to by the parties. It can only be changed by subsequent written agreement of the parties or by order of the Court entered following application by the Plaintiffs or Defendants.

88. This Stipulation is final and binding upon all parties, their successors, and assigns.

**ADVOCATES FOR CHILDREN OF
NEW YORK**

**CORPORATION COUNSEL OF THE
CITY OF NEW YORK**

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Rebecca Shore
Matthew Lenaghan
Bernard Dufresne

By: Janice Birnbaum
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Counsel for Defendants

-and-

DAVIS POLK & WARDWELL LLP

By: Sharon Katz
Sharon Katz
Michael Scheinkman

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New York, NY 10017
Telephone: 212-450-4000

**Counsel for Lead Plaintiffs and the
Class**

ATTACHMENT A

Group 1: all Level 3s, A32, A33, A38, A40, A41, A43, B33, B34, B35, B36, B42, B44, B45

Group 2: A34, A35, A36, A37, A39, A42, A44, A45, A46, A47, A48, B37, B38, B39, B40, B41, B43, B46, B47, B48, B49, B50

Group 3: A49, A50, A51, A52, A53, A54, A55, A56, A57, A58, A59, A60, B51, B52, B53, B54, B55, B56, B57, B58, B59, B60, B61, B62

ATTACHMENT B

Manifestation Determination Worksheet

Meeting Date: _____

Student's name: _

Student's NYC DOE #: _____

Date of Birth: _____ DBN of current enrollment: _____ Duration of enrollment: _____Y _____M

STEP 1: Confirm that the student is subject to IDEIA Due Process Protections:

A. Does the student currently have an IEP?

- YES
- NO

If the answer to the above question is no, the student may still be subject to IDEIA due process protections if certain other conditions have been met. (See below for explanation.)

B. Has this MDR meeting been scheduled as a result of a determination that the Department is "deemed to have knowledge" that the student was a student with a disability, before the conduct in question?

- YES
- NO

If the answer to (B) is yes, the student must be provided with an expedited evaluation within 15 school days of receipt of parental consent for the evaluation.

The Department may be "deemed to know" that the student is a student with a disability if, **before** the conduct in question, any of the following occurred:

- The parent of the student expressed concern in writing to supervisory school staff, the Committee on Special Education Office, or to a teacher of the student informing one or more of them that the student is in need of special education (note that this may be made orally only if the parent does not know how to write or has a disability that prevents a written statement);

OR

- The parent of the student requested an evaluation of the student to determine whether the student is a student with a disability;

OR

- A teacher of the student, or other personnel of the school district, expressed specific concerns in writing about a pattern of behavior demonstrated by the student directly to the Committee on Special Education Office or to the school principal or to other supervisory personnel of DOE.

Exceptions: The Department is NOT "deemed to know" if:

- The parent of the student has not allowed an evaluation of the student or has revoked or withdrawn consent ;
- The parent of the student has refused services;
- It was determined by the IEP Team that the student is not a student with a disability.

NYC DOE; Standard Operating Procedural Manual

**IF THE ANSWER TO ANY OF THE ABOVE QUESTIONS IS YES, PROCEED TO STEP 2.
IF THE ANSWER TO BOTH OF THE ABOVE QUESTIONS IS "NO," AN MDR IS NOT REQUIRED.**

STEP 2: Arrange for MDR Team Participants

Parents must receive notification in writing of participants and their right to request the participation of additional members of the IEP team. If a parent has been provided with written notification of the meeting 5 school days prior to the scheduled meeting and refuses to participate, the meeting may still take place. NYC DOE; Standard Operating Procedural Manual

Attendance at the Manifestation Determination Review

The IDEIA requires that the following people participate in the MDR:

REQUIRED MEMBERS:

- Representative(s) of the school district knowledgeable about the student and the interpretation of information about the child’s behavior. This role may be filled by the school psychologist or social worker.

Name: _____ Title: _____ Signature: _____

- The Parent

Participation: in person by phone no show refusal non-response

If parent is not participating (either in person or by phone), was written notification sent to parent?

YES NO

Name: _____ Title: _____ Signature: _____

Name: _____ Title: _____ Signature: _____

OTHER MEMBERS:

- Other members of the IEP Team as determined by the MDR Team and the parent.

Name: _____ Title: _____ Signature: _____

Name: _____ Title: _____ Signature: _____

Name: _____ Title: _____ Signature: _____

Name: _____ Title: _____ Signature: _____

Name: _____ Title: _____ Signature: _____

Parent objected to having an observer present for the meeting. (complete only if Central Observation Unit plans to observe the MDR)

STEP 3: Review of Documents

The MDR team must review all relevant information from the student’s file. This includes, but is not limited to, the student’s IEP, the OORS report, the FBA/BIP, relevant evaluations, teacher observations and any information provided by the parent(s).

- Indicate the documents that were reviewed as part of the MDR
- Indicate the date of each document.

Document	Description/Comments	Date of Document
The student’s IEP	<input type="checkbox"/> Student does not have an IEP Reason: <input type="checkbox"/> Student has a 504 Plan <input type="checkbox"/> Student has not completed initial evaluation process	
The student’s 504 Plan	<input type="checkbox"/> Student does not have a 504 plan	
OORS Report		
Teacher observation(s)	<input type="checkbox"/> Not Available Reason:	
Functional Behavior Assessment (FBA)	<input type="checkbox"/> Student does not have an FBA	
Behavior Intervention Plan (BIP)	<input type="checkbox"/> Student does not have a BIP	
Evaluation(s) – Please specify	<input type="checkbox"/> Not Available Reason:	
Relevant information provided by the parent(s) – Please Specify	<input type="checkbox"/> None	
Other – Please specify,		

STEP 4: Background Information

A. Please describe the inherent characteristics of the student's disability.

B. At the time of the incident, was the student receiving all the programs and services set forth in the student's IEP?

YES NO

If the answer is "NO" to question (B), list all aspects of student's IEP that were not fully implemented when the behavior occurred:

STEP 5: Behavioral Background Information

A. Describe the behavior that was the code of conduct violation at issue here.

B. Were there behavioral concerns about this student before the incident?

YES NO

If yes, describe the behavioral concerns:

C. If the answer to question (B) is YES, do the behavioral concerns noted above include behaviors similar to or related to the behavior that was the code of conduct violation at issue here?

YES NO

If yes, please explain.

- D. If the answer to question (C) is YES, have these behavioral concerns been identified in the current IEP?
 YES NO
If yes, describe how these behavioral concerns have been identified in the IEP (e.g., "Behavior" was indicated to be a special consideration in the Present Levels of Performance).
- E. Prior to the code of conduct violation at issue, did the student's behavior warrant an FBA ?
 YES NO
- F. If the answer to question (E) is YES, has an FBA been completed for this student?
 YES NO
If yes, describe what behavioral concerns were identified.
- G. If the answer to question (F) is YES, were the behavioral concerns identified in the FBA related to the behavior that was the code of conduct violation at issue here?
 YES NO
If yes, please explain your response.
- H. Was a BIP developed for this student?
 YES NO
- I. If the answer to question (H) is YES, does the BIP identify behaviors related to the behavior that was the code of conduct violation at issue here?
 YES NO
If yes, describe the behavior and corresponding intervention and explain whether the intervention was implemented.

J. Was there a triggering event or triggering circumstance that preceded the behavior that was the code of conduct violation at issue here?

YES NO

If yes, describe the trigger.

Step 6: Manifestation Determination

Using the information gathered from a review of the student's documents and the questions above, a determination must be made as to whether there is a causal link between the conduct for which the student is to be disciplined and the student's disability. The events that led to the act in question and the patterns of previous behavior must be considered. In making this determination, the student's ability to control his or her behavior, including impulsivity issues, must be considered, separating out conduct that only bears an attenuated relationship to the student's disability. Stereotyping about the student's disability type from his or her IEP and/or official classification must be avoided.

Although the primary focus remains on the behavior subject to disciplinary action, the MDR Team must also evaluate any triggering events or circumstances that may have occurred immediately prior to the behavior subject to disciplinary action.

In reaching a decision regarding the manifestation determination, if certain aspects of the student's IEP or BIP have not been implemented, consider whether the full implementation of the IEP and/or BIP would have prevented this conduct or made it less likely to occur.

1. Was the code of conduct violation in question **caused by** or did it have a **direct and substantial relationship** to the student's disability?

YES NO

2. Was the conduct in question a **direct result** of the DOE's failure to implement the student's IEP?

YES NO

If the MDR Team agrees that the answer to **either** question is YES, the behavior **is** a manifestation of the student's disability

If the MDR Team agrees that the answer to **both** questions is NO, the behavior **is not** a manifestation of the student's disability.

STEP 7: Follow Up Action

If it is determined that the **student's behavior was a manifestation** of his or her disability, you must do the following:

- If the student does not already have an FBA and BIP, conduct an FBA, and if appropriate, develop and implement a BIP immediately. If the student already has a BIP, review it and determine if changes need to be made or if an FBA is required to gather new data.
- If any part of the student's IEP is not fully implemented (as noted in Step 5, question 2), the deficiencies must be immediately remedied.

If it is determined that the **student's behavior was not a manifestation** of his or her disability, you must do the following:

- As part of the IEP team meeting, the team must make a determination of whether the student's behavior necessitates the development of a BIP. If a BIP is needed, an FBA must be done and a BIP developed and implemented immediately. If a BIP has already been developed for the student, it must be reviewed and modified, as necessary, to address the student's behavior. The FBA and BIP must be forwarded to the student's suspension site upon completion.

Regardless of whether the behavior is found to be a manifestation of the student's disability:

- If any member of the MDR Team believes that the educational or related service needs warrant a change in the student's program or a reevaluation of the student, the member must submit a request for a reevaluation or an IEP review immediately following the completion of the MDR.

The following information must be entered into SOHO: Date of the MDR, outcome, and participants in the meeting.

A copy of this worksheet must be submitted to: _____

ATTACHMENT C

Manifestation Determination Observation Report

Student's name: _____ Date of MDR: _____

Observer's name: _____ DBN of current enrollment: _____

CATEGORY	REMARKS	OBSERVER'S COMMENTS
1. Team Participation	<input type="checkbox"/> All required members were not present <input type="checkbox"/> Required members present	
2. Parent Notification	<input type="checkbox"/> Parent was not notified in writing <input type="checkbox"/> Parent was notified but not in writing <input type="checkbox"/> Parent was notified in writing	
3. Review of Documents	<input type="checkbox"/> No documentation was presented <input type="checkbox"/> Some relevant documentation was presented and reviewed <input type="checkbox"/> All relevant documentation was presented to team members and reviewed	
4A. Description of the inherent characteristics of the student's disability.	<input type="checkbox"/> No discussion <input type="checkbox"/> General discussion of disability without student specific consideration <input type="checkbox"/> Effective discussion of student's disability	
4B. Determination of whether the student was receiving all of the program and services set forth in the student's IEP?	<input type="checkbox"/> No discussion <input type="checkbox"/> Incomplete review of documents and discussion of whether student was receiving the services and program set forth on the student's IEP <input type="checkbox"/> Complete review of documents and discussion of	

Manifestation Determination Observation Report

Student's name: _____ Date of MDR: _____

	<p>whether student was receiving the services and program set forth on the student's IEP.</p>	
<p>5A. Review of the behavior that was the code of conduct violation at issue here.</p>	<p><input type="checkbox"/> No discussion/review of code of conduct violation</p> <p><input type="checkbox"/> Discussion of code of conduct violation but no consideration of context and surrounding circumstances</p> <p><input type="checkbox"/> Discussion of code of conduct violation and consideration of context and surrounding circumstances</p>	
<p>5B . Discussion of behavioral concerns about this student including behaviors similar to or related to the behavior that was the code of conduct violation at issue here.</p>	<p><input type="checkbox"/> No discussion</p> <p><input type="checkbox"/> Limited discussion/limited review of documents</p> <p><input type="checkbox"/> Effective discussion and use of documents</p>	
<p>6. Functional Behavior Assessment and relationship to current behavior</p>	<p><input type="checkbox"/> N/A (no FBA)</p> <p><input type="checkbox"/> No discussion of FBA and code of conduct violation</p> <p><input type="checkbox"/> Limited discussion of FBA and code of conduct violation</p> <p><input type="checkbox"/> Effective discussion of FBA and code of conduct violation</p>	
<p>7. Behavior Intervention plan and relationship to current behavior</p>	<p><input type="checkbox"/> N/A (No BIP in place)</p> <p><input type="checkbox"/> No discussion of BIP and code of conduct violation</p> <p><input type="checkbox"/> Limited discussion of BIP and code of conduct</p>	

Manifestation Determination Observation Report

Student's name: _____ Date of MDR: _____

	violation <input type="checkbox"/> Effective discussion of BIP and code of conduct violation	
8. Identification of triggering events	<input type="checkbox"/> No discussion <input type="checkbox"/> Limited discussion and reference to documents <input type="checkbox"/> Effective discussion and use of documents	
9. Discussion of relationship between behavior and student's disability	<input type="checkbox"/> No discussion <input type="checkbox"/> Limited discussion and reference to documents <input type="checkbox"/> Effective discussion and use of documents	
10. Consideration of whether conduct was a direct result of failure to implement IEP	<input type="checkbox"/> No discussion <input type="checkbox"/> Limited discussion <input type="checkbox"/> Effective discussion	

OBSERVER RECOMMENDATIONS:

ATTACHMENT D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EB, LB 1, HG, KSG, AJ, IP, SM, JW, DR, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

-against-

NEW YORK CITY DEPARTMENT OF
EDUCATION; NEW YORK CITY BOARD OF
EDUCATION; JOEL KLEIN, in his individual and
official capacity as Chancellor of the New York
City School District,

Defendants.

No. 02 CV 5118 (ENV/MDG)

ORDER FOR NOTICE AND HEARING

WHEREAS, on May 13, 2015, the parties to the above-entitled action (the “Action”) entered into a Stipulation and Agreement of Settlement (the “Settlement” or “Stipulation”) which is subject to review under Rule 23 of the Federal Rules of Civil Procedure and which, together with the attachments to the Stipulation, sets forth the terms and conditions for the proposed settlement of the claims alleged in the Action on the merits and with prejudice; and

WHEREAS, pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure and by Memorandum and Order dated August 17, 2004, the Action was certified as a class action on behalf of a “disabled New York City children age three through twenty-one who have been, will be, or are at risk of being excluded from school without adequate notice and deprived of a free and appropriate education through suspensions, expulsions, transfers, discharges, removals and denials of access.”; and

WHEREAS, pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure and by Memorandum and Order dated June 29, 2005, this Court amended the class definition under Fed. R. Civ. P. 23(b)(2) to consist of “[d]isabled New York City children age three through twenty—one who have been, will be, or are at risk of being excluded from school for disciplinary reasons without adequate notice and deprived of a free and appropriate education through suspensions, expulsions, transfers, discharges, removals, denials of access or other changes of educational placement,” and certified six subclasses under Fed. R. Civ. P. 23 (c)(4); and

WHEREAS, the Court having read and considered the Stipulation and the accompanying documents; and the parties to the Stipulation having consented to the entry of this Order, as more fully set forth in the Stipulation; and all capitalized terms used herein having the meanings defined in the Stipulation;

NOW, THEREFORE, IT IS HEREBY ORDERED, this _____ day of _____, 2015 that:

1. A hearing (the “Settlement Fairness Hearing”) pursuant to Rule 23(e) of the Federal Rules of Civil Procedure is hereby scheduled to be held before the Court on _____, 2015, at ____:_____.m. for the following purposes:
 - a) to determine whether the proposed Settlement is fair, reasonable, and adequate and should be approved by the Court;
 - b) to determine whether the Order and Final Judgment as provided under the Stipulation should be entered, dismissing the Complaint herein, on the merits and with prejudice, and to determine whether the release by the Class of the Settled Claims, as set forth in the Stipulation, should be provided to the Released Parties;

- c) to determine whether the proposed injunctive obligations in the Stipulation are fair and reasonable and should be approved by the Court; and
 - d) to rule upon such other matters as the Court may deem appropriate.
2. The Court approves the form, substance, and requirements of the Notice of Proposed Settlement (the “Settlement Notice”), annexed to the Stipulation as Attachment F, and the Short Notice of Proposed Settlement (the “Short Form Notice”), annexed to the Stipulation as Attachment E, and directs Defendants, within ten (10) business days of the date of entry of this Order, to post the Short Form Notice in all Suspension Sites, DOE Pathways to Graduation sites, Referral Centers, DOE suspension hearing offices, and Committee on Special Education offices, and shall maintain those postings and make the Settlement Notice accessible to parents and students at those locations until the conclusion of the Settlement Fairness Hearing. Defendants are further directed to send copies of the Short Form Notice to the New York City Impartial Hearing Office, to all network and cluster leaders or any successor structure, to the Assistant for Special Education for each network or any successor structure, and to any CBO with which DOE has a contract to provide GED-related services to DOE high school students and request that they post the Short Form Notice until the conclusion of the Settlement Fairness Hearing.
3. The Court directs that Defendants shall cause the Short Form Notice to be published once in the New York Post and El Diario as soon as practicable after the Settlement Notice and Short Form Notice have been posted pursuant to paragraph 3, but in no event more than ten (10) business days after the posting. Defendants shall, at or

before the Settlement Fairness Hearing, file with the Court proof of publication of the Settlement Notice.

4. The Court directs Class Counsel to post the Settlement Notice on the website of Advocates for Children of New York, Inc. and directs Defendants to post a link on the DOE's website to another website that will post the Settlement Notice.
5. The form and content of the Settlement Notice and Short Form Notice, and the method set forth herein of notifying the Class of the Settlement and its terms and conditions, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto.
6. Class Members shall be bound by all determinations and judgments in this Action, whether favorable or unfavorable.
7. The Court will consider comments and/or objections to the Settlement, including the Injunctive Obligations, only if such comments or objections and any supporting papers are filed in writing with the Clerk of the Court, United States District Court, 225 Cadman Plaza East, Brooklyn, New York 11201, and copies of all such papers are served, on or before _____, 2015, upon each of the following:

Rebecca Shore
Advocates for Children of New York, Inc.
151 West 30th Street, 5th Floor
New York, NY 10001

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

8. Attendance at the Settlement Fairness Hearing is not necessary; however, persons wishing to be heard orally with regard to the approval of the Settlement, including the Injunctive Relief, are required to indicate in a written submission their intention to appear at the hearing and file such submission with the Clerk of the Court, United States District Court, 225 Cadman Plaza East, Brooklyn, New York 11201, and copies of all such papers must be served, on or before _____, 2015, upon each of the following:

Rebecca Shore
Advocates for Children of New York, Inc.
151 West 30th Street, 5th Floor
New York, NY 10001

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

Persons who intend to comment on or object to the Settlement, including the Injunctive Obligations, and desire to present evidence at the Settlement Fairness Hearing must include in their written submissions the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Fairness Hearing. Class Members do not need to appear at the hearing or take any other action to indicate their approval.

9. Pending final determination of whether the Settlement should be approved, the Lead Plaintiffs, all Class Members, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence or prosecute any action which asserts Settled Claims against any Released Party. However, nothing in the

Stipulation or in this Order shall prevent Class Members from seeking relief for Reserved Claims in the appropriate forum.

10. This Order shall not be construed or used as an admission, concession, or declaration by or against any Defendants of any fault, wrongdoing, breach, or liability. This Order shall not be construed or used as an admission, concession, or declaration by or against Lead Plaintiffs or the Class that their claims lack merit or that the relief requested in the Action is inappropriate, improper or unavailable, or as a waiver by any Party of any defenses or claims he, she, or it may have.
11. The Court reserves the right to continue the Settlement Fairness Hearing without further written notice.
12. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement.

Dated: New York, New York
_____, 2015

Honorable Eric N. Vitaliano
UNITED STATES DISTRICT JUDGE

ATTACHMENT E

United States District Court for the Eastern District of New York
E.B. et al. v. New York City Department of Education, et al., 02 CV 5118

IF YOU HAVE AN IEP OR HAD AN IEP

(OR ARE A PARENT OR GUARDIAN OF A STUDENT WITH AN IEP)

AND YOU WERE SUSPENDED OR REMOVED FROM CLASS, OR TRANSFERRED
OR DISCHARGED FROM A NYC PUBLIC SCHOOL

**PLEASE READ THIS SHORT NOTICE OF SETTLEMENT WITH THE NYC DEPARTMENT OF
EDUCATION, BECAUSE YOUR RIGHTS MAY BE AFFECTED.**

THIS SETTLEMENT MAY AFFECT THE RIGHTS OF STUDENTS WITH DISABILITIES WHO
ATTEND OR ATTENDED A NYC PUBLIC SCHOOL WHO BELIEVE THEY WERE:

- Improperly suspended or removed from class or school for disciplinary reasons
- Denied appropriate educational services while suspended or removed from class
- Improperly suspended or removed from class because of their disability
- Improperly discharged or transferred from school for disciplinary reasons

IF THIS SETTLEMENT IS APPROVED, THE NYC DEPARTMENT OF EDUCATION HAS
COMMITTED TO CERTAIN PROCEDURES CONCERNING STUDENT DISCIPLINE DURING THE
TIME OF THE SETTLEMENT THAT CONCERN:

- Removing students with disabilities from class or school for disciplinary reasons
- Removing students with disabilities from school before a Superintendent's suspension hearing
- Determining if a student was removed from class or school as a direct result of the student's disability
- Educating and evaluating students with disabilities while on suspension
- Discharging and transferring students with disabilities out of school

**IF YOU WISH TO BE HEARD IN CONNECTION WITH THE FAIRNESS OF THE
PROPOSED SETTLEMENT, YOU MUST ACT BY _____.**

FOR FURTHER INFORMATION OR TO GET A COPY OF THE FULL SETTLEMENT NOTICE OR
THE SETTLEMENT AGREEMENT, CONTACT ADVOCATES FOR CHILDREN AT 973-878-4559 OR
WWW.ADVOCATESFORCHILDREN.ORG.

ATTACHMENT F

IF YOU HAVE AN IEP OR HAD AN IEP

(OR ARE A PARENT OR GUARDIAN OF A STUDENT WITH AN IEP)

AND YOU WERE SUSPENDED OR REMOVED FROM CLASS, OR TRANSFERRED OR DISCHARGED FROM A NYC PUBLIC SCHOOL

PLEASE READ THIS NOTICE OF SETTLEMENT WITH THE NYC DEPARTMENT OF EDUCATION, BECAUSE YOUR RIGHTS MAY BE AFFECTED.

THIS SETTLEMENT MAY AFFECT THE RIGHTS OF STUDENTS WITH DISABILITIES WHO ATTEND OR ATTENDED NYC PUBLIC SCHOOLS AND BELIEVE THEY WERE:

- IMPROPERLY SUSPENDED OR REMOVED FROM CLASS OR SCHOOL FOR DISCIPLINARY REASONS
- DENIED APPROPRIATE EDUCATIONAL SERVICES WHILE SUSPENDED OR REMOVED FROM CLASS
- IMPROPERLY SUSPENDED OR REMOVED FROM CLASS BECAUSE OF THEIR DISABILITY
- IMPROPERLY DISCHARGED OR TRANSFERRED FROM SCHOOL FOR DISCIPLINARY REASONS

IF THIS SETTLEMENT IS APPROVED, THE NEW YORK CITY DEPARTMENT OF EDUCATION HAS COMMITTED DURING THE TIME OF THE SETTLEMENT TO TAKE CERTAIN ACTIONS, DESCRIBED IN DETAIL BELOW.

THIS SETTLEMENT **CAN AFFECT THE RIGHTS** OF STUDENTS WHO ARE PART OF THE CLASS. PLEASE READ THE ATTACHED NOTICE FOR COMPLETE INFORMATION ABOUT THIS SETTLEMENT.

If you have any questions or to get a copy of the full Settlement agreement, call Advocates for Children at 973-878-4559 or go to www.advocatesforchildren.org

United States District Court for the Eastern District of New York
E.B. et al. v. New York City Department of Education, et al., 02 CV 5118

If you are or were a resident of New York City and are or were a student aged 4-21 with an IEP who was removed from class, suspended, discharged or transferred out of a New York City public school for disciplinary reasons, you may be part of a class action lawsuit.

YOUR LEGAL RIGHTS MAY BE AFFECTED BY THIS CASE WHETHER OR NOT YOU ACT. READ THIS NOTICE CAREFULLY.

The proposed settlement (the "Settlement") resolves a lawsuit claiming that the New York City Department of Education ("DOE"):

- Improperly removed students with disabilities from class or school,
- Denied an appropriate education to students with disabilities while they were suspended or removed from class, and
- Improperly discharged or transferred students with disabilities.

In exchange for giving up the Class claims, the Defendants have agreed to the terms of a Settlement. The rights of class members under the Settlement are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

OBJECT	You may write to the Court if you don't like the Settlement.
GO TO THE FAIRNESS HEARING	You may ask to speak in Court concerning the fairness of the Settlement.

- **If you do nothing**, and the Settlement is approved, you will be bound by the terms of the Settlement.
- These rights and options are explained in this Notice. **There are deadlines to exercise these rights and options.**

If you have any questions or to get a copy of the full Settlement agreement, call Advocates for Children at 973-878-4559 or go to www.advocatesforchildren.org

BASIC INFORMATION

1. What is this lawsuit about?

This federal lawsuit was brought by students and parents of students with disabilities who attended New York City Department of Education (“DOE”) schools, including community schools, schools in District 75, alternative high schools, and suspension sites. The students (the “Named Plaintiffs”) filed the Complaint on September 19, 2002, claiming that the DOE (the “*Defendants*”) violated federal and state law by depriving the Plaintiffs of educational services while disciplined, removed from class, or suspended, improperly discharging or transferring Plaintiffs out of DOE schools, and improperly disciplining, suspending, and removing Plaintiffs from school or class. Defendants have denied any wrongdoing or violation of law concerning these allegations.

2. What is a class action?

The Named Plaintiffs made their claims through a class action complaint on behalf of themselves and also on behalf of other students who may have been affected by these practices. In a class action, one or more people called “*Class Representatives*”, who include the Named Plaintiffs here, sue on behalf of people who have similar claims. The Class Representatives and all people who have similar claims are the “*Class Members*” or the “*Class*.”

Because this is a class action, one court will resolve the issues for all Class Members. After the Settlement Fairness Hearing scheduled for _____, 2015 at _____, a United States District Judge will decide whether to approve the Settlement and bind the Class Members to the terms of the Settlement.

3. Why is there a Settlement?

The Court has not decided in favor of Named Plaintiffs or Defendants. Instead, both sides agreed to a Settlement that they believe is fair, adequate, and reasonable. That way, they avoid the costs and risks of a trial, and the people affected will receive benefits sooner. The Class Representatives and their attorneys think the Settlement is in the best interests of all Class Members.

If you have any questions or to get a copy of the full Settlement agreement, call Advocates for Children at 973-878-4559 or go to www.advocatesforchildren.org

WHO IS IN THE SETTLEMENT?

To see if you may be affected by this Settlement, you first have to determine if you are a Member of the Class.

4. How do I know if I am part of the Settlement?

Everyone who fits the following description is a member of the Class that has been certified by the court:

New York City children with disabilities from kindergarten through age 21, who have been, will be, or are at risk of being excluded from school for disciplinary reasons without adequate notice and deprived of a free appropriate education through suspensions, expulsions, transfers, discharges, removals, denials of access, or other changes of educational placement.

The court has identified six groups of the Class:

- Class Members with IEPs who were denied an appropriate education because of a Superintendent's suspension or expulsion.
- Class Members with IEPs who were denied an appropriate education because of discipline imposed by a staff member at the Class Member's school.
- Class Members with IEPs who were denied an appropriate education because of a school's exclusion of the Class Member from school or class.
- Class Members with IEPs who were denied an appropriate education because of a transfer or discharge out of school.
- Class Members without IEPs who were denied an appropriate education because of a suspension, expulsion, transfer, discharge, removal, denial of access, exclusion, or change of educational placement.
- Class Members who have a disability under Section 504 of the Rehabilitation Act who were denied an appropriate education because of a suspension, expulsion, transfer, discharge, removal, denial of access, exclusion, or change of educational placement.

5. I'm still not sure if I am included.

If you are still not sure whether you are included, you can ask for further clarification. You can call Advocates for Children at 973-878-4559 for more information.

If you have any questions or to get a copy of the full Settlement agreement, call Advocates for Children at 973-878-4559 or go to www.advocatesforchildren.org

THE SETTLEMENT – WHAT ACTIONS THE DOE HAS COMMITTED TO TAKE DURING THE TERM OF THE SETTLEMENT

6. Can a student receive money under the Settlement?

The Settlement does not give any compensatory or monetary relief for Class Members. You will still have a right to seek compensatory relief from the DOE for you or your child during the time period covered by this lawsuit. PLEASE NOTE that there are deadlines for filing a claim and you should contact an attorney or Advocates for Children if you have questions.

7. What does the Settlement provide?

If this Settlement is approved, specific requirements and procedures for student discipline will be in place during the period of the Settlement. The Settlement will be in effect for a minimum of three school years from the time the Court approves the Settlement, with a maximum period of five school years. These actions broadly relate to:

(1) suspensions and removals of students with disabilities, and education services for students while on suspension,

(2) involuntary transfers and removals of students with disabilities from class or school, and

(3) transfers and discharges of students with disabilities out of DOE schools.

Plaintiffs will be monitoring the DOE's compliance with the Settlement's required actions during the term of the Settlement. This notice summarizes the requirements in the Settlement by each of the above categories:

If you have any questions or to get a copy of the full Settlement agreement, call Advocates for Children at 973-878-4559 or go to www.advocatesforchildren.org

Suspensions

Removals of Students Before Superintendent's Suspension Hearings

Under the Settlement, schools must follow certain steps before a Class Member can receive a Superintendent's suspension (a suspension of 6 or more days) and before a student can be removed from school and reassigned to a suspension site before the Superintendent's suspension hearing is held. These requirements include:

- A principal must get approval from the DOE's Office of Safety and Youth Development for the district to initiate a Superintendent's suspension.
- The Settlement explains the rules on when a student may stay in school before the suspension hearing and when a principal can remove a student immediately from the school before the suspension hearing.
- In some instances, the DOE is required to get approval from the Office of Safety and Youth Development to remove a student from school before the Superintendent's suspension hearing.

Manifestation Determination Reviews

A manifestation determination review ("MDR") is a meeting to determine (a) if the conduct of a student who was removed from class or suspended was caused by, or had a direct relationship to the student's disability, or (b) if that student's conduct was the result of the DOE's failure to implement the student's IEP.

If a school determines at the MDR meeting that the conduct for which the student was suspended is the result of or was directly and substantially related to the student's disability or is the result of the failure to implement the student's IEP, the school cannot suspend the student.

Under this Settlement, the DOE must conduct an MDR for a student with an IEP in three instances:

1. If a student is suspended for more than ten (10) consecutive school days in a school year;
2. If a student is removed from class (through teacher removals or suspensions) **3 or more** times for a total of 11 or more cumulative school days within a forty school day period within a school year;
3. If a student is removed from class (through teacher removals or suspensions) **2 or more** times for a total of 11 or more cumulative school days in a school year *and* the principal of the school determines (i) that the student's behavior is substantially similar to the student's behavior(s) resulting in prior removals, and (ii) the Principal determines that there is a "pattern of removals" by examining:

If you have any questions or to get a copy of the full Settlement agreement, call Advocates for Children at 973-878-4559 or go to www.advocatesforchildren.org

- a. The length of prior removals;
- b. The total amount of time that the student has been removed through removals or suspensions from class or school; and
- c. How close in time the removals are in relation to each other.

The Settlement sets timelines and requirements for conducting MDRs, generally requiring that the MDR occur within 5 days of the removal, principal suspension conference or the Superintendent's suspension hearing:

- If the student was not removed from his/her home school prior to the suspension hearing or no contest plea and an MDR is required, the student cannot be suspended until *after* the MDR takes place.
- If a Superintendent's Suspension is withdrawn by the DOE or the charges are not sustained through a hearing, an MDR is not required, although any days of removal will be considered in the future to determine whether an MDR is required.
- At the MDR, a school must complete a worksheet that identifies the participants at the MDR, and the documents and information the school considered, and guides the decision making process,
- During the 2015-16, 2016-17 and 2017-18 school years of the Settlement, the DOE will send staff to some MDRs to gather information to help improve the process of MDRs throughout DOE schools.

If you have any questions or to get a copy of the full Settlement agreement, call Advocates for Children at 973-878-4559 or go to www.advocatesforchildren.org

Suspension Plans and IEP Team Meetings

The DOE will prepare a Suspension Plan for each Class Member with an IEP who is suspended for more than 10 consecutive school days and assigned to a suspension site. This plan will be the special education program that the student will receive while suspended. The Suspension Plan will include IEP goals, interventions, programs, supports, testing accommodations, modified promotional criteria, medical alerts, transportation needs, proficiency levels, the special education program to be provided at the suspension site, and the names of the persons participating in the creation of the Suspension Plan.

- An IEP team meeting will be held to develop the Suspension Plan no later than the tenth school day after the Class Member first attends the Suspension Site, unless the parent requests a postponement of the meeting. If a Class Member's IEP is out of date at the time of the suspension, the DOE will create a Suspension Plan, but may use the out-dated IEP. If a new IEP is prepared during the suspension, the suspension plan will be updated if necessary.
- Class Members with IEPs will be given instruction that can implement the Suspension Plans.
- Each Class Member keeps the right to assert individual claims that the services actually provided under the Suspension Plan did not enable him or her, while suspended, to participate in the general education curriculum and progress toward meeting the goals on his or her IEP.
- It is important to note that Class Members may not challenge Suspension Plans by claiming that:
 - Suspension Plans are implemented in classes that include general education students and students with disabilities, even if those classes differ from those in the Class Member's IEP;
 - Suspension Plans were developed using the procedures required by this Settlement, or
 - Suspension Plans were used instead of IEPs.

IEPs and Evaluations While Suspended

If a Class Member is suspended for 11 to 30 school days, the DOE is not required to hold an IEP meeting or three year reevaluation during the suspension.

- Suspension Plans for these Class Members may be developed using their existing IEPs.

If you have any questions or to get a copy of the full Settlement agreement, call Advocates for Children at 973-878-4559 or go to www.advocatesforchildren.org

- If the student's IEP is out of date, the school in which the Class Member is enrolled after the suspension will schedule an IEP meeting or three year re-evaluation to take place within 15 school days after the Class Member first returns to school after the suspension.
- If a three year reevaluation requires new assessments, the DOE will have an additional 15 school days to complete them and schedule the IEP meeting for that reevaluation.
- PLEASE NOTE: These timelines do not apply if the parent cancels or reschedules the IEP meeting or assessment, or requests an independent evaluation.

If a Class Member is suspended for more than 30 school days and the IEP is more than one year old at the time the student is suspended or will become more than one year old during the suspension, the DOE will schedule an IEP meeting.

- The IEP meeting will be scheduled for the later of (1) the 20th school day after the suspension hearing or entry of a no contest plea, and (2) one year from the date of the last IEP.
- PLEASE NOTE: These timelines do not apply if the parent cancels or reschedules the IEP meeting or assessment, or requests an independent evaluation.

If a Class Member is suspended for more than 30 school days and the IEP becomes more than one year old during the last 20 school days from the scheduled end of the suspension, the IEP meeting will occur no later than 20 school days after the conclusion of the suspension.

- If a three year reevaluation requires new assessments, the DOE has an additional 15 school days to complete them and schedule the IEP meeting for that reevaluation.
- PLEASE NOTE: These timelines do not apply if the parent cancels or reschedules the IEP meeting or assessment, or requests an independent evaluation.

Students on One-Year Suspensions

- The settlement has additional requirements for students with IEPs who are suspended for one year. Suspension Sites will provide instruction in the **four core subject areas** and will, as appropriate, provide **additional instruction in reading intervention strategies** to Class Members with IEPs.

If you have any questions or to get a copy of the full Settlement agreement, call Advocates for Children at 973-878-4559 or go to www.advocatesforchildren.org

- Each Suspension Site serving Class Members with IEPs with 1 year suspensions will have at least one special education teacher, one paraprofessional, and one guidance counselor, social worker, or school psychologist. Special education teachers will discuss with other staff the progress and needs of students with IEPs.
- Students on one year suspensions will be programmed and scheduled with the objective of implementing the Suspension Plans of Class Members with IEPs.
- A Suspension Site principal will refer students without IEPs for evaluation if the students meet certain criteria. Suspension Site staff may also request that principals make such referrals and the DOE will remind principals and staff of their obligations to refer students for evaluation under federal law.
- When a student leaves a Suspension Site and returns to his prior school or a new school, the Suspension Site will make sure that the next school has certain student records (e.g., Suspension Plans, IEPs, BIPS and other formal assessments) and may provide other documents relevant to the student's educational development.

Involuntary Transfers from Schools and Informal Removals from Class

The Settlement prohibits schools from transferring students with IEPs out of their schools or class, without following required procedures.

- The DOE may not transfer a student involuntarily for disciplinary reasons to a different school to receive the same program.
- The Settlement does permit the DOE to move a student from one suspension site to another suspension site during the period of the suspension without an IEP meeting as long as the suspension time is not increased.

Under this Settlement, the DOE cannot remove or exclude students with disabilities from their classrooms or schools as discipline unless the removals are teacher removals or suspensions and the procedures set forth in the Settlement are followed.

If you have any questions or to get a copy of the full Settlement agreement, call Advocates for Children at 973-878-4559 or go to www.advocatesforchildren.org

Discharges Out of School and Transfers to GED or High School Equivalent Program

Under the Settlement, a public school cannot discharge students with IEPs out of school or transfer students with IEPs to a GED or high school equivalent program as discipline. The Settlement requires a school to take the following steps in connection with a discharge or transfer:

- The school must conduct a meeting with the parent and student with an IEP, called a planning interview, before discharging or transferring the student.
- The school may not schedule a planning interview to be held in the first 20 school days after the student returns from a suspension.
- The purpose of the planning interview is for the school to discuss and consider ways to address the student's learning and behavior challenges so the student can progress in school to a diploma instead of being transferred or discharged.
- The school will send a written notice to the parent before the planning interview that says that the school is considering transferring or discharging the student, and tells the parent and the student of the right to attend school to the end of the school year in which the student turns 21.
- The school will provide to the parent a packet of information called the Planning Interview Packet, that tells the student and parent their rights before and after discharge.
- As part of the planning interview process, school staff must look at the student's prior school history, including past discipline. A special education staff member at the school must review the student's IEP and planning interview form.
- The school must get the parent's consent to discharge a student with an IEP, unless the student has been absent for 20 school days in a row.
- A person within the DOE who does not work for the student's school will be required to review certain transfers and discharges of students with IEPs and will work with the school and student if the reviewer believes the transfer or discharge was for disciplinary reasons.

If you have any questions or to get a copy of the full Settlement agreement, call Advocates for Children at 973-878-4559 or go to www.advocatesforchildren.org

- The DOE will include its policy to not transfer or discharge students with IEPs for disciplinary reasons in its planning interview materials.

SETTLEMENT PROCEDURES:

8. When will the Court determine if it approves the Settlement?

The Court will hold a hearing on _____, 2015, at _____ to decide whether to approve the Settlement ("Settlement Fairness Hearing"). If the Judge approves the Settlement after the Settlement Fairness Hearing, there could still be appeals. If any appeal is filed, it is uncertain how long it might take to resolve. If the Settlement is approved, and no appeal is filed, the DOE will start taking the actions required by the Settlement.

9. Do I have a lawyer in this case?

Yes. Attorneys from Advocates for Children of New York and Davis Polk & Wardwell LLP represent you for the purposes of this Settlement, *if you are a Class Member*. You will not be charged for being represented by these lawyers in this matter. If you want to be represented by your own lawyer, you may hire one at your own expense.

10. Will the lawyers be paid?

The Agreement provides that attorneys for the class may seek reasonable attorneys' fees for investigating the facts, litigating the case, negotiating the Settlement, and monitoring and enforcing the Settlement. **Any payment of Attorneys' fees will not reduce the educational services provided by the DOE under this Settlement.**

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the Settlement or some part of it.

11. How do I tell the Court that I don't like the Settlement?

If you are a member of the Class or Subclasses, you can object to the Settlement. You can give reasons why you think the Court should not approve the Settlement. The Court may consider your views. To object, you must send a letter saying that you object to *E.B. et al. v. New York City Department of Education, et al.* Be sure to include your name, address, telephone number, your signature, and the reasons you object to the Settlement. Mail the objection to the following address postmarked no later than _____, 2015:

If you have any questions or to get a copy of the full Settlement agreement, call Advocates for Children at 973-878-4559 or go to www.advocatesforchildren.org

The Clerk of the Court
U.S. District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Rebecca Shore
Advocates for Children of New York
151 West 30th Street
New York, New York 10001

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

If you have any questions or to get a copy of the full Settlement agreement, call Advocates for Children at 973-878-4559 or go to www.advocatesforchildren.org

THE COURT'S SETTLEMENT FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to come to Court to receive educational benefits under the Settlement.

12. **When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Settlement Fairness Hearing on _____, 2015, at _____ at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, in Courtroom 4CS. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Judge will listen to people who have properly asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement.

13. **Do I have to come to the hearing?**

No. Advocates for Children and Davis Polk & Wardwell LLP will answer questions the Judge may have. But, you are welcome to come at your own expense. If you send an objection, you don't have to come to court to talk about it. As long as you have mailed your written objection on time, the Court may consider it. You may also pay your own lawyer to attend, if you so choose, but it is not required.

14. **May I speak at the hearing?**

You may ask the Court for permission to speak at the Settlement Fairness Hearing. Please note that any appearance will be at your own expense. To do so, you must send a letter saying that it is your intention to appear in *E.B. v. New York City Department of Education*, No. 02CV5118. Be sure to include your name, address, telephone number, your signature and any witnesses you may call to testify and exhibits you intend to introduce into evidence at the hearing.

Your letter must be postmarked no later than _____ and be sent to the following addresses:

The Clerk of the Court
U.S. District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

If you have any questions or to get a copy of the full Settlement agreement, call Advocates for Children at 973-878-4559 or go to www.advocatesforchildren.org

Rebecca Shore
Advocates for Children of New York
151 West 30th Street
New York, New York 10001

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

15. **What if I do nothing at all?**

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

GETTING MORE INFORMATION

16. **Are there more details about the Settlement?**

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

You can access a copy of the Agreement by visiting the Advocates for Children website at www.advocatesforchildren.org. You can call Advocates for Children at (973) 878-4559 for more information.

If you have any questions or to get a copy of the full Settlement agreement, call Advocates for Children at 973-878-4559 or go to www.advocatesforchildren.org