

**THIRD AMENDED
EXHIBIT E
TO STIPULATION OF SETTLEMENT**

8. The District will timely deliver programs and services required by the CSE.

A. The past levels of performance are as follows:

In the 2017-18 school year, 42 variances were submitted to the New York State Education Department ("SED") to allow SWD be placed in a program for which the District lacked capacity. Regarding services being reported, 69% of required Occupational Therapy, 79% of required Physical Therapy, and 65% Speech/Language Therapy sessions were reported as having been provided in Frontline by related service providers, for an overall average of 71% of sessions reported to have been delivered by the related services providers.

In the 2018-2019 school year, the number of variances requested due to lack of capacity was 7. The 2018-2019 actual performance for the rate of providers reporting that they have provided related services was approximately 72%.

In the 2018-2019 school year, prior to the Covid-19 school shutdown, the number of variances requested due to lack of capacity was 1. Preliminary internal data suggests that the rate of providers reporting related services in Frontline was approximately 70%.

B. The commitments that have already been made to improve performance to external parties like the SED are:

In the 2017-2018 school year, the District was placed under a Corrective Action Plan from the State Education Department due to the high number of variances. The District has committed to creating the necessary special classes needed as recommended by the CSE.

C. The level of performance that is required by law or regulation is:

New York State Commissioner's Regulations including Part 200.4, *et seq.*, require that SWD placement and services must begin within 60 school days of the receipt of consent to evaluate for a student not previously identified with a disability, or within 60 school days of the referral for review of a student with a disability. If such recommendation is for placement in an in-state or out-of-state private school, the board shall arrange for such program and services within 30 school days of the board's receipt of the recommendation of the committee.

D. The data measures that are available or will be created with reasonable effort to measure performance are:

Frontline will be used to track Related Service delivery by provider, in the Related Services Log. The District will count the number of variances requested from the State.

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E. The parties agree that the following levels of improvement will be achieved:

Variances.

The District will decrease the number of variances by Commissioner approval by at least 50% each year, bringing the overall number of variances due to the District's lack of capacity to a maximum of two variances by the end of the 2021-2022 school year.

Related Services.

The original language in the preamble and benchmark measurement description for the second portion (related services) of IBFG 8 of increasing the percentage of related services reported as delivered was not consistent with the objective key performance indicators to be used as Interim Benchmarks and the Final Goal for IBFG No. 8. Toward the end of the 2022-23 school year, the District explored the acquisition of a new service management product that is capable of storing and disaggregating data on the reported delivery status of related services. The District has commenced loading and testing reported service delivery data for Occupational Therapy (OT), Physical Therapy (PT), and Speech/Language therapy. The Parties have now agreed that this new system, referred to as the Frontline Service Management System, or its equivalent, will be used to more accurately measure progress toward increasing the percentage of related services reported as delivered which is the objective measure and basis for the Interim Benchmarks and Final Goal for IBFG No. 8.

Starting with a baseline of 84% for the 22-23 school year, the District will increase the percentage of related services¹⁴ reported as delivered in the District's Frontline Service Management System, or its equivalent, by 1.5% each year, with a Final Goal and Disengagement Standard of 87% of related services reported as delivered to be achieved by the 2024-2025 school year¹⁵, as set forth in the table below.

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¹⁴ OT, PT and Speech Language related services reported on by encounter in the Frontline Management System or its equivalent. Any change to data sources or calculation methodology shall be subject to paragraph 90 of the Stipulation.

¹⁵ If the District achieves compliance the before the end of the 2024-2025 school year, the District may seek partial disengagement pursuant to the terms of the Stipulation.

	Past Perform ance	Past Perform ance	Interim Benchmarks					Final Goal (Disengagement Standard)
School Year	2017- 2018	2018- 2019	2019- 2020 ¹⁶	2020- 2021	2021- 2022	2022- 2023	2023-2024	2024-2025
Number of Variances by Commissioner Approval Due to Lack of Capacity	41	6	10	5	2	2	2	2
Percentage of Providers Reporting Services in Frontline	71%	72%	79%	83%	87%	84%	85.5%	87%
Percentage of related services delivered, as reported in Frontline	N/A	N/A	N/A	N/A	N/A	84%	85.5%	87%

Formula to calculate percentage of related services delivered, as reported in Frontline:

All related services reported as delivered¹⁷ (by encounter), DIVIDED BY the total of all related services (by encounter) reported in Frontline.

Related services reported as not provided due to “inclement weather”, “school out of session”, “school closed”, “student absent”, “student refused” and “student unavailable”, will be excluded from the calculation of the denominator. For the avoidance of doubt, related services reported as not provided due to “provider absent” or “provider unavailable” will be included in the calculation of the denominator.

¹⁶ Due to the COVID-19 pandemic, the data used to calculate the 2019-2020 benchmark was measured from July 1, 2019 to March 1, 2020. The data used to calculate the 2020-2021 benchmark will be measured from September 8, 2020 to June 30, 2021. The past performance data and the data used to calculate the 2021-2022 benchmark were measured, and will be measured, from data from July 1 to June 30.

¹⁷ OT, PT and Speech Language related services reported on by encounter in the Frontline Management System or its equivalent. Any change to data sources or calculation methodology shall be subject to paragraph 90 of the Stipulation.

11. The District will decrease the number of full-time equivalent ("FTE") positions filled by uncertified, or otherwise unqualified, necessary Special Education teachers

A. The past and current levels of performance are as follows:

During the 2018-2019 school year, 46 full-time equivalent ("FTE") Special Education teacher positions.²⁰ were filled by uncertified individuals.

As of March 13, 2020, the number of full-time equivalent ("FTE") positions filled by uncertified, or otherwise unqualified, necessary Special Education teachers i was 38.

B. The commitments that have already been made to improve performance to external parties like the New York State Education Department ("SED") are:

The District is offering a permanent salary step increase at the time of new hire for certified Special Education teachers in grades 7-12. Through the Teachers of Tomorrow Grant, a stipend is available for those certified teachers in identified shortage areas (i.e. Special Education 7-12).

C. The level of performance that is required by law or regulation is:

New York State provides that every child is entitled to receive instruction by an appropriately certified teacher in accordance with their IEP.

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²⁰For the purposes of this benchmark and final goal, those deemed "certified" shall include: teachers who are certified in special education in another state, territory, commonwealth or country (8 NYCRR 80-5.8); retired teachers with previous special education certification within the last three (3) years (based in part on 8 NYCRR 80-5.5); teachers holding a NYS Supplementary Certificate where the target title for the additional supplementary certificate is special education, the candidate has met the necessary content core and pedagogical core coursework requirements, has provided evidence of satisfactory performance on the special education content specialty examination, and has completed a minimum of 90 school days of job-embedded supervised teaching experience in the special education classroom (based in part on 8 NYCRR 80-5.18); Teachers holding a valid Internship Certificate in Special Education who have satisfactorily completed their Pedagogical core requirements in special education and satisfactorily completed 40 school days of student teaching in special education (based in part on 8 NYCRR 80-5.9); Teachers holding a Statement of Continued Eligibility for teachers of students with disabilities who teach a special education class in grades 7-12 (based in part on 8 NYCRR 80-3.15); Teachers holding an "All Grades" Special Education Certification; Teachers holding an Emergency Covid-19 Certification in Special Education (8 NYCRR 80-5.27); Teachers holding a Transitional G Certificate with a graduate or undergraduate degree in Special Education, and whose post-secondary 2-year teaching experience is also in K-12 Special Education (based in part on 8 NYCRR 80-5.22); Long term non-itinerant substitute teachers who are either certified in Special Education or have completed the content core course requirements, the pedagogical core course requirements, and the content specialty test in special education and who have an aggregate of two years of teaching in a special education classroom (based in part on 8 NYCRR 80-5.4); Graduates from qualifying teacher programs who have completed all of the academic and other requirements for New York State Certification in Special Education and have applied for certification, and whose application for certification has not been pending for more than 12 months; Probationary emergency (Conditional) hires who, within 12 months of hire, have completed the required core content and required pedagogical content coursework in special education and have satisfactorily completed their student teaching in any K-12 special education title.

D. The level of performance that is required by law or regulation is:

New York State provides that every child is entitled to receive instruction by an appropriately certified teacher in accordance with their IEP.

E. The data measures that are available or will be created with reasonable effort to measure performance are:

New York State has no state target or other data measures. The District will use its Human Resources databases, including Peoplesoft, to provide information on this goal.

F. The parties agree that the following level of improvement will be achieved:

The District will decrease the number of **full-time equivalent (“FTE”) positions filled by uncertified, or otherwise unqualified, necessary Special Education teachers** as set forth in the table below.

	Past Performance	Current Performance		Current Performance/ Interim Benchmark	Final Goal (Disengagement Standard)
School Year	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023
FTE positions filled by uncertified Special Education teachers	46	38	26	21 ²¹	21

²¹ The parties had negotiated a Final Goal for the 2021–2022 school year of 21, which was approved by the Board of Education. Thereafter, the District became aware that the number of Special Education teachers who were not certified in New York Special Education was actually 38 as of BEDS Day 2021, which would not meet that metric, whether set as an Interim Benchmark or Final Goal. As set forth in the Amended Consent Decree, the parties have agreed that paragraphs 92(b) and (c) of the Settlement Stipulation will not apply to the failure to achieve this metric, now revised to be an Interim Benchmark, for the 2021–2022 school year only. The parties have further agreed that, in the event that the District determines that it will not meet the revised Interim Benchmark or Final Goal, the District retains the right to exercise the remedies available under the Amended Consent Decree to modify that Interim Benchmark or Final Goal.

14. The District will decrease the number of Special Education teachers, psychologists and social workers who are assigned to bilingual positions who are not both appropriately certified in New York State and bilingual in Spanish, by developing and implementing a strategic plan to increase the recruitment, education, and certification of bilingual individuals for positions including bilingual Special Education teachers, bilingual Special Education administrators, and bilingual Special Education social workers and psychologists.

A. The past levels of performance are as follows:

During the 2018-2019 school year, there were uncertified²³ individuals utilized for 19 FTE bilingual Special Education teacher positions, 3.5 FTE bilingual social worker positions, and 1 FTE bilingual psychologist position.

For the 2019-2020 school year, the District projected that there would be uncertified individuals utilized for 25 FTE bilingual Special Education teacher positions, 2.5 FTE bilingual social worker positions, and 1 FTE bilingual psychologist position.

B. The commitments that have already been made to improve performance to external parties like the New York State Education Department ("SED") are:

The District is offering a permanent salary step increase at the time of new hire for certified Special Education teachers in grades 7-12 and certified bilingual Special Education teachers in grades K-12 with a bilingual extension. Through the Teachers of Tomorrow Grant, a stipend is available for those certified teachers in identified shortage areas (i.e. Special Education 7-12), and to all certified teachers with a bilingual extension working in bilingual positions.

²³ For the purposes of this benchmark and final goal, those deemed "certified" shall include: teachers who are certified in special education in another state, territory, commonwealth or country (8 NYCRR 80-5.8); retired teachers with previous special education certification within the last three (3) years (based in part on 8 NYCRR 80-5.5); teachers holding a NYS Supplementary Certificate where the target title for the additional supplementary certificate is special education, the candidate has met the necessary content core and pedagogical core coursework requirements, has provided evidence of satisfactory performance on the special education content specialty examination, and has completed a minimum of 90 school days of job-embedded supervised teaching experience in the special education classroom (based in part on 8 NYCRR 80-5.18); Teachers holding a valid Internship Certificate in Special Education who have satisfactorily completed their Pedagogical core requirements in special education and satisfactorily completed 40 school days of student teaching in special education (based in part on 8 NYCRR 80-5.9); Teachers holding a Statement of Continued Eligibility for teachers of students with disabilities who teach a special education class in grades 7-12 (based in part on 8 NYCRR 80-3.15); Teachers holding an "All Grades" Special Education Certification; Teachers holding an Emergency Covid-19 Certification in Special Education (80 NYCRR 80-5.27); Teachers holding a Transitional G Certificate with a graduate or undergraduate degree in Special Education, and whose post-secondary 2-year teaching experience is also in K-12 Special Education (based in part on 8 NYCRR 80-5.22); Long term non-itinerant substitute teachers who are either certified in Special Education or have completed the content core course requirements, the pedagogical core course requirements, and the content specialty test in special education and who have an aggregate of two years of teaching in a special education classroom (based in part on 8 NYCRR 80-5.4); Graduates from qualifying teacher programs who have completed all of the academic and other requirements for New York State Certification in Special Education and have applied for certification, and whose application for certification has not been pending for more than 12 months; Probationary emergency (Conditional) hires who, within 12 months of hire, have completed the required core content and required pedagogical content coursework in special education and have satisfactorily completed their student teaching in any K-12 special education title.

C. The level of performance that is required by law or regulation is:

New York State provides that every child is entitled to receive instruction by an appropriately certified teacher in accordance with their IEP. New York State requires that each school district provide English Language Learners ("ELL") with appropriate English as a New Language ("ENL") supports adopted by New York State under New York State Education Law Section 3204 2-a; New York State Commissioner's Regulations Part 154-2. ENL supports must be designed to provide content instruction for children of limited English proficiency using the child's native language and English; provide native language instruction; and provide English as a second language instruction. New York State Education Law Section 3204 2-a (4).

D. The data measures that are available or will be created with reasonable effort to measure performance are:

New York State has no state target or other data measures. The District will use its Human Resources databases, including Peoplesoft, to provide information on this goal.

E. The parties agree that the following improvement will be achieved:

STRATEGIC PLAN OBJECTIVE

The Superintendent will convene a planning group to develop a five-year strategic plan, with an aspirational goal to fill all bilingual Special Education positions in the District with certified teachers or other Special Education related service providers who are both certified in New York State for Special Education and bilingual in Spanish by the beginning of the 2025-2026 school year. To be classified as bilingual, teachers must possess or be actively pursuing a bilingual extension; other Special Education related service providers must demonstrate functional bilingual fluency sufficient to deliver professional services in Spanish.

STRATEGIC PLANNING GROUP COMPOSITION

The planning group will be chaired by the Deputy Superintendent, or a person designated by the Superintendent with equivalent stature.

The Superintendent will consult with counsel for the Plaintiffs and select planning group members from the community with knowledge about education of students with disabilities who are Spanish language dominant.

The District will engage a consultant with knowledge of strategies for recruiting and developing bilingual professional staff from a public or private entity (such as a university), or a think tank (such as New America), or another consultant, to assist the group to develop the strategic plan.

The District will involve the community and stakeholders, including Empire Justice and Special Education Parent Advisory Council ("SEPAC") in all substantive aspects of the development of the plan.

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WORK OF THE STRATEGIC PLANNING GROUP

The planning group will examine the historic nationwide shortage of bilingual educators, including of bilingual Special Education teachers and related service providers in New York State, and research efforts school districts across the country have made to address the shortage. The planning group will identify efforts made by school districts that have been successful in addressing the shortage.

The planning group will develop innovative strategies and actions to:

- Assist in the education and certification of bilingual individuals;
- Recruit and retain bilingual Special Education teachers, Special Education administrators, and Special Education related service providers including bilingual social workers, and bilingual psychologists;
- Develop ways to incentivize current certified employees who are bilingual, but who have chosen not to work in bilingual positions to accept bilingual positions; and
- Obtain a waiver, or amend, adopt, and enact a sub-part to Part 80 of the Commissioner Regulations, *Requirements for Teachers' Certificates and Specialized Credentials*, to allow the Rochester City School District to hire Special Education teachers, Bilingual teachers, and Bilingual related services providers who do not hold a New York State Certification or Bilingual Extension, but who hold a certification or license from another State or Territory, or who have a Bilingual Extension from another State or Territory or who are otherwise certified, licensed, or permitted to educate Spanish-speaking students and/or who are fluent in Spanish, and permit those educators – without additional testing or coursework, without unreasonable cost, or other unreasonable burden – to hold a Provisional or Temporary Certificate and/or Provisional or Temporary Bilingual Extension, so that those educators may be employed by the Rochester City School District in the same manner as New York State Certified Special Education teachers, Certified Special Education teachers with Bilingual Extension, and Certified Related Services Providers with Bilingual Extension, for a minimum of three (3) years.

The plan will specifically provide Action Items the District will enact or complete each year of the plan. The plan will contemplate the need for the District to establish measurable Interim Performance Benchmark(s) and Final Disengagement Goal(s) for bilingual staffing under the consent decree and will provide a framework and recommendations for how this might reasonably be achieved.

IMPLEMENTATION OF THE STRATEGIC PLAN

The District will complete the plan on or before January 15, 2021, so that steps in the plan related to recruiting can be implemented on a timely basis to assist in recruiting for the 2021-2022 school year.

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The parties did meet within thirty (30) days of delivery to the Board of Education of a strategic plan, but in no event later than April 15, 2021, to negotiate Final Disengagement Goal(s) for the 2021-2022 School Year, after the completion of the planning process described above. The parties will also negotiate additional Key Performance Indicators ("KPIs") in the Strategic Plan through the 2025-2026 school year.

The parties have negotiated objective Strategic Plan Final Disengagement Goals for the 2022-2023 School Year based on the reasonable projected number of necessary bilingual positions, if any, that will not be filled in the District (as measured on Basic Educational Data System ("BEDS") Day²⁴ for the 2022-2023 school year) by teachers or other Special Education Providers who are both certified in New York State and bilingual in Spanish, as defined above.

After the District has achieved the Strategic Plan Final Disengagement Goals, it shall maintain compliance for a period of an additional twelve (12) months as set forth in Paragraphs 101-107 of the Stipulation of Settlement. For this Goal, maintaining compliance means that the District will maintain the trajectory projected in the Strategic Plan, i.e., achieve the KPIs for the following (2023-2024) school year.

The District presented the plan, along with the Final Disengagement Goals for the 2022-2023 School Year, to the Board during a public meeting of the Board on November 18, 2021.

The District will commit to carry out the Action Items set forth in each year of the Strategic Plan, including those years that occur following disengagement from Court supervision.

The Action Items shall be treated in the same way as the Recommendations offered by the Special Committee, in Paragraphs 62-63 of the Stipulation of Settlement. If the District decides not to implement any Action Item, the procedures set forth in Paragraph 63 of the Stipulation of Settlement shall apply.

While the parties are subject to the Consent Decree, the District will provide notice of no less than thirty (30) days to the Plaintiffs' counsel of any meeting of the Board during which any modification, amendment or change to the Strategic Plan is scheduled to be discussed.

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²⁴ BEDS Day is a date set by the New York State Education Department ("NYSED") as the deadline for submission for data from school districts to the NYSED's online BEDS IMF Application. BEDS Day for the 2018-2019 school year was October 3, 2018. See *gen.* <http://www.p12.nysed.gov/irs/beds/IMF/home.html>.

[PROPOSED] BILINGUAL SPECIAL EDUCATION STRATEGIC PLAN

This strategic plan aims to recruit, develop, support, and retain the most effective, diverse bilingual special educators.

Our aspirational goal is to fill all bilingual Special Education positions in the District with certified teachers or other Special Education related service providers who are both certified in New York State for Special Education and bilingual in Spanish by the beginning of the 2025-2026 school year.

This plan's priorities and goals were developed through the collaboration of a strategic planning committee. The plan will be implemented by the District's Office of Human Capital. The Chief of Human Capital presented the plan to the Board of Education.

Priorities	Action Items
Recruit	<ol style="list-style-type: none"> By 2025-2026, refine our hiring practices to recruit employees that are representative of the diversity of our school district and increase employees of color in all areas. By 2021-2022, develop a strong RCSD brand identity that captures the hearts and minds of prospective employees and staff. By 2022, increase strategies to recruit new employees including through social media and virtual fairs, ensuring local, regional, statewide, and national reach. By 2021-2022, build recruitment-focused profiles for high-needs schools, as defined by NYSED and/or for those schools with unique bilingual programs. By 2021-2022, train and develop existing bilingual educators and leaders to serve as recruiters and utilize them to engage candidates in future recruitment activities. By 2021-2022, identify and recruit support staff who are bilingual but who lack certification and incentivize them to obtain bilingual certification. By 2022, develop relationships with Big 5, other Districts, state leaders and/or other organizations to advocate for the submission of a waiver, or amendment, adoption, and enactment a sub-part to Part 80 of the Commissioner Regulations. By 2022-2023, create at least one bilingual special educator recruitment pipeline, with colleges/universities. By 2022-2023, request funding for financial incentives to assist prospective candidates in obtaining appropriate certifications to serve as bilingual special educators. By 2022-2023, request funding for financial incentives to recruit and retain bilingual special educators. By 2021-2022, redesign and launch a new Office of Human Capital website, with a focus on brand, highlighting living in Rochester, recruitment, and information for prospective employees and as a resource for current staff. By 2021-2022, establish process for life-cycle recruitment for the hiring of new teachers by April 1. By 2021-2022, make the hiring process user-friendly and fast for applicants and hiring managers. By 2021-2022, create pathways to teaching by growing our own through the creation of middle school programs to attract students to teaching and into high school career and technical education (CTE) programs in urban teacher preparation.

	15. By 2021-2022, create annual pathways for Bilingual Paraprofessionals-to-Teacher Program.
Develop	<ol style="list-style-type: none"> 1. By 2021-2022, provide training to human capital office staff on anti-racism learning, racial consciousness and implicit bias and expand opportunities for anti-racism and culturally responsive learning for all staff. 2. By 2022-2023, train principals and assistant principals in human capital recruitment and retention strategies focused on mindsets, levers, and processes to implement in their schools. 3. By 2022-2023, train leaders in conducting stay interviews and require annual survey and focus groups for this purpose at the school level.
Support	<ol style="list-style-type: none"> 1. By 2021-2022, improve systems and structures to provide the high-quality customer service and support to assist educators in obtaining certification—both those who aspire to serve in new bilingual special education roles and to retain current bilingual special educators. 2. By 2022-2023, engage new staff early in ways, including school-based onboarding, that connect them to their school, the District and each other. 3. By 2022-2023, establish partnership with four (4) community-based organizations or community-based entities to assist our efforts to recruit, develop, support, and retain our bilingual educators.
Retain	<ol style="list-style-type: none"> 1. By 2021-2022, implement a <i>RCSD Cares</i> staff wellness program to develop more positive work environments and conduct a related annual survey. Annually report disaggregated results and plan for improvements from the resulting data. 2. By 2021-2022, coordinate staff recognition opportunities to celebrate years of service benchmarks, retirement and tenure and bilingual teacher of the year. 3. By 2021-2022, establish and coordinate related affinity groups (e.g., bilingual, LatinX, special education) to bring together people of like backgrounds to ensure advocacy, relationships, and retention toward a healthy and thriving workplace culture. 4. By 2021-2022, annually report on disaggregated recruitment and retention data related to bilingual special education staff and efforts.

Key Performance Indicators

1. Percentage of bilingual special educators filled with a fully certified educator and educators working on certification extension on BEDS Day and first day of second semester.

2020-2021 Interim Benchmark	2021-2022 Interim Benchmark	2022-2023 Interim Benchmark	2023-2024 Final Goal ²⁵	2024-2025	2025-2026
33%	33	35	39	44	48

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²⁵ This Key Performance Indicator for each of 1, 2 and 3, below, will be the Final Disengagement Goal in the *N.N. v. RCSD* Consent Decree.

2. Percentage of bilingual special education school vacancies known by July 15 filled on Day One with a fully certified educator and educators working on certification extension.

2020-2021 Interim Benchmark	2021-2022 Interim Benchmark	2022-2023 Interim Benchmark	2023-2024 Final Goal	2024-2025	2025-2026
31%	31	32	36	40	48

3. Percentage of effective, as defined by APPR, bilingual special education educators retained in their roles as of first day of school, who worked in the previous year (exclusive of those who are terminated, relocate out of the Rochester Standard Metropolitan Statistical area, are promoted within RCSD or retire.

2020-2021 Interim Benchmark	2021-2022 Interim Benchmark	2022-2023 Interim Benchmark	2023-2024 Final Goal	2024-2025	2025-2026
100%	95	95	95	95	95