

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

N.N., by his parent, A.N.; T.G., by her parent,  
P.G.; A.H., by her parent, S.H.; T.W., by her  
parent H.M.; Y.R. by her parent, E.R.;  
on behalf of themselves and all persons similarly  
situated,

Plaintiffs,

- vs -

ROCHESTER CITY SCHOOL DISTRICT  
AND THE BOARD OF EDUCATION OF THE  
ROCHESTER CITY SCHOOL DISTRICT,

Defendants.



**STIPULATION AND  
~~PROPOSED~~ ORDER FOR  
THIRD AMENDED CONSENT  
DECREE**

Civil Action No.  
19-cv-6526-DGL-MJP

**WHEREAS**, on December 8, 2020, the Court entered its Order [Docket #34] granting the Plaintiffs' Motion for Class Certification, Approval of the Form of Notice and Approval of a Settlement set forth in a Stipulation of Settlement executed by counsel for the parties in this class action (the "Motion") [Docket #29], and certifying the classes and subclasses described therein;

**WHEREAS**, on February 4, 2021, the Court entered an Order granting Final Approval of the Settlement and a Consent Decree [Docket #38] ("Initial Consent Decree");

**WHEREAS**, the Court approved entry of an Amended Consent Decree incorporating an Amended Exhibit E on March 8, 2022 revising Interim Benchmark and Final Goal ("IBFG") No. 1 [Docket #49];

**WHEREAS**, the parties thereafter continued to negotiate anticipated modifications and revisions to Interim Benchmarks and Final Goal No. 1 and submitted a Stipulation for the Second Amended Consent Decree to the Court [Docket #53], and the Court entered a Second

Amended Consent Decree incorporating a Second Amended Interim Benchmark and Final Disengagement Goal No. 1 as part of Amended Exhibit E on October 25, 2022 [Docket #54].

**WHEREAS**, the District filed its Annual Report for the 2021-2022 School Year on or about December 1, 2022 [Docket # 58], updated on April 10, 2023 [Docket # 59];

**WHEREAS**, the Annual Report revealed, *inter alia*, that the District had not achieved the Interim Benchmarks for three of the IBFG (Nos. 2, 7 and 11) and only partially achieved the applicable Interim Benchmark for three additional IBFGs (3, 4 and 14); and

**WHEREAS**, the District provided Remedial Action Plans (“RAP”) for each IBFG that had not been fully achieved; and

**WHEREAS**, IBFG 11 set certain objective metrics as Interim Benchmarks and the Final Disengagement Goal intended to reduce the number of special education teachers in special education classrooms who are not certified in New York special education, and IBFG No. 14 set certain objective metrics as Interim Benchmarks and the Final Disengagement Goal intended to increase the percentage of bilingual special education vacancies that are known to the District by July 15 preceding the school year and filled on Day One of the School Year with a fully certified educator or an educator working on certification extension; and

**WHEREAS**, the RAPs for IBFG Nos. 11 and 14 asked plaintiffs’ counsel to consider a revision to the definition of “certified teacher” in each of IBFG Nos. 11 and 14 to include categories of teachers who are considered to be the equivalent of presently certified teachers by the New York State Education Department, including through certain regulations enacted to address COVID-specific situations, and certain categories of teachers recruited by the District through specific initiatives who are working towards certification; and

**WHEREAS**, the parties engaged in extensive and lengthy negotiations to attempt to agree upon an expansion of the categories of teachers who will be considered to be “certified teachers” for the limited purposes of IBFG Nos. 11 and 14 and to extend the date by which the District will be required to meet and maintain the revised Final Goals Nos. 11 and 14; and

**WHEREAS**, the Parties also determined that the language in the preamble and general description of the second portion of Interim Benchmark and Final Goal No. 8, intending to measure the increase in the percentage of related services reported as delivered, was not consistent with the type and nature of the data used as Interim Benchmarks and the Final Goal for IBFG No. 8; and

**WHEREAS**, towards 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; and

**WHEREAS**, the District has commenced loading and testing reported service delivery data for Occupational Therapy (PT), Physical Therapy (PT), and Speech/Language therapy, and

**WHEREAS**, the Parties have agreed that this new system, referred to as Frontline Service Management System, or its equivalent, will be used to more accurately measure progress towards increasing the percentage of related services reported as delivered, which is the objective measure for Interim Benchmarks and the Final Goal for IBFG No. 8; and

**WHEREAS**, the Parties have collaborated to develop amended language and revised Interim Benchmarks and the Final Goal for IBFG No. 8, to align with the data output capabilities and features of the District’s service management system, and to extend the date by which the District will be required to meet and maintain revised Interim Benchmarks and the Final Goal for IBFG No. 8; and,



**WHEREAS**, the parties have now completed their negotiations and finalized their agreement on the amendments to IBFG Nos. 8, 11 and 14.

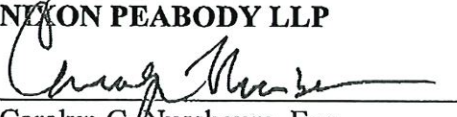
**IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:**

1. Interim Benchmark and Final Goal No. 8 in Exhibit E to the Stipulation of Settlement and the Consent Decree shall be revised, amended and replaced with an Amended Interim Benchmark and Final Goal No. 8, which is attached hereto and intended to be incorporated into and made a part of the Stipulation of Settlement, as amended.
2. Interim Benchmark and Final Goal Nos. 11 and 14 in Exhibit E to the Stipulation of Settlement and the Consent Decree shall be revised, amended and replaced with an Amended Interim Benchmark and Final Goal Nos. 11 and 14, which are attached hereto and intended to be incorporated into and made a part of the Stipulation of Settlement, as amended.
3. The parties intend that this Stipulation shall be presented to the Court, along with the Amended Interim Benchmark and Final Goal Nos. 8, 11 and 14 and, if approved, the terms of these Amended Interim Benchmarks and Final Goals shall be incorporated into and become a part of the Third Amended Consent Decree.

*[Signature block on next page]*

December  
DATED: ~~November~~ 18, 2023

**NIXON PEABODY LLP**

  
Carolyn G. Nussbaum, Esq.  
1300 Clinton Square  
Rochester, New York 14604  
Tel: (585) 263-1558  
cnussbaum@nixonpeabody.com

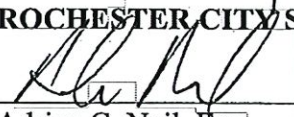

**EMPIRE JUSTICE CENTER**

Maggie R. Robb, Esq.  
1 West Main Street, Suite 200  
Rochester, New York 14614  
Tel.: (585) 295-5724  
mrobb@empirejustice.org

*Attorneys for Plaintiffs*

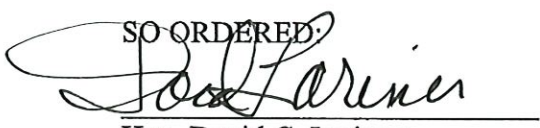
~~December~~  
DATED: November 14, 2023

**ROCHESTER CITY SCHOOL DISTRICT**

  
Adrian G. Neil, Esq.  
  
Yolanda Asamoah-Wade, Esq.  
Rochester City School District  
131 West Broad Street  
Rochester, NY 14604  
Tel.: (585) 262-8550  
adrian.neil@rcsdk12.org  
yolanda.asamoah-wade@rcsdk12.org

*Attorneys for Defendants*

SO ORDERED

  
Hon. David G. Larimer  
United States District Judge

*January 5, 2024*