



Any provisions that require implementation prior to final approval shall be undertaken by the parties notwithstanding that the date for fairness hearing and final approval has not yet occurred. Any amounts expended by any party prior to final approval shall be borne by them in the event that the settlement is not approved without prejudice to recovery of attorneys' fees and costs as governed by federal law.

In the event that the Court does not approve the settlement, no party shall thereafter be bound by its terms prospectively.

## II. CLASS ACTION

### A. Provisional and final certification.

The parties agree to present the settlement for approval as a class action settlement under Fed. R. Civ. P. 23(b)(2). Defendants assent to the motion for class certification previously filed contingent upon the Court's preliminary and final approval of the Settlement. If the Court gives preliminary approval to the Settlement, it shall provisionally certify the two subclasses, class representatives for each subclass and class counsel. If the Court thereafter rejects the Settlement, it shall allow Defendants to present their substantive argument on class certification and may confirm or decertify the class.

### B. Description of the class/subclasses/representatives/class counsel

The parties agree, for purposes of settlement, to subclass 1 and subclass 2 as described in subsection (B)(1) and (B)(2) below, with proposed class representatives as set forth in ECF 6 and Supplement ECF 23, and Ellen Saideman, Jennifer Wood, and Lynette Labinger as class counsel:

1. **The Evaluation Subclass (Subclass 1):** Identified children denied timely evaluation and determination of eligibility for special education and related services: All children, who on or after July 17, 2023, are or hereafter will be between the ages of three and five, with disabilities as defined by the IDEA, living or will live in the City of Providence and who have been identified by PPSD as requiring an initial evaluation for eligibility for special education services and have not received or will not receive an initial evaluation and determination of eligibility for special education and related services.
2. **The Services Subclass (Subclass 2):** Children with IEPs denied IEP services: All children, who on or after July 17, 2023, are or hereafter will be between the ages of three and five, with disabilities, as defined by the IDEA, living or will live in the City of Providence, who have been determined eligible for preschool programs under Part B of the IDEA and have been provided an IEP, but have been denied or delayed in the provision of the preschool programs and services identified in their IEPs on the claimed basis of unavailable resources or staffing.

### **C. Notice to the Class**

Parties will draft class notice and present same to Court for approval. All costs of providing notice shall be borne by Defendants and shall be provided personally to all Class members, for whom Defendants have email and home address, by email and US postal service, first class. Notice shall also be given by providing a link to the notice on both RIDE and PPSD websites and on ACLU of RI and Center for Justice websites.

Notice to class of settlement shall include, in addition to a description of the terms of the Settlement, that their individual claims re sufficiency of evaluations, eligibility determinations, IEP, FAPE, placement, and claims for individualized prospective compensatory education, etc., subject to IDEA requirements are expressly preserved and not resolved by the Settlement. Individual notice shall also include a statement describing:

1. Notice to members of the Evaluation Subclass (Subclass 1) (in existence as of the date of filing Complaint, inclusive of all students who may become overdue for such evaluations during the term of this Settlement Agreement) shall include statement that includes Defendants' date of record of referral, projected date by which evaluations should have been completed under federal and state law and regulations, projected date by which an eligibility meeting should have been held under the federal and state law and regulations, and, if the student was determined eligible, the date by which an IEP should have been drafted under federal and state law and regulations.
2. Notice to members of Services Subclass (Subclass 2) (in existence as of the date of filing Complaint, inclusive of all students who may become overdue for such services during the term of this Settlement Agreement) shall include a statement of the date that they should have received full services provided in the IEP measured from either: (1) the date ten school days after the IEP was written according to the records of the Defendants; (2) for students referred from early intervention ("EI") who qualify for an IEP, the date of the students' third birthdays.

Notice to members of both Subclasses shall include contact information for the Rhode Island Parent Information Network ("RIPIN").

### **III. REMEDIES AS TO ALL CLASS MEMBERS**

Whenever a provision set forth below calls for notice to the parent, Defendants shall provide at least two forms of notice based upon available contact information and in the language of record for the family. In each case, Defendants shall provide notice by letter, US postage first class, and one other form of notice reasonably calculated to reach the parent, that is, telephone, email, or text message.

**A. Remedies as to Evaluation Subclass**

1. As to members of the Evaluation Subclass whose information includes evidence or significant indication of an affirmative finding of eligibility, and who have eligibility meetings scheduled for a date in September 2023, combine the eligibility/IEP meetings if the parent agrees.

2. Prioritize members whose eligibility meetings are over 70 days after the date of the referral or whose IEP meetings are over 80 days after the date of referral and who currently have meetings scheduled (or to be scheduled) for dates after September 30, 2023 to be provided earlier meeting dates made available by cancelled meetings or meeting appointments newly made available by the addition of staff or contractors or by any other scheduling changes.

3. Notify parents who are overdue on evaluation services that Defendants will pay providers for needed evaluation services at regional market value from a non-exclusive list of outside approved providers or other qualified service providers.

4. As to members of the Class identified as awaiting evaluations:

(a) By close of business on August 25, 2023, notify parent(s) that Defendants will consider evaluations provided by outside evaluators and request that any existing evaluations be provided to Defendants;

(b) Review existing evaluations and all evaluations provided by parent(s) within six business days of receipt and notify parent(s) if the evaluations have been accepted by Defendants;

(c) For students who have been determined eligible for EI services and have had at least one evaluation by the EI team conducted by a qualified provider(s) or are receiving EI services, Defendants must rely on the evaluation(s) of the EI team and may not delay preparation of an initial IEP and delivery of services while additional evaluations are sought;

(d) If it is determined that additional evaluations are required and have not been scheduled prior to September 15, 2023:

(i) Notify parent(s) of their right to obtain a qualified outside provider(s) to do the evaluation at regional market value from a non-exclusive list of approved service providers; and

(ii) Notify parent(s) that that Defendants will pay the qualified service provider directly for any evaluation obtained pursuant to subsection (d)(1).

- (e) For members whose information includes evidence or significant indication of an affirmative finding of eligibility, combine the eligibility/IEP meetings if parent(s) agrees.

The above format shall apply on a rolling basis to all future subclass 1 members who have not been evaluated.

5. For members of the Class who are referred by EI and have not yet had referral meetings, with the parent's consent, combine the referral, eligibility, and IEP meetings unless there is inadequate information to establish the student's eligibility for IDEA services; if additional information is needed, Defendants will notify parent(s) that they should bring any outside evaluations to the referral meeting. The requirements in paragraph 4 shall apply to these students.

6. For members of the Class who require an evaluation, eligibility meeting and/or IEP meeting to be rescheduled, respond to the request for a new date within three business days, offer the earliest date available, and place the student on a cancellation list.

- (a) If a parent does not show up for an appointment (evaluation, eligibility or IEP meeting), find out and document in writing if there are any obstacles to parent(s) attending the meeting and identify systemic barriers in order to address those barriers.

7. No later than September 20, 2023, establish and maintain at least three full time preschool evaluation teams for the school year 2023-24 staffed by Defendants' staff. Report back to Court and Plaintiffs by September 30, 2023 if this goal has been achieved, and, if not, what steps Defendants have taken to fill these positions and what alternatives have been put in place to increase the capacity to evaluate students.

8. At the conclusion of the 2023-24 school year, if the backlog has been eliminated, Defendants may maintain at least two full-time preschool evaluations times for the summer.

9. No later than September 20, 2023, establish and maintain throughout the 2023-24 school year at least one part-time preschool evaluation team with meeting times on one weekday evening and Saturday. Report back to Court and plaintiffs by September 30, 2023 if this goal has been achieved, and, if not, what steps Defendants have taken to fill these positions and what alternatives have been put in place to increase the capacity to evaluate students.

10. No later than August 25, 2023, execute and commence contract(s) with qualified provider(s), such as Presence or any other equivalent successor contracting entity, for sufficient evaluation teams to eliminate the currently existing backlog.

## **B. Remedies as to Services Subclass**

- 1. For each child whose IEP currently provides for a five day a week program:

- (a) No later than August 24, 2023, Defendants shall review each such IEP to determine whether the required services can be provided in a two-day program (for 3-year olds) or three-day program (for 4-year olds). Defendants shall base all special education program placements on the service needs set forth in each student's IEP. Any student who requires special education and related services in a five-day program per the IEP shall be placed in a five-day program.
- (b) Every student placed in a two- or three-day program in September 2023 shall be reviewed for suitability of placement before the conclusion of the first quarter of the 2023-24 school year. Progress data will be collected and reviewed in an IEP meeting with parent(s) no later than 10 business days before the end of the quarter and a determination as to adequate progress will be made. If adequate progress is not established, the child will be moved to a five-day program and compensatory education services as determined by the IEP team shall thereafter be provided.

2. In integrated preschool classrooms, the students with IEPs shall receive the same number of days of programming as the nondisabled peers in their classroom.

3. Any open classroom seats within the Rhode Island Pre-K Program or integrated District preschool program will be prioritized for special education students whenever appropriate in order to meet the needs of the student's IEP, up to the maximum class size. In determining maximum class size, Defendants shall waive any local rule limiting class size, so long as such waiver would not affect the health and safety of students and staff or otherwise render Defendants in violation of IDEA requirements.

4. Provide parent(s) with notice of the proposed school placement for their child for the 2023-2024 school year by August 28, 2023. The notice must include contact information for outside agencies such as RIPIN, which may be able to assist them should parent(s) have questions or concerns about the proposed placement.

5. Notify parent(s) of each student awaiting services in their IEP of their right to services and their right to request the date service provision was originally due and tracking the number of days overdue by September 6, 2023, and request this notification quarterly until services/placement have been provided or the parent declines such services/placement, which shall be documented in reporting.

6. Until Defendants eliminate the backlog on delivery of services:

- (a) Defendants must provide direct payment to qualified providers (and notify parent(s) that Defendants will provide such direct payment) for the cost of qualified special education and related services at regional market value obtained by parent(s) from a non-exclusive list of approved outside service providers or other qualified service providers;

- (b) Defendants will widen the geographic contours of available placements and/or outside contractors to increase availability and, to the extent necessary, waive certification/licensure requirements so long as the service provider is certified/licensed in home state.

#### **IV. THIRD PARTY MONITORING AND CASE DISMISSAL**

##### **A. Independent Monitor**

Thru Consulting LLC (“Thru Co.” or “Monitor”) shall independently monitor compliance with this Agreement.

Defendants shall be jointly and severally responsible for paying all costs and expenses related to Thru Co.’s monitoring activity.

##### **B. Substantial Compliance**

For each subclass, substantial compliance is reached at 95% timeliness, or no more than 10 students whose evaluations or services are overdue, excluding parent appointment cancellations and/or no-shows.

##### **C. Monthly Progress Reports**

Monitor shall provide a written report to the Court each month on the first of the month, commencing on October 1, 2023 and continuing through October 1, 2024, unless extended by the Court by application, or otherwise agreed to by the parties.

The monthly report shall include:

1. Numerical, anonymized list of any and all Defendants’ preschool students who are overdue for:
  - (a) Evaluations as to eligibility for special education services;
  - (b) IEPs;
  - (c) Placements; or
  - (d) Special education services detailed in any student’s IEP.
2. As to any students who may be included above, a detailed explanation as to the reasons for the delay in providing the requisite evaluations and/or services;
3. Recommendations for corrective actions to remedy the unmet timelines, benchmarks, metrics and tasks referenced in the monthly report; and

4. Any additional information required by the Monitor.

**D. Termination**

Unless an earlier termination date is agreed to by the parties, this Agreement shall terminate July 1, 2025, unless extended by the Court by application.

**V. ATTORNEYS' FEES**

Defendants shall be jointly and severally liable for a reasonable attorneys' fee for Plaintiffs' attorneys.

**VI. SIGNATURES**

This Agreement may be executed in separate counterparts electronically or in handwriting and by facsimile or email, and each such counterpart shall be deemed an original with the same effect as if the Parties had signed the same document.

**For Plaintiffs:**

**Date** August 29, 2023

/s/ Ellen Saideman

Ellen Saideman, Esq. (Bar No. 6532)  
Law Office of Ellen Saideman  
7 Henry Drive  
Barrington, RI 02806  
401.258.7276  
fax 401.709.0213  
esaideman@yahoo.com

/s/Lynette Labinger

Lynette Labinger, Esq. (Bar No. 1645)  
128 Dorrance Street, Box 710  
Providence, RI 02903  
401.465.9565  
LL@labingerlaw.com

/s/ Jennifer L. Wood

Jennifer L. Wood (Bar No. 3582)  
The R.I. Center for Justice  
1 Empire Plaza, Ste. 410  
Providence, RI 02903  
401.837.6431  
jwood@centerforjustice.org



**For Defendants Rhode Island Department of Education; and Angélica Infante-Green, in her official capacity as Commissioner of Education:**

**Date** August 29, 2023

/s/ Anthony Cottone

Anthony Cottone (Bar No. 3922)

Chief Legal Counsel

Kaelyn R. Phelps Prigge (Bar No. 10171)

RI Department of Education

255 Westminster Street

Providence, RI 02903

401.222.4600

Anthony.Cottone@ride.ri.gov

**For Defendants Providence Public School Department and the Providence School Board:**

**Date** August 29, 2023

/s/ Mary Ann Carroll

Mary Ann Carroll (Bar No. 6664)

155 South Main Street, Suite 406

Providence, RI 02903

401.424.5224

macarroll@hcllawri.com