

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.

**ORDER GRANTING FINAL
APPROVAL OF
SETTLEMENT AND
CONSENT DECREE**

Civil Action No. 19-cv-6526-DGL

On November 19, 2020, the Plaintiffs filed their 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].

On December 8, 2020, the Court entered its Order [Docket #34] (1) granting the Plaintiffs’ Motion, and certifying the classes and subclasses consisting of:

MAIN CLASS 1: All students with disabilities who were in the last two years, are now, or will be subject to the jurisdiction of the Rochester City School District Committee on Special Education who were not, are not being, or will not be properly evaluated for special education and related services as required by law.

SUBCLASS 1.1: All such students who were, are now, or will be, potentially eligible for special education and related services, but were not, are not, or will not be, located, evaluated, and/or identified due to a systemic failure of RCSD to follow Child Find laws.

SUBCLASS 1.2: All such students who did not, do not, or will not, receive initial eligibility determinations for special education and related services within 60 days of the Committee on Special Education receiving parental consent for evaluations because of

systemic failures to determine their eligibility within the required timeframe.

SUBCLASS 1.3: All such students who did not, or will not, have a Manifestation Determination Review following proposed suspensions, as required by law.

MAIN CLASS 2: All students with disabilities who were in the last two years, are now, or will be subject to the jurisdiction of the Rochester City School District Committee on Special Education who did not, do not, or will not receive legally required special education and related services.

SUBCLASS 2.1: All such students who were, are now, or will be, potentially eligible for special education and related services, but have not, do not, or will not, receive the special education programs and services listed on their Individualized Education Programs because of a systemic failure of RCSD to adequately plan for the known placement and programming

SUBCLASS 2.2: All such, students who were, are now, or will be, denied their educational programs and services in the least restrictive environment because of a systemic failure of RCSD to adequately plan for the needs of students classified with disabilities.

SUBCLASS 2.3: All such students who were, are now, or will be, potentially eligible for individualized, outcome-oriented transition goals and services on their Individualized Education Programs, but have not, do not, or will not, receive individualized, outcome-oriented transition goals and services because of a systemic failure of RCSD to adequately plan for transition services and programming needs of these students.

MAIN CLASS 3: The parents of students with disabilities who were in the last two years, are now, or will be subject to the jurisdiction of the Rochester City School District Committee on Special Education who have been or may be denied meaningful opportunities to participate in the education of their children as required by law.

SUBCLASS 3.1: All such parents whose right to meaningful participation in the education process has been denied because of RCSD's systemic failure to translate critical documents into the parent's native language.

SUBCLASS 3.2: All such parents whose right to parent training and counseling has been denied because of RCSD's systemic failure to provide this related service;

(2) designated attorneys from Empire Justice Center and Nixon Peabody LLP to represent the classes; (3) granted preliminary approval to the settlement, as memorialized in the Stipulation of Settlement; (4) directed that notice be disseminated to the Class Members in the manner set forth in the Stipulation of Settlement and Plaintiffs' Motion, and (5) set a hearing on the request for final approval of the settlement ("Preliminary Order").

Based upon the Declaration of Maggie M. Robb, Esq., dated February 2, 2021 [Docket # 36], and the Declaration of Alison K.L. Moyer, Esq., dated February 2, 2021 [Docket #37], it appears that notice to the members of the Plaintiff classes and subclasses has been provided in accordance with the Preliminary Order of this Court.

On February 4, 2020, the Court conducted a fairness hearing and heard Carolyn Nussbaum, Esq., Nixon Peabody LLP, and Maggie Robb, Esq. and Jonathan Feldman, Empire Justice Center, for the plaintiffs, and Alison Moyer, Esq. for the defendants in support of the Motion to approve the settlement.

The Court has reviewed the terms of the proposed settlement and the has applied the factors set forth by the Second Circuit in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (1974) that are relevant to cases that seek only injunctive and declaratory relief. *See D.S. v. New York City Dep't of Educ.*, 255 F.R.D. 59, 70-74 (E.D.N.Y. 2008).

I find that:

(1) this case is complex, proceeding to trial would have been expensive, and would have prolonged the litigation and delayed the injunctive relief to the classes and subclasses;

- (2) the absence of comments or objections from the members of the classes, given the large size of the classes, demonstrate a positive reaction of the classes to the settlement;
- (3) the case was settled after an appropriate amount of investigation and extensive informal disclosure was completed so that counsel were sufficiently informed to reach a fair settlement;
- (4) the risks of establishing liability were low and the terms of the settlement reflect that.

I find that the settlement is fair, reasonable and adequate to the members of the plaintiff classes and subclasses and that it was arrived at by a process of informed arms-length bargaining by experienced counsel, without collusion.

I find that the method, form and content of the notice to the class met the requirements for *Rule 23* and constitutional due process. Therefore, it is hereby:

ORDERED that the settlement of this action is hereby **APPROVED** on the terms set forth in the Stipulation of Settlement, which is attached to and incorporated herein as an Order of this Court.

Further, the Court **ORDERS** Defendants to comply with the provisions of the Stipulation of Settlement in dealing with the members of the certified plaintiff classes and subclasses described above, and this Order to comply with the terms set forth in the Stipulation of Settlement shall be the Consent Decree of this Court; and it is further

ORDERED that, pursuant to paragraph 109 of the Stipulation of Settlement, this Court shall retain jurisdiction for purposes of enforcement matters, if any, from the date that this Order is signed and for a period of fifteen (15) months from such time as the parties agree that the Defendants have met all of the Final Goals specified in paragraph 101 of the Stipulation of

Settlement, and maintained compliance with all of such Final Goals for a period of twelve (12) months, or the Court so determines that the Final Goals have been met and compliance has been maintained for a period of twelve (12) months, if the parties cannot reach agreement, subject to such other terms and conditions as set forth in paragraph 108 of the Stipulation of Settlement in the event that the Defendants fail to achieve and maintain compliance with the Final Goals as set forth in paragraph 108 of the Stipulation of Settlement, unless that time period is extended by further Order of this Court pursuant to paragraph 109 of the Stipulation of Settlement.

DATED: February 4, 2021
Rochester, New York


DAVID G. LARIMER, USDJ

**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 OF
SETTLEMENT**

Civil Action No. 19-cv-6526

This Stipulation of Settlement (“Stipulation”) is entered into by the Plaintiffs, **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.**, as representatives of the putative class, through their attorneys, Empire Justice Center (“Empire Justice”) and Nixon Peabody LLP (collectively “Plaintiffs’ Counsel”), and the defendants, Rochester City School District (the “District”) and the Board of Education of the Rochester City School District (the “Board”) (collectively, Plaintiffs, the District and the Board may be referred to as the “Parties” and each as a “Party”), to resolve this action.

As set forth below, the Parties have negotiated over an extensive period of time toward a collaborative approach to address the concerns of the Plaintiffs, who are students with disabilities, those suspected of having disabilities, and the parents of those students, and their attorneys, with respect to the education of monolingual students with disabilities and students

with disabilities who are English Language Learners (“ELL”) regarding the District’s compliance with its legal obligations.

WHEREAS, the Parties acknowledge that every student who has been determined to have a disability following the CSE or the Section 504 process, and every student who is suspected of having a disability, and those students’ parent(s), have a right to compliance with all applicable laws and regulations covering their education;

WHEREAS, Dr. Jaime R. Aquino, Distinguished Educator appointed by the New York State Education Department to provide support in improving the District’s systems, structures and operations, as well as to address significant gaps in student services and academic performance, issued a report, dated November 14, 2018. The report noted that the District is currently classified under New York state law as a District in Need of Intervention under the Individuals with Disabilities Education Act (“IDEA”) and is required to implement corrective action plans because of its failure to provide appropriate services to students with disabilities;

WHEREAS, the Distinguished Educator’s report noted the negotiations between the District and Empire Justice that are described and reflected in this Stipulation, and recommended that the District’s Department of Special Education be supported, resourced, and held accountable for the District’s implementation of the Special Education Strategic Action Plan and the prospective consent decree discussed herein;

WHEREAS, the Parties, after extensive negotiations, entered into a Settlement Agreement, with an Effective Date of January 2, 2019, to memorialize those matters and items on which they had then reached agreement, and the process that they agreed that they would employ thereafter to guide, assist and complete their continuing negotiations, to limit the risk of

future uncertainty and misunderstanding, and to permit effective planning and budgeting for the actions that they have each agreed to undertake in the future, which Settlement Agreement is intended to be subsumed within and superseded by this Stipulation;

WHEREAS, the District agreed in that Settlement Agreement that it is fully committed to bringing the delivery of its special education services and programs into compliance with law, and the District agreed that engaging in a collaborative, coordinated effort with Plaintiffs, through their counsel, to remedy all areas of noncompliance is important and necessary;

WHEREAS, Plaintiffs have filed this action alleging the District is systemically not in compliance with its legal obligations to students with disabilities, those suspected of having disabilities, and the parents of those students (the “Action”);

WHEREAS, the Parties have engaged in extensive review of the allegations, claims, and the legal remedies to which they are entitled, and as further set forth below, they have approved the following Stipulation to fully and finally resolve the Action in its entirety; and

WHEREAS, the Parties wish to avoid the expense, uncertainty, and disruption of litigation on the issues in the Action, and the Parties are prepared to settle their differences without admitting any fault or liability;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the representatives for the Parties herein, that this action is settled, subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, and entry of a Final Order or Decree on Consent (“Consent Decree”) as follows:

HISTORY

1. In 1981, a class action was filed on behalf of all students with disabilities in the District, titled J.G. v. Board of Education of the Rochester City School District, 81 CV 173T. The J.G. plaintiffs, through their attorneys, the predecessor firms to Empire Justice, alleged that the District was in substantial noncompliance with numerous obligations under the Education for All Handicapped Children Act, 20 U.S.C. §§ 1401, et. seq., and Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794. The J.G. plaintiffs further alleged that the District systematically:

- Failed to evaluate children believed to have a disability within 30 days as required by law;
- Failed to conduct appropriate evaluations of children believed to have a disability;
- Failed to start special education services or classes for children found to have a disability within 30 days as required by law;
- Failed to provide required information to parents about their rights to challenge decisions made by the District with regard to the education of their children;
- Failed to involve parents as required by law in developing educational programs for their children;
- Failed to have the full range of educational programs required by law;
- Failed to educate children with disabilities in the least restrictive educational setting as required by law;
- Failed to provide children with disabilities with an equal opportunity to participate in academic, nonacademic, and extra-curricular activities and services; and
- Failed to appropriately educate children who were in need of residential or private placements.

2. Under the close supervision of the Court, the parties began negotiating a comprehensive settlement to the J.G. plaintiffs' claims. The settlement was approved by the Court and incorporated into a consent decree in 1983.

3. In 1989, the J.G. parties agreed to a set of minor modifications to the original consent decree in response to changes in state law, and to reflect the fact that the District had completed some of the tasks required by the 1983 Order. The modified consent decree was entered upon consent of the parties on November 1, 1989.

4. In 1991, the J.G. plaintiffs contended that the District fell out of compliance with many of the terms of the 1989 Decree. The parties again negotiated and developed a plan to bring the District into substantial compliance with the Court's Order. The negotiations culminated in the entry of an Enforcement Order upon consent of the parties on October 15, 1993. The findings of fact in the Enforcement Order recounted areas of non-compliance with the Court's prior Orders, including:

- In the 1992-93 school year, over 1,600 students who were referred to the District's Committee on Special Education ("CSE") to determine if they had a disability, and if so, what special educational programs or services they ought to receive, did not obtain a recommendation from the CSE within the time set by state and federal law;
- Children with disabilities were not receiving the services which were ordered by the CSE, particularly when those services were to be delivered in a general education class;
- The District's self-monitoring and self-correction efforts were not effective;
- Students with disabilities were not being provided with equal access to the full range of academic programs, extra-curricular activities and to equipment such as laboratories and computer rooms which were available to students in general education; and
- The disciplinary procedures in the Michael T. Consent Decree (a companion case) were not being fully implemented.

5. The 1993 Enforcement Order failed to bring the District into compliance. Informal negotiations between the parties began in 1995 and formal negotiations began in January 1996. The Court subsequently appointed the Hon. Jonathan W. Feldman to supervise negotiations. On May 1, 1997, the parties entered into an Amended Consent Decree.

6. On January 14, 2002, the Court concluded that the District had made significant progress to address plaintiffs' concerns; the District was in compliance with the goals of the plaintiffs as set forth in the plaintiffs' underlying complaint; and the Court's jurisdiction had expired due to the consent decree's "three-year jurisdiction clause." Therefore, the Court terminated the consent decree. J.G. v. Board of Educ. of Rochester City School Dist., 193 F.Supp.2d 693 (W.D.N.Y. 2002), *aff'd*, J.G. v. Rochester City School District, 53 Fed. Appx. 157 (2d Cir. 2002).

7. In the years that followed, Empire Justice continued to represent individual parents and students with disabilities in claims against the District, including claims of systemic violations. In the fall of 2014, Empire Justice was approached by approximately 20 Spanish-speaking parents of students with disabilities in the District regarding claims of violations of special education laws and laws guaranteeing bilingual education and equal access for ELL students with disabilities.

8. On March 31, 2015, Empire Justice memorialized the parents' claims of legal violations in over 20 areas in a demand letter to the Counsel for District and the Superintendent of Schools. Empire Justice informed the District that it would have no choice but to file a class action lawsuit unless the District resolved the claimed violations.

9. In response, the District's Superintendent expressed a desire to resolve the legal violations through negotiation. The District and Empire Justice met on a regular basis for the next several years. Over this time period, the superintendency changed hands frequently. Barbara Deane-Williams, the fourth superintendent in less than a year, was appointed on August 8, 2016, and announced her retirement, effective January 31, 2019, on October 19, 2018.

10. From 2015 to 2017, the District made changes to remediate some of the claimed violations identified by Empire Justice; however, most areas of claimed noncompliance remained.

11. Empire Justice and the District entered into a confidentiality agreement on March 20, 2017, to allow the District to provide data and information to Empire Justice, so that Empire Justice could assess the level of compliance and diagnose causes of noncompliance.

12. On December 20, 2017, Empire Justice informed the District that its efforts to resolve the claimed systemic issues had not produced enough compliance. It was the position of Empire Justice that a class action lawsuit was needed to obtain systemic compliance.

13. In response to this communication, the Board and its counsel approached Empire Justice and proposed that the Board form a Committee to Review Special Education Programs and Services (the "Special Committee") to serve as an advisory body to the Board and address the systemic problems with special education. Empire Justice agreed to this proposal.

14. On January 25, 2018, through Resolution No. 2017-18: 561, attached as **Exhibit "A,"** the Board commissioned the Special Committee as an advisory body to the Board, and directed it to:

- a. Review the Board's policies on special education programming and services;

- b. Review the District's practices and protocols relating to special education programs and services; and
- c. Propose solutions to the District's challenges in special education.

15. The members of the Special Committee included parents of students with disabilities, advocates for students with disabilities, individuals with knowledge of the particular issues involving ELL students with disabilities and their parents, individuals with knowledge of providing services to students with disabilities, Empire Justice attorneys, and District staff including the then-Interim Executive Director of Special Education, and the District's Counsel for Special Education.

16. The Special Committee met weekly from February 26, through April 23, 2018. There was consensus about the scope of the problems and the belief that they could be solved with appropriate actions by the District. The members reviewed:

- a. The report from the Council of Great City Schools on special education prepared in 2008-2009;
- b. The report by Judy Elliott, Ph.D., prepared in April 2017;
- c. Information regarding the two reports by Patrick Tydings, Esq., on issues in the CSE process;
- d. Data about current District performance on a number of special education requirements that were subject to empirical measurement;
- e. Experiences of parents, advocates, administrators, school staff, and outside experts regarding the District's performance in evaluating and providing education and services to students with disabilities;
- f. Information from the District about current staffing levels and vacancies in special education;
- g. Information about findings of non-compliance from the State Education Department;
- h. Information on accountability structures for key tasks in special education; and

- i. Information about the limits of the current data reporting system to provide front line staff and managers with the information they needed to ensure compliance with the law and quality programs and services.

17. Based on its review, the Special Committee concluded that there were widespread and very serious problems in virtually every aspect of the District's special education programs and services and identified 29 specific areas of concern around non-compliance with legal obligations. These problems led to non-compliance with the District's legal obligations and to the failure of students with disabilities to succeed to the extent to which they were capable.

18. The problems that were identified by the Special Committee were:

- a. Students with disabilities had low levels of academic performance.
- b. Students with disabilities were not included to fullest extent possible in activities and opportunities at all schools.
- c. Students with disabilities were suspended at disproportional rates, and received harsher penalties than non-classified students.
- d. Parents were treated as if they were not full participants in all decisions involving special education for their children.
- e. Parents did not always receive written notices of CSE meetings within the legally required time; meetings were delayed or rescheduled resulting in delays in decisions and delays in providing programs and services.
- f. Parents were not always provided with printed copies of fully completed Individualized Education Programs ("IEPs") and CSE minutes at the CSE meeting or within a few days thereafter.
- g. The District did not provide quarterly IEP Progress Reports to the parents of all students with IEPs on the same schedule as report cards as is required.
- h. The District did not conduct Functional Behavior Assessments ("FBAs") or develop Behavior Improvement Plans ("BIPs") for all students for whom they are required. When prepared, they were not consistently completed by appropriate staff and were not monitored for their continued effectiveness.

- i. The District's CSEs failed to follow the state requirements for determining the appropriate classification of students with regard to certain disabilities.
- j. Sometimes, decisions made at CSE meetings were not reflected in the minutes or in the printed version of the IEP, and at other times, items on the IEP were changed without informed parental consent because of lack of space or services, or transfer to a program like LyncX Academy.
- k. CSEs conducting Annual Reviews often continued the same placement and services in cases where the student has made little or no progress toward achieving their expected level of performance during the past year.
- l. Not enough trained staff were available to timely conduct all CSE meetings (including annual reviews and reevaluation reviews).
- m. Not enough trained and (where required) certified staff were available to deliver the programs and services on the IEPs of all students.
- n. The District lacked sufficient trained behavior specialists and analysts to meet the significant behavioral needs of special education students.
- o. The District did not have appropriate programs and services to adequately meet the needs of many of its students with emotional disabilities.
- p. The District lacked sufficient programs and services to timely meet the projected needs for placements and services, which resulted in students not receiving their program and services in the school that they would have attended if they did not have a disability; students being placed wherever there was an opening, rather than with students with similar needs; students being placed in settings with more students with disabilities than is permitted; students having IEPs altered to provide for programs and services that are available, instead of those that the CSE believed were needed.
- q. The District's process for determining whether a potentially suspendable offense was a manifestation of a disability relied on illegal criteria and failed to prevent suspension when the student was not receiving all the services on their IEP (in their primary language) or the staff has failed to comply with their BIP.
- r. Some District building administrators sometimes used illegal strategies to avoid manifestation determinations including: repeat short term suspensions totaling more than ten (10) days; telling parents to keep children at home or sending children home without formally suspending them; and not determining whether students were receiving the program and all services on their IEPs before making truancy referrals.

- s. The District sometimes restricted access to Extended School Year programing and services to students classified with intellectual disabilities and autism, rather than conducting an individualized analysis of regression for students classified in other categories.
- t. The District's special education management information system did not permit senior managers to easily track and measure compliance (and the locations of non-compliance) with key quantifiable compliance metrics.
- u. The District did not always provide qualified translators at all CSE meetings where the primary and preferred language of the parent and/or a child is other than English.
- v. The District did not translate all important documents concerning students with disabilities whose parents would prefer the documents in their primary language at times resulting in the lack of informed parental consent and participation in shared decision making.
- w. The District lacked the bilingual staff necessary to conduct evaluations and deliver all the programs and services which should be provided in the primary language of the student.
- x. The District did not provide tutors who could communicate in the student's primary language, or alternative services in the student's primary language, to ELL students with disabilities who were suspended.
- y. The District did not always conduct student transition planning in the years for which it was required for students with IEPs, and did not update transition plans as student needs changed. When completed, transition plans were not always thoroughly completed and did not meet the legal requirements.
- z. The District lacked the staff and services needed to provide effective transition services to all students with disabilities.
- aa. The District's compliance with the Section 504 process was highly variable based on school settings. It was frequently not used in cases where providing services under Section 504 could have been appropriate to avoid the eventual need for classification.
- bb. The professional development needs, across the board, of the special education staff were not being met in order to provide the education to which all students were entitled.
- cc. There was a significant lack of accountability in Special Education in the District, in part caused by lack of specificity of roles and responsibilities, and in part because of the lack of continuity of supervisors.

19. The Special Committee made four core recommendations:

- a. The Board of Education commit that the District will become fully compliant with all its legal obligations to students with disabilities and to those suspected of having disabilities within three years, and will meet a series of milestones for compliance in specific areas over that period of time.
- b. The Board authorizes Counsel to make this commitment in a legally enforceable Consent Decree, containing specified consequences should the District fail to substantially comply with its obligations, in order to make it likely that the resources needed to fix the problems are made available to those charged with fixing them, even if District senior leadership changes over the three years.
- c. These consequences for failure to substantially bring its programs into compliance with its legal obligations under the Consent Decree would include appointment of a Special Master to externally oversee compliance activities; appointment of an outside monitor to guarantee accurate reporting of the District's performance on its obligations; and awarding Empire Justice Center the statutory attorney's fees that it has agreed not to ask the District to pay if the District substantially complies with its obligations under the Consent Decree.
- d. The District put aside sufficient funding in the 2018-19 budget to retain an outside consultant who can look objectively at the work that needs to be accomplished over the next three years, and make recommendations to the District about the number, positions, skills, and levels of staffing needed to successfully carry out the reformation of services and instruction for children with disabilities in accord with our recommendations.

20. The Special Committee also recommended that, if the Board approved its core recommendations, the Board should authorize the Special Committee to form seven workgroups to study particular issues and bring their recommendations to the full Special Committee. After review by the Special Committee, the recommendations of the workgroups would go to the Board for consideration.

21. On May 24, 2018, the Board unanimously approved a motion to accept the report and recommendations of the Special Committee. A copy of the report, as approved by the Board, is attached as **Exhibit “B”**.

22. Thereafter, eight workgroups were formed, and were asked to examine the following issues:

- Issues that Occur Before the Meetings of the Committee on Special Education
- Issues Involving Committee on Special Education Meetings and Placement
- Issues Involving Appropriate Program and Services
- Evaluations and Services for Children on the Autism Spectrum
- Transition Planning and Services
- Behavior – suspensions, crisis intervention, and behavior specialists
- Issues involving Bilingual Students and Parents
- Partnering with Parents

23. The workgroups were further asked to propose solutions and time lines for the issues within each workgroup’s area designed to end the noncompliance by the conclusion of the 2021-2022 school year.

24. The workgroups consisted of at least three members of the Special Committee as well as parents, District management and staff, outside experts, and advocates for children with disabilities, who were knowledgeable in the specific area to which they were assigned. Each workgroup was provided with a list of the problems assigned to the workgroup, a summary of the prior studies that had identified problems in the workgroup’s area of concern, and a summary

of the discussions at the full Special Committee on topics within the responsibility of the workgroup, as well as a template for recording its work on each recommendation.

25. The full Special Committee met from October 2018 through February 2019. The Special Committee looked to Los Angeles as a successful model of a large urban District which had used consent decree-required benchmarks and goals to remediate prior illegal practices and to improve outcomes for students with disabilities. To keep the reporting manageable and the District focused on what was most important, the Committee was advised to keep the number of goals to about a dozen, rather than trying to set up goals and metrics for the 29 areas of noncompliance.

26. The Special Committee discussed proposed areas for benchmarks and goals, defined and described below in paragraphs 60 and 61. For each possible goal, the Committee then examined:

- The current level of performance;
- What commitments, if any, had already been made to improve performance on that goal to external entities like the New York State Education Department;
- Where applicable, what level of performance is required by law or regulation;
- What data measures are available or can be created with reasonable effort; and
- What level of improvement is achievable over the next three-and-a-half years.

27. Based on the review of that information, which was provided by the Executive Director of Special Education, the Special Committee made additional modifications to the proposed benchmarks and goals which were then accepted unanimously on March 8, 2019. The Special Committee recognized that some of the recommended goals would leave the District still

short of full compliance with its legal obligations at the end of the 2021-2022 school year but it did not believe that full compliance could be achieved within three and a half years. In those areas, the Special Committee recommended goals that would be reasonably achievable within that time period, with the expectation that the changes made to achieve the goal would lead to full legal compliance in future years beyond the 2021-2022 school year.

28. As each workgroup completed its work in 2018 and 2019, its recommendations were presented to the full Special Committee.

29. The Special Committee unanimously adopted the workgroups' recommendations, interim benchmarks, and final goals in February and March 2019.

30. The Special Committee issued its Second Report on March 19, 2019. The Special Committee Report set forth thirteen (13) recommended disengagement goals with associated interim benchmarks, and made one hundred-forty-five (145) recommendations organized by workgroup and forty-four (44) recommendations in the areas of accountability, information systems, professional development and staffing. The one hundred eighty-nine (189) recommendations of the Special Committee are hereinafter collectively referred to as the "Recommendations."

31. The Board received the Second Report of the Special Committee report on March 19, 2019. On April 25, 2019, by Resolution No. 2018-19: 826, the Board delegated acceptance and approval of the Second Report and Recommendations to the District's General Counsel and the representatives of the District negotiating with Empire Justice Center. Copies of the Second Report and the Resolution are attached as **Exhibit "C."**

32. The Parties met to negotiate the terms of the applicable final disengagement goals and interim benchmarks pursuant to the terms of the Settlement Agreement. The final disengagement goals and measurable interim performance benchmarks that the Parties had negotiated to that date were then submitted to the Board, along with a form of this Stipulation as of that time, for approval at a public business meeting of the Board on June 20, 2019. By Resolution No. 2018-19: 1008, the Board accepted and approved the final disengagement goals and measurable interim performance benchmarks that the Parties had negotiated up to that time. The Board further authorized and directed the District's General Counsel to finalize and execute, on behalf of the District and the Board, this Stipulation of Settlement. A copy of the Resolution is attached as **Exhibit "D."**

33. On July 16, 2019, Plaintiffs filed this action, as the Parties had contemplated and agreed. *See* ECF Doc. No. 1. Thereafter, the parties continued to negotiate and finalize the language and wording of this Stipulation and the final disengagement goals and interim benchmarks.

34. In response to the COVID-19 pandemic, on March 14, 2020, the County Executive announced that all Monroe County public schools, including the RCSD schools would be closed to students, starting March 16, 2020, until further notice. Governor Cuomo directed all schools within New York State to close until April 1, and subsequently extended that closure until at least May 15, to help reduce the spread of COVID-19.

35. As a direct result of the school closures, the Board of Regents announced that the statewide English Language Arts (ELA) and Math tests normally given at the end of the school year, and the Regents exams scheduled to be given in June 2020, would be canceled.

36. Additional cancellations, delays and changes caused by the COVID-19 school closures required the Parties to adjust and renegotiate the final disengagement goals and interim benchmarks, which are now set forth on “**Exhibit “E.”** These revisions including extending the period of time to achieve certain of the final disengagement goals and interim benchmarks, as set forth in Exhibit E, until the conclusion of the 2022-2023 school year. These changes were necessitated solely by and agreed to by the Parties to address the anticipated consequence of the school closures in Spring 2020 due to the COVID-19 pandemic.

37. The Governor issued Executive Orders that stated that school districts must follow NYSED’s guidance by providing critical educational supports for students and alternative options for instruction for all students during the period of school closure.

38. On July 13, 2020, the State announced that school districts in New York could begin instruction of students and reopen for in-person schooling in September 2020, if COVID-19 infection rates remained at 5% or lower in each region. Schools were ordered to develop reopening plans, release them to the public, and file them with the State on July 31, 2020.

39. The District released the results of a survey to families, students, and staff, regarding reopening schools and its initial plan with safety precautions the District was undergoing to ensure a safe and healthy return to school in a document entitled *School Year 2020-2021: RCSD Together, July 2020*, on July 20, 2020.

40. On July 30, 2020, Plaintiffs filed an amended complaint in this action following agreement by the parties regarding a change to one of the plaintiff subclasses. *See ECF Doc. No. 19.*

41. The District released its plans for reopening the school district and individual schools on July 31, 2020, at <https://www.rcsdk12.org/reopens>. Plans addressed three potential reopenings: in-person, remote, and a hybrid model of both.

42. On August 7, 2020, the State announced that school districts could reopen. The State directed school districts to provide the specific components of reopening plans to parents and teachers through three to five meetings, no later than August 21, 2020.

43. On August 12, 2020, the District filed an answer to the amended complaint. *See ECF Doc. No. 20.*

44. The following day, August 13, 2020, the District announced that all Rochester City School District students would begin the school year on September 14, 2020, under a remote learning model. The District scheduled four virtual parent meetings/forums, and one staff meeting, and held the meetings from August 15 to August 21, 2020.

45. The first day of school for District students was September 14, 2020. As of the date of this Stipulation, students continue to attend school under a remote learning model. This Stipulation is intended to settle and resolve the claims in this action set forth in the Amended Complaint. As such, this Stipulation does not address any other rights or claims of any proposed class member, including those related to services provided while attending school under a remote learning model.

MISSION, VISION, AND VALUES

46. The mission statement, and the vision and values statement attached as **Exhibit “F”** shall be the mission, vision, and values statements of the District’s Department of Special

Education for the time covered by this Stipulation and the Consent Decree. The Parties may, from time to time during the period this Stipulation and Consent Decree is in effect, meet, discuss, and reflect upon those statements and consider modifications upon mutual agreement of the Parties, which shall not be unreasonably withheld.

47. The District will provide the mission, vision and values statements to all schools, administrators and teachers; review at the beginning-of-the-year meeting of staff (regular education and general education) at each District elementary, middle, and high school building in September of each year; review at least once subsequently during each year by the special education staff in each building in either: (a) a staff meeting of special education teachers (and other providers); or (b) through an e-mail of the statements to the District's administrators and staff; and posted in all rooms in which CSE in-person meetings are conducted.

48. This Stipulation and the Consent Decree will be implemented and interpreted consistent with the mission, vision, and values statements.

**CLASS CERTIFICATION AND WAIVER OF INDIVIDUAL NOTICE
TO THE CLASS MEMBERS**

49. The Parties intend to seek certification of the following classes and subclasses of plaintiffs:

- a. Class I: All students with disabilities who were in the last two years, are now, or will be subject to the jurisdiction of the Rochester City School District Committee on Special Education who were not, are not being, or will not be properly evaluated for special education and related services as required by law.
 - i. Subclass 1.1: All such students who were, are now, or will be, potentially eligible for special education and related services, but were not, are not, or will not be, located, evaluated, and/or

identified due to a systemic failure of RCSD to follow Child Find laws.

- ii. Subclass 1.2: All such students who did not, do not, or will not, receive initial eligibility determinations for special education and related services within 60 days of the Committee on Special Education receiving parental consent for evaluations because of systemic failures to determine their eligibility within the required timeframe.
 - iii. Subclass 1.3: All such students who did not, or will not, have a Manifestation Determination Review following proposed suspensions, as required by law.
- b. Class 2: All students with disabilities who were in the last two years, are now, or will be subject to the jurisdiction of the Rochester City School District Committee on Special Education who did not, do not, or will not receive legally required special education and related services.
- i. Subclass 2.1: All such students who were, are now, or will be, potentially eligible for special education and related services, but have not, do not, or will not, receive the special education programs and services listed on their Individualized Education Programs because of a systemic failure of RCSD to adequately plan for the known placement and programming needs of these students.
 - ii. Subclass 2.2: All such, students who were, are now, or will be, denied their educational programs and services in the least restrictive environment because of a systemic failure of RCSD to adequately plan for the needs of students classified with disabilities.
 - iii. Subclass 2.3: All such students who were, are now, or will be, potentially eligible for individualized, outcome-oriented transition goals and services on their Individualized Education Programs, but have not, do not, or will not, receive individualized, outcome-oriented transition goals and services because of a systemic failure of RCSD to adequately plan for transition services and programming needs of these students.
- c. Class 3: The parents of students with disabilities who were in the last two years, are now, or will be subject to the jurisdiction of the Rochester City School District Committee on Special Education who have been or may be denied meaningful opportunities to participate in the education of their children as required by law.

- i. Subclass 3.1: All such parents whose right to meaningful participation in the education process has been denied because of RCSD's systemic failure to translate critical documents into the parent's native language.
- ii. Subclass 3.2: All such parents whose right to parent training and counseling has been denied because of RCSD's systemic failure to provide this related service.

50. Because this Action seeks only declaratory and injunctive relief; this Stipulation requires the District to comply with the law; and does not compromise the rights of any class member; the Parties will submit a joint request that the Court waive individualized notice to the class members of the settlement and the date, time and place of the fairness hearing, under Fed. R. Civ. P. 23(e).

NOTICE TO POTENTIAL CLASS MEMBERS

51. Counsel for the Parties will work together and jointly seek approval from the Court to provide notice to potential class members by taking the steps listed below to notify potential class members, including students with disabilities who are or were subject to the jurisdiction of the District between July 16, 2017 and July 16, 2019, and their parents, of the pending settlement and their rights, in a form to be submitted to and approved by the Court. Plaintiffs' Counsel will prepare a template of a short-form and long-form notice to be reviewed and approved by the District counsel and submitted to the Court.

52. The District will post both forms of the notice on its website at www.rcsdk12.org, in a conspicuous format, and transmit instructions for viewing the notice on the website through a mass telephonic notification sent via the District's School Messenger software to parents of students receiving Special Education services, and through a mass email notification sent

through School Messenger to parents of students receiving Special Education services who have provided their email addresses to the District.

53. If the District reopens its administrative offices to the public prior to the expiration of any comment period established by the Court, it will post the short-form notice for the lesser of (i) a period of thirty (30) days or (ii) the remainder of the comment period at the following conspicuous locations, which have been identified by counsel for the Parties as the places where potential class members are most likely to see the physical postings: (a) the District lobby at 131 West Broad Street, Rochester, New York; (b) the District Centralized Committee on Special Education meeting space at 30 Hart Street, Rochester, New York; (c) at the location of the monthly meetings of the District Special Education Parents' Advisory Council for each of the three monthly meetings after the Court approves the form of notice.

54. Plaintiffs' Counsel will post both forms of the notice for thirty (30) days on the Empire Justice website at www.empirejustice.org. If the Empire Justice Center reopens its offices to the public prior to the expiration of any comment period established by the Court, it shall post the form notice in the lobby of the Telesca Center at 1 West Main Street, Rochester, New York for the lesser of (i) a period of thirty (30) days or (ii) the remainder of the comment period.

**PUBLIC ANNOUNCEMENT OF AGREEMENT
TO THE PUBLIC AND DISTRICT STAFF**

55. This Stipulation and the Court's Order on the motion for preliminary approval of the settlement shall be announced by a presentation at the next public business meeting of the Board following the entry of the Court's Order on the motion for class certification and approval

of the notice of settlement. At that time, the Parties shall also jointly issue a press release. The Parties shall emphasize the collaborative problem-solving nature of the settlement. The commentary, announcement and roll-out of the Stipulation shall be discussed in a meeting between counsels for the Parties before the Board meeting. At the Board meeting, the District's General Counsel shall make a presentation regarding the history of litigation, this Action, and the development of this Stipulation. Plaintiffs' Counsel shall then make a presentation outlining the same, their views of the benefits of the Stipulation, and any other relevant commentary. The Parties' statements will be positive in nature, emphasizing the collaborative problem-solving nature of the resolution of the lawsuit, and the District's commitment to making a good-faith effort to resolve issues concerning its students served by the District's Department of Special Education.

56. Within thirty (30) days after the Court's Order on the motion for preliminary approval of the settlement, and annually thereafter while the District is subject to Court supervision, the District will provide a summary of the provisions of the Stipulation to the parents of students with disabilities. The summary will be drafted jointly by the Parties. The summary will be provided by reasonable means, and a time, to be determined by the District in consultation with Plaintiffs' Counsel. The District will post the summary on its website, and keep it posted until the Court issues an Order dismissing the Action.

57. The Superintendent will inform all District staff of the responsibilities that the District has accepted in the Stipulation, within fourteen (14) days following the filing of the Court's Order on the motion for preliminary approval of the settlement.

58. The District's Consent Decree Coordinator, whose position is detailed in paragraph 65, *infra*, will then present to all Special Education Department staff a summary of the Stipulation and Consent Decree, and the actions required by the Stipulation and Consent Decree. Each District building principal, academy director, and program director, shall present to their staff a summary of the Stipulation and Consent Decree, and the actions required by the Stipulation and Consent Decree, and support enthusiastically the District's commitment to addressing the special education needs of all students. Such meetings shall be presented, with updates on the District's progress, within ten (10) days after beginning of the next semester, and on or before the beginning of each subsequent school year until the final dismissal of the Action.

AGREEMENT AND ACTIONS REQUIRED

59. The District confirms and repeats its agreement to comply with all of its legal obligations with respect to the delivery of special education services and programs for students with disabilities, and those suspected of having disabilities, and their parents, and to comply with its obligations under the Consent Decree to be entered by the Court upon approval of the settlement among the Parties, and to solve the twenty-nine (29) areas of concern set forth above in paragraph 18(a) through 18(cc) by June 30, 2022, i.e., the end of the 2021-2022 school year; except, as described in paragraphs 36 and 59, to address the anticipated consequence of the school closures in Spring 2020, and virtual/hybrid instruction thereafter, due to the COVID-19 pandemic, the Parties have agreed to extend the time, until June 30, 2023 (the end of the 2022-2023 school year) to achieve the first final disengagement goal, concerning the required increase in the percentage of Students With Disabilities (SWDs) with Proficient Level ELA scores and with Proficient Level Math scores.

60. The District has already begun to implement the recommendations of the Special Committee and is committing to making further immediate and continuing changes to comply with its legal obligations. The Parties acknowledge that it may take one or more years to produce objective data of the impact of these changes. To demonstrate that the District has and is continuing to sufficiently improve its compliance with its legal obligations to students with disabilities and their parents, the District agrees that it will achieve fourteen (14) Final Disengagement Goals (“Final Goals”), as set forth in **Exhibit E**. The Final Goals have been developed, established and approved as described herein, and are intended to be the objective evidence of compliance with the law, where measurable, and improvements in the quality in the delivery of programs and services to students with disabilities and their parents.

61. To ensure that continual improvement and progress is being made towards the Final Goals so that they will be met on or before June 30, 2022 (with the exceptions discussed above in paragraphs 36 and 59), the District agrees that it will achieve Measurable Interim Performance Benchmarks (“Interim Benchmarks”). The Interim Benchmarks are intended to be reasonable and realistic objective measures of continual incremental progress by the District towards the achievement of the Final Goals, and incorporate and reflect the anticipated consequences of the school closures in Spring 2020, and virtual/hybrid instruction thereafter, due to the COVID-19 pandemic. The Interim Benchmarks have been developed, established and approved as described herein, and are set forth in **Exhibit E**.

62. The District will give due consideration to the implementation of the 189 Recommendations offered by the Special Committee. The District may decide not to implement a Recommendation of the Special Committee, but shall be entitled to do so only if the Recommendation is illegal, impossible or impractical, or if the District has identified a strategy

that would be equally effective and designed to meet the regulatory objective of the Recommendation.

63. If the District decides not to implement a Recommendation, it shall notify Plaintiffs' Counsel within ten (10) business days of such decision. The District will explain its reasoning for the decision not to implement the Recommendation, and any decision to implement alternative means or methods. If Plaintiffs' Counsel believes that the District's decision will cause the District not to resolve one or more of the areas of concern identified in paragraph 18, or not to meet an Interim Benchmark or Final Goal, it shall notify the District within ten (10) business days. The Parties will meet within ten (10) business days after delivery of said notice to discuss the District's decision and Plaintiffs' Counsel's response. If the Parties are unable to agree, they may attempt to resolve their dispute through mediation as provided in the Alternative Dispute Resolution process set forth herein.

ACCOUNTABILITY

64. The Superintendent shall be responsible for the overall implementation of the Stipulation and Consent Decree, including achievement of the Final Goals and Interim Benchmarks described herein. The Stipulation and Consent Decree are binding on the Board, and all District administrators and staff.

65. The Superintendent, in consultation with Plaintiffs' Counsel, shall designate a District employee who occupies the position of Deputy Superintendent, Chief, Executive Director, Director, or other administrator with Special Education experience and expertise, comparable reporting and decision-making authority, and similar oversight, compliance, or supervisory duties, as the Consent Decree Coordinator (the "Coordinator"). The Coordinator

will be responsible for supervising and coordinating all aspects of implementation of the Stipulation and Consent Decree; providing all monitoring information; and responding to issues raised by Plaintiffs, Plaintiffs' Counsel, students' parents/guardians, and advocates, regarding implementation of the Stipulation and Consent Decree.

66. In the event that the Superintendent determines that a different employee should be designated as the Coordinator, the Superintendent will designate a person with special education experience and expertise, in a position with comparable reporting and decision-making authority, as well as similar reporting oversight, compliance, or supervisory duties and shall notify Plaintiffs' counsel of the reassignment and the Parties shall meet within fourteen (14) days to discuss the reassignment.

MONITORING AND REPORTING

67. The District shall report to Plaintiffs' Counsel on its progress towards meeting the Interim Benchmarks and Final Goals on a schedule appropriate to each benchmark or goal. For some items, reports may be monthly, some quarterly, and some annually. To the extent possible, the reports provided to Plaintiffs' Counsel will use the same data as is being reported to State and Federal agencies. The reporting schedule for each item is based on the measures and reporting frequency recommended by the Special Committee for the respective Interim Benchmark as negotiated by the Parties, and is set forth on the attached **Exhibit "G,"** and will be incorporated in the Consent Decree, and/or may be amended by further agreement and stipulation of the Parties.

68. Within thirty (30) days of either receipt or transmission, whichever is applicable, or on such other frequency that the Parties agree to and will be set forth in the Consent Decree

and/or by further agreement and stipulation by the Parties, the District will provide to Plaintiffs' Counsel copies of substantive communications concerning non-compliance and substantive responses thereto with the New York State Department of Education, the United States Department of Education, or other government officials, concerning any cited non-compliance with the District's legal obligations to students with disabilities.

69. The District will provide copies of the Coordinator's Complaint Log as referenced in paragraph 80 to Plaintiffs' Counsel on a monthly basis, or on such other frequency that is agreed to by the Parties and set forth in the Consent Decree and/or by further agreement and stipulation by the Parties.

70. The District and/or the Coordinator will meet with Plaintiffs' Counsel no less than quarterly to discuss the progress reports, the success of the actions the District is taking to meet the Interim Benchmarks and Final Goals, and any barriers it is facing in meeting them.

71. The District will provide an Annual Report to the Court and Plaintiffs' Counsel detailing its progress towards meeting the Interim Benchmarks and Final Goals, in the format set forth as **Exhibit "H"** hereto or as may be otherwise agreed to by the Parties. The Annual Report will be published on the District's website, and all Annual Reports will remain publicly available on the District's website until the Court issues an Order dismissing the Action.

72. Plaintiffs' Counsel shall have the right to review a reasonably-sized sample of data and records, including but not limited to student records, school, departmental and District-wide records. The Parties will negotiate the sample size and methodology for data and record review based on the data being examined. Any request by Plaintiffs' Counsel for data and records shall be in writing, and may be sent by email to the Coordinator.

73. Within thirty (30) days of receiving a report, Annual Report, or requested data or records, Plaintiffs' Counsel shall indicate to the District whether they have any issues or problems with any report, Annual Report, or any information or data. The District will have ten (10) business days to respond to Plaintiffs' Counsel's notice. In the event that the District acknowledges that there is an issue or problem, the Parties will meet within ten (10) business days to attempt to negotiate a consensual solution and a time period for any such solution to the issue. If the Parties disagree on whether there is an issue or problem, or the solution or remedy for the issue, they may, but shall not be required, to pursue mediation through the Alternative Dispute Resolution process set forth in this Stipulation.

74. Nothing contained herein shall be deemed to preclude or limit the rights of any Party to seek redress or relief from the Court for any violation of the Consent Decree related to a report, Annual Report, or requested data or records, after exhausting the Alternative Dispute Resolution process set forth in this Stipulation.

PRESERVATION OF STUDENT AND PARENT RIGHTS

75. This Stipulation is not intended and shall not be deemed to waive or limit any substantive or enforcement rights of any member of the classes or subclasses in this Action, and nothing in this Stipulation waives or limits the rights of any member of the classes or subclasses in this Action to seek redress or relief for any violation at law, or any legal or administrative process rights. Nor is anything in this Stipulation intended and shall not be deemed to waive or limit any substantive, legal, administrative or enforcement rights of any student, or the parent or advocate of any student, who is not a member of a class or subclass.

76. If Plaintiffs' Counsel or any Plaintiff, including any parent or advocate of any Plaintiff, believes that the District is failing to comply with its legal obligations under this Stipulation or the Consent Decree, or at law, with regard to an individual student, in addition to the other remedies provided by law and regulation, they may contact the Coordinator, or a person designated by the Coordinator, orally or in writing, to report the complaint ("Complaint") and request that the Coordinator secure compliance.

77. This process is not intended to replace or eliminate the present and ongoing efforts by District staff to attempt to resolve individual problems and complaints presented by parents of the Plaintiffs. However, if a District building principal, academy director, or program director is unable to resolve a complaint by a parent of a Plaintiff that the District is failing to comply with its legal obligations under this Stipulation or the Consent Decree, or at law, within thirty (30) days, they will notify the parent of the right to report their complaint to the Coordinator.

78. The Coordinator, or appropriate staff, will investigate the Complaint. If the Coordinator agrees that the District is in violation of its obligations with regard to an individual student, the Coordinator will direct the appropriate staff to comply with the requirements of this Stipulation or the Consent Decree. If the Coordinator determines that there is no violation, the Coordinator will advise the complainant in writing, and inform complainant of their legal remedies if the complainant disagrees with the findings.

79. If the investigation by the Coordinator shows that the District's action or inaction towards the student who was the subject of the Complaint was being repeated with regard to

other students, the Coordinator shall note that in the log described below and will take appropriate action to correct the situation for the students affected.

80. The Coordinator shall maintain a chronological Complaint Log, in a format agreed to by the Parties, recording:

- a. The date of the Complaint;
- b. Its source;
- c. A summary of the Complaint;
- d. The result of the investigation;
- e. The resolution of the Complaint including date of compliance; or the date that the complainant was informed that the Coordinator believed that the District's action or inaction was appropriate; and
- f. If the action/inaction was being repeated with other students. If so, the log will note what action was taken to remedy the situation for those students.

81. If Plaintiffs' Counsel believe that the District's response to a Complaint by an individual, or by an individual complaint that appears to have been repeated with other students, is inadequate, Plaintiffs' Counsel will provide written notice to the Coordinator and the Parties shall meet to discuss the issue and attempt to reach a resolution within ten (10) business days of said notice. In the event that the Parties are unable to reach a resolution, they may pursue the Alternative Dispute Resolution process set forth herein.

COMPLIANCE

82. The District acknowledges its legal obligations to students with disabilities and their parents. The Parties acknowledge that the District is such a large and complex organization that, even once it takes the necessary actions reasonably calculated to come into compliance and achieve the Final Goals, random, non-systemic lapses from compliance with the District's legal

obligations to every student are possible. Because of this, the Parties agree that Plaintiffs' Counsel will not seek an Order of contempt for failure to comply with the Consent Decree other than as provided herein.

83. If the District becomes aware of circumstances that have caused, will cause, or are likely to cause the District to be unable to meet an Interim Benchmark, or that the District has not met an Interim Benchmark, by more than five (5) percent of the stated Interim Benchmark, the Coordinator will promptly notify Plaintiffs' Counsel of the issue, identifying the relevant Interim Benchmark, the extent of variance, and the relevant circumstances causing or explaining the variation. The Parties shall meet to discuss the issues raised in the notice within ten (10) business days of receipt of such notice.

84. Within ten (10) business days of such meeting, the District will provide Plaintiffs' Counsel with a Remedial Action Plan ("RAP") to remedy the prospective or actual noncompliance. The RAP will explain the District's understanding of the cause(s) of the prospective or actual failure to meet the Interim Benchmark, and the steps the District proposes to remedy the cause(s) of the failure. The RAP will specify whether the District believes that any Interim Benchmark(s) should be modified as provided herein.

85. Plaintiffs' Counsel will notify the District within ten (10) days of receipt of the RAP if they believe the RAP is insufficient, either because they dispute the cause of the failure or prospective failure to meet the Interim Benchmark or the RAP is not a reasonable and realistic objective indicator of progress to bring the District into compliance with an Interim Benchmark, and/or is not a reasonable and realistic objective measure of continual progress by the District towards the achievement of the Final Goals, or otherwise have a dispute regarding any

Recommendation implicated by the prospective or actual non-compliance with the Interim Benchmark. The Parties will meet within ten (10) business days and attempt to resolve the issue(s).

86. If the Parties are unable to resolve any dispute regarding whether there is or has been non-compliance with an Interim Benchmark or a RAP, after meeting as provided herein, they may attempt to resolve their dispute through the Alternative Dispute Resolution procedure set forth in this Stipulation.

87. In the event that the District believes that it cannot meet an Interim Benchmark and that such Interim Benchmark set forth in the Consent Decree should accordingly be modified, the District shall provide written notice to Plaintiffs' Counsel of the particular provision at issue, the circumstances warranting modification, the steps taken to attempt to achieve the Interim Benchmark, and the modification the District proposes, and the Parties shall meet and discuss the issue in good faith within ten (10) business days. Approval of the District's modification request shall not be unreasonably withheld, and Plaintiffs' Counsel shall not oppose any request by the District to the Court to modify the Interim Benchmark in the Consent Decree, if the District establishes that the circumstance(s) underlying the modification request could not have been reasonably planned for and are wholly outside of its control. If the Parties are unable to resolve a dispute regarding modification of an Interim Benchmark in the Consent Decree, they may, but are not required to, pursue mediation under the Alternative Dispute Resolution procedure set forth herein.

88. If the District becomes aware of any circumstances that will impair its ability to meet any obligations under the Stipulation or the Consent Decree, other than the failure or prospective failure to meet an Interim Benchmark, the District will promptly notify Plaintiffs' Counsel of the issue(s) causing the problem(s) and the steps the District proposes to take to resolve the problem(s). In either event, the Parties will meet within ten (10) business days and attempt to resolve the issue(s). If they are unable to resolve the issue, they may but will not be required to pursue the Alternative Dispute Resolution procedure set forth in this Stipulation.

89. If Plaintiffs' Counsel believes that the District is failing to meet any obligations under the Stipulation and Consent Decree, or otherwise failing to solve one of the twenty-nine (29) areas of concern, they will notify the Coordinator of the obligation(s) or provision(s) involved, and the basis for their belief. The Parties will meet within ten (10) business days and attempt to resolve the issue(s). If they are unable to resolve the issue, they may but will not be required to pursue the Alternative Dispute Resolution procedure set forth in this Stipulation.

90. The District agrees not to make any unilateral changes to the data sources and calculation methodology it has used to calculate the District's "Current Performance" and "Current Projection" (as those terms are reflected in Exhibit "E" hereto) when calculating and reporting each Interim Benchmark and Final Goal. In addition, as many of the Interim Benchmarks and Final Goals adopt or rely upon measures or statistics determined under criteria, guidelines or formulas defined or established by an external source, such as the State of New York, if such measures, criteria, guidelines or formulas are changed in a manner that will change the way in which a measurement or statistic is calculated for an Interim Benchmark or Final Goal, the District will promptly notify Plaintiffs' Counsel. Thereafter, the Parties will meet and confer to discuss whether a corresponding change is appropriate for any Interim Benchmark or

Final Goal and, if so, will present the modification to the Court for approval. If the Parties are unable to agree whether, and to what extent, a change to a Final Goal or Interim Benchmark should be made, they may but will not be required to pursue the Alternative Dispute Resolution procedures set forth in this Stipulation.

91. The Alternative Dispute Resolution procedures in this section are voluntary.

Nothing contained in this section shall limit or restrict the ability of any Party to seek relief from the Court.

92. The Parties agree that Plaintiffs will not file a motion for contempt, unless

Plaintiffs have provided prior notice to the District that:

- a. The District has agreed to a RAP as a result of the failure to achieve an Interim Benchmark, and has not achieved the level of performance required under the RAP within the time limits agreed to by the Parties; or
- b. The District fails to achieve an Interim Benchmark in the same subject area by more than five percent (5%) of the stated Interim Benchmark percentage on more than one occasion, and has failed to take actions necessary to remedy the problems causing the deviations within a reasonable period of time; or
- c. The District fails to achieve more than one Interim Benchmark by more than ten percent (10%) of the stated Interim Benchmark percentage in the same year, and has failed to take actions necessary to remedy the problems causing the deviations within a reasonable period of time; or
- d. The District has failed to comply with an Order of Compliance, as defined below; or
- e. The District fails to comply with its obligations and the time frames set forth by the Court in the Consent Decree, other than with respect to an Interim Benchmark.

93. Nothing contained in this Stipulation, however, is intended to limit or restrict the authority of the Court to take whatever actions it deems appropriate for any failure to comply with the terms of this Stipulation, the Consent Decree or the law.

PRIVACY OF STUDENT INFORMATION

94. The Parties recognize the District's obligations under State and Federal Law, including pursuant to New York Education Law § 2-d and the Federal Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99 ("FERPA"). As used herein, confidential student information shall mean personally identifiable information, in any form, oral, written, or electronic, about a current or former student of the District, including, but not limited to education records and personally identifiable information, as these terms are defined in FERPA. Confidential information shall include, without limitation, any information, in any form, about individualized students, their test data, test scores, grades, student records, evaluations, related services, and special education information, District operations, activities, finances, databases, reports, processes, and practices that are not public information, personnel records, and agreements that are not public information, and any information protected under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The Parties agree to the definition of "disclosure" under FERPA contained in 34 CFR 99.3.

95. During the implementation of the Consent Decree, the District may furnish student records and confidential information to Plaintiffs' Counsel under all applicable sections of FERPA, including 34 CFR 99.31. The Parties agree that, to the extent necessary to implement the Court's Consent Decree, disclosure of student personal identifying information may be provided without parental consent to Plaintiffs' Counsel, as the disclosure falls within the

exceptions in 34 CFR 99.31 regarding compliance with a judicial order and/or compliance with demands for a student's records made by the parent or student in the context of the parent or student's lawsuit, as a member of the plaintiffs class(es), against an educational institution, and/or any other applicable section.

96. Plaintiffs' Counsel agrees to request to view and to access only those student records of class members that are material and necessary for monitoring compliance with the Consent Decree as set forth above. Plaintiffs' Counsel will require FERPA training for all individuals who will have access to student records. The District will periodically provide free FERPA training to Plaintiffs' Counsel.

97. Plaintiffs' Counsel will comply with New York Education Law § 2-d and applicable regulations and will take all reasonable measures to maintain the confidentiality of student records and protect the privacy of student information as required by State and Federal laws including but not limited to FERPA, HIPAA, IDEA, and the New York State Education Law.

98. The Parties will comply with New York Education Law § 2-d and applicable regulations, and will take all reasonable measures to safeguard the confidential information and records furnished under the Consent Decree. Plaintiffs' Counsel agree not to disclose student information, at any time, to any individual or party not bound by the Consent Decree, or other Order of the Court regarding confidentiality, including unauthorized third parties. However, Plaintiffs' Counsel may disclose student information to experts or consultants retained to provide services in connection with the Action and Plaintiffs' Counsel will require any such person to comply with New York Education Law § 2-d and any applicable regulations, and agree in

writing to maintain the confidentiality of such student information. Upon investigation by a Party, the other Party may be directed to return and/or securely destroy information and records, if legally allowed to do so. If allowed by applicable law, the Parties shall destroy all confidential information and records when the information and records are no longer needed for the purposes of monitoring compliance, but in any event, no later than three (3) years after the litigation is ended by the entry of a final Order dismissing the Action.

99. A Party will promptly notify the other Party if it becomes aware of any actual or suspected breach of the information and records furnished under the Consent Decree. The Party that caused the breach shall take all reasonable steps to mitigate and rectify the consequences of a breach, including notification to suspected impacted individuals, at its sole expense. The Parties are entitled as a matter of right to seek injunctive relief to prevent a continuing breach. Nothing contained herein will be deemed to limit or abridge any other remedy available to the Parties or an individual class member at law or in equity to address a suspected breach or for any liability to a student, parent, or other third party incurred by such a breach, including, but not limited to common law indemnification by the Party that caused the breach.

DISENGAGEMENT STANDARDS

100. As the Consent Decree will provide, when the Parties agree that the District has achieved one or more of its Final Goals, the Parties shall file a stipulation setting forth that the District has achieved such Final Goal(s) and the date when compliance with each such Final Goal was achieved.

101. When the District has achieved all of the Final Goals; the District's performance has been verified through the process set forth in the Monitoring and Reporting section above; the District has complied with any Orders of Compliance; and the District has maintained verified compliance with each of the Final Goals for a period of an additional (12) twelve months from the end of the school year in which it achieved such Final Goal, the Parties shall file a stipulation to that effect, and request that the Court enter an Order of Full Disengagement, and the Action may be voluntarily dismissed or otherwise dismissed by the Court.

102. In the event that the District achieves compliance with one or more, but not all, of the Final Goals, and the performance has been verified through the provisions of the Monitoring and Reporting section above, and the District has maintained its compliance for a period of an additional twelve (12) months, the District will be entitled to an Order of Partial Disengagement with regard to the Final Goal(s) that have been achieved and maintained. The District will continue to report performance with regard to Final Goals on which it has been disengaged pursuant to the Monitoring and Reporting provisions.

103. In the event that the District obtains one or more Orders of Partial Disengagement for all of the Final Goals, and the performance has been verified through the provisions of the Monitoring and Reporting section above, and the District has maintained compliance regarding such Final Goals for a period of an additional twelve (12) months following the filing of the last Order of Partial Disengagement, and the District has complied with any Orders of Compliance, the Parties shall file a stipulation to that effect, whereupon the Court may enter an Order of Full Disengagement, and the Action may be voluntarily dismissed by the Parties or be otherwise dismissed by the Court.

104. In the event that the District falls out of compliance with any of the Final Goals after the entry of an Order of Partial Disengagement, but prior to the entry of the Order of Full Disengagement, the District must again achieve compliance with that Final Goal and maintain that compliance, as well as compliance with all other Final Goals, for a continuous period of twelve (12) months to obtain an Order of Full Disengagement.

105. Prior to the entry of an Order of Full Disengagement, if Plaintiffs' Counsel establishes that the District has failed to solve one or more of the twenty-nine (29) areas of concern such that the District has not substantially complied with its obligations under this Stipulation and the Consent Decree, and that the District's failure(s) constitute a systemic violation of a Plaintiff's legal rights, Plaintiffs' Counsel may move for an Order of Compliance requiring the District to address and remediate the problem area(s). The District must then satisfy the Court's Order of Compliance to obtain an Order of Full Disengagement.

106. Plaintiffs' Counsel will not be eligible for attorneys' fees with regard to time spent monitoring any Final Goals upon which the District has obtained an Order of Partial Disengagement. However, if prior to entry of the Order of Full Disengagement, the District falls out of compliance with any of the Final Goals on which it had previously obtained an Order of Partial Disengagement, Plaintiffs' Counsel will again become eligible for attorney's fees with regard to monitoring that Final Goal.

107. If the Parties cannot agree upon whether the District has met one or more of the Final Goals or whether it has maintained compliance for twelve (12) months, or has fallen out of compliance with any of the Final Goals prior to entry of an Order of Full Disengagement, or has failed to comply with an Order of Compliance, they agree to submit the dispute to the Magistrate

Judge assigned to this case for resolution, or they may pursue the Alternative Dispute Resolution process set forth herein.

108. If the District has not achieved all of the Final Goals by June 30, 2022 (other than Final Goal No. 1, concerning the required increase in the percentage of Students With Disabilities (SWDs) with Proficient Level ELA scores and with Proficient Level Math scores, which require compliance in the following school year, and as to that Final Goal, the date for compliance shall be June 30, 2023), or complied with all Orders of Compliance, the District will consent to an entry of an Order by the Court which includes the following, as stated above in paragraph 19(c):

- a. Appointment of a Special Master to externally oversee compliance activities;
- b. Appointment of an outside monitor to guarantee accurate reporting of the District's performance on its obligations; and
- c. Awarding Plaintiffs' Counsel reasonable attorney's fees.

RETENTION OF JURISDICTION

109. The Court will retain jurisdiction over this Action for a period of fifteen (15) months following the Court's entry of an Order of Full Disengagement. If the District has not submitted the performance data for all of the Final Goals to the Court and Plaintiffs' Counsel within thirteen (13) months after entry of the Order of Full Disengagement, the Court will retain jurisdiction for an additional sixty (60) days following the submission of the performance data to allow the Court to determine whether the District remained in compliance for at least one year following disengagement, and for the Parties to take appropriate action either by agreement or through a motion based on the data.

110. Nothing herein shall impair the right of the Court to extend the period of jurisdiction should the District either fail to substantially comply with any of its obligations under the Consent Decree, or if the data submitted for any Final Goal during the year following the entry of the Order of Full Disengagement does not continue to support final disengagement, or if the District has not complied with an Order of Compliance.

ATTORNEYS' FEES

111. The District stipulates that Plaintiffs are “prevailing parties” in this litigation. As an inducement to the District to comply with its obligations under this Consent Decree as soon as possible, Plaintiffs’ Counsel agrees that, should the District: (i) achieve compliance with all Final Goals by June 30, 2022 (other than the first Final Goal, which requires compliance in the following school year, and as to that Final Goal, the date for compliance shall be June 30, 2023), (ii) obtain an Order of Full Disengagement, and (iii) remain in compliance for the 2022-2023 school year (other than Final Goal No. 1, concerning the required increase in the percentage of Students With Disabilities (SWDs) with Proficient Level ELA scores and with Proficient Level Math scores, which requires compliance in the following school year, and as to that Final Goal, the date shall be June 30, 2024), Plaintiffs’ Counsel will waive all statutory attorneys’ fees to which they would be entitled as prevailing parties in this action. Should the District fail to meet the Final Goals by June 30, 2022 (other than Final Goal No. 1, concerning the required increase in the percentage of Students With Disabilities (SWDs) with Proficient Level ELA scores and with Proficient Level Math scores, which requires compliance in the following school year, and as to that Final Goal, the date shall be June 30, 2023), or should the District fall out of compliance with any Final Goal(s) during the 2022-2023 school year (other than Final Goal No.

1, and as to that Final Goal, the date shall be June 30, 2024), Plaintiffs' Counsel will be entitled to collect reasonable attorney's fees and costs as calculated under applicable law.

112. The District acknowledges that any award of legal fees and expenses Plaintiffs may request may include fees and expenses incurred in or after October 2014 by Empire Justice, including by Jonathan Feldman, who is and has been associated with Empire Justice and also was its legal consultant at times, as well as Nixon Peabody LLP and its legal consultant, Bryan Hetherington, who are presently providing and are expected to continue to provide legal services to or on behalf of Plaintiffs.

113. Should the District become liable for payment of attorneys' fees under the previous paragraph, the Parties will make a good faith attempt to settle the amount of fees owed. Plaintiffs' Counsel will provide the District with a copy of their contemporaneously maintained time records and information on any disbursements as well as information on the reasonable billing rates for all individuals who worked on the case, and information on any billing judgment that was exercised. The District's General Counsel shall respond with the District's position within thirty (30) days. If the Parties reach an impasse in negotiation, or no agreement is reached within sixty (60) days after the submission by Plaintiffs' Counsel, either Party may make a motion concerning the reasonable amount of the attorneys' fees and disbursements within thirty (30) days after the Parties acknowledge they are at an impasse for sixty (60) days after the submission by Plaintiffs' Counsel. Nothing herein shall prohibit the Parties from extending the time limits in this paragraph upon mutual written consent.

ALTERNATIVE DISPUTE RESOLUTION

114. Where this Stipulation or the Consent Decree provides for Alternative Dispute Resolution, the following process shall apply:

- a. Either Party may declare a dispute by providing written notice, specifically setting forth the dispute in reasonable detail, to the other Parties.
- b. The other Parties shall respond to the notice within five (5) business days. If the exchange does not resolve the dispute, the Parties agree to submit the dispute to Bruce A. Goldstein, who they agree would be a suitable Mediator and who has indicated he is willing to serve in this role (the "Mediator") and has made disclosures required by Rule M-5 of the Commercial Mediation Procedures of the American Arbitration Association ("AAA"), which have been reviewed and accepted by the Parties, or, if he is not available, Judy Elliot or another person to be mutually agreed upon. The Party initiating the dispute shall have the obligation to notify the Mediator of the dispute.
- c. The Parties will thereafter meet with the Mediator as quickly as possible and in no event later than ten (10) business days from the transmission of notice to the Mediator to attempt to resolve the identified dispute. In the event that Mr. Goldstein is unavailable or otherwise unable to serve as Mediator, the Parties will promptly meet and select an alternate to serve as Mediator, and agree to give due consideration and preference to Judy Elliott to serve as Mediator, if she is available. The Parties agree that the mediation will be conducted consistent with Rules M-7 - M-11 of the Commercial Mediation Procedures of the AAA, to the extent not inconsistent with this Stipulation. In light of the indigence of the Plaintiffs, and the Plaintiffs' agreement not to pursue attorneys' fees other than as set forth in paragraphs 111-113 herein, any fees or expenses of the Mediator will be paid by the District.
- d. If the meeting with the Mediator is unsuccessful in resolving the noticed dispute, the Party initiating the dispute may agree to further meetings with the Mediator.
- e. The Parties may also agree to resolve the dispute through binding Arbitration, pursuant to the process negotiated by the Parties set forth as **Exhibit "I."**

MODIFICATION OF THE CONSENT DECREE

115. Should the substantive state or federal laws or regulations governing any of the provisions set forth in the Stipulation or Consent Decree or the subjects covered by the Action change, the Parties agree to meet at the request of either Party within thirty (30) days to discuss the impact of any such change. If the Parties agree that any changes to this Stipulation, or any of its exhibits, are appropriate as a result of such changes, they will enter into a stipulation providing for the amendment(s), and submit it to the Court for approval.

116. Should Federal, State, or local government undertake an action changing the governance structure of the District, or changing the District's budget or how the District is funded, or if an event, such as a natural or man-made occurrence or disaster, public health emergency, or other state of emergency, including the Covid-19 pandemic should occur, or continue to occur, that causes in-person instruction for SWD to be suspended for a material period of time and purports to prevent the District from complying with the provisions set forth in this Stipulation or the Consent Decree, the District will notify Plaintiffs' Counsel, and the Parties agree to meet within thirty (30) days to discuss the impact of any such action or change. If the Parties then agree that any resultant modifications to this Stipulation and/or the Consent Decree should be made, that the deadlines set forth herein or in the Consent Decree should be extended, or that the Consent Decree should be otherwise stayed, they may enter into a stipulation and submit it to the Court for approval. Nothing contained herein, however, shall relieve the District from its obligation to comply with the law and nothing contained herein shall preclude or limit Plaintiffs' Counsel from arguing that any such changes may make it more difficult, but will not prevent, the District from complying with its obligations under the Stipulation and Consent Decree.

117. Nothing contained herein shall preclude the Parties, upon consent, from seeking approval from the Court to modify any provision of this Stipulation or the Consent Decree. Nor shall anything contained herein be deemed to limit or waive the rights of any Party to seek a modification from the Court of this Stipulation or the Consent Decree.

TIME AND TERM

118. The obligations in this Stipulation, other than the District's obligation to comply with all applicable laws, and to continue the reporting required in the Stipulation or Consent Decree, shall end upon the entry of a non-appealable Order of Full Disengagement or other Order dismissing or voluntarily dismissing the Action. In no event shall Plaintiffs or Plaintiffs' Counsel have any rights, authorities, or powers under this stipulation following the termination of monitoring and/or entry of a non-appealable Order of Full Disengagement or other Order dismissing or voluntarily dismissing the Action.

119. The Parties acknowledge that the Parties, new students, parents, and any students or parents who become part of the Plaintiff classes or subclasses or subject to this Stipulation, shall have the rights provided under any and all laws then-applicable to periods of time subsequent to the time covered by this Stipulation.

120. Any notice to be given by one Party to another hereunder shall be in writing and shall be deemed given when delivered, personally or by email, on the date sent if prior to 5:00 p.m. local time on a business day, or, if after 5:00 p.m. or not on a business day, on the next business day, and addressed as follows:

If to Plaintiffs' Counsel:

Maggie R. Robb, Esq.
Empire Justice Center
One West Main Street, 2nd Floor
Rochester, NY 14614
Email: mrobb@empirejustice.org
Tel: (585) 295-5724

With a copy to (which shall not constitute notice for purposes hereunder):

Carolyn G. Nussbaum, Esq.
Nixon Peabody LLP
1300 Clinton Square
Rochester, NY 14604-1792
Email: cnussbaum@nixonpeabody.com
Tel: (585) 263-1558

If to the Rochester City School District or the Board of Education of the Rochester City

School District:

Department of Law
Rochester City School District
131 W. Broad Street
Rochester, NY 14614
Attn: General Counsel
Email: Judith.Rutalis@rcsdk12.org and/or email address of General Counsel or
other Executive Assistant to the General Counsel
Tel: (585) 262-8267
(585) 262-8410

121. Each of the Parties represents and warrants and covenants: (i) that such Party has the right, power and authority to enter into and carry out its obligations under this Stipulation; and (ii) that this Stipulation has been duly executed and delivered by an authorized agent of such Party, and constitutes its valid and legally binding agreement and obligation and is enforceable according to its terms. Each Party further warrants and represents that the execution, delivery and performance of this Stipulation (i) have been duly authorized by all necessary or proper corporate, statutory or other applicable actions; (ii) do not contravene any provision of such

person's charter or other applicable governing documents; (iii) do not violate any order or decree of any court; (iv) do not conflict with or result in the breach or termination of, constitute a default under, or accelerate or permit the acceleration of any performance required by, any agreement or other instrument with such person as a Party or by which such person or any of its property is bound; and (v) do not require the consent or approval of any authority or person who is not a signatory to this Stipulation.

122. The Settlement Agreement between the Parties effective January 2, 2019, is fully superseded, supplanted, and replaced by this Stipulation.

Plaintiff's, by their Counsel:

EMPIRE JUSTICE CENTER

By: Maggie R. Rott Date: 10/22/20

Its: Senior Attorney

NIXON PEABODY LLP

By: Chaz M. ... Date: 10/22/2020

Its: Partner

Defendants, by their Counsel:

ROCHESTER CITY SCHOOL DISTRICT

By: Ed. ... Date: 10/22/20

Its: GENERAL COUNSEL

EXHIBIT "A"

Board Meeting: January 25, 2018

Whereas, the District is indeed grateful for the concern and support shown by individuals and organizations in the community, therefore be it

Resolved, that the Board hereby accepts this donation.

Seconded by Member of the Board Commissioner Adams
Adopted 6-0 with Commissioner Evans absent

Resolution No. 2017-18: 561

By Member of the Board Commissioner Hallmark

Whereas, the Board of Education of the City School District has commissioned a Special Committee to serve as an advisory body to the Board for the purpose of reviewing the Board's policies on special education programming and services, reviewing the District's practices and protocols relating to special education programs and services, and proposing solutions to the District's challenges in special education; and

Whereas, the Board, has the authority, per the Advisory Bodies Policy No. 2260, to create advisory bodies that use the talents, resources, and interests available in the broader community to assist in developing the programs needed for the maintenance of a quality educational program in the schools of the district; and therefore be it

Resolved, that the Board authorizes the appointment of an advisory body to the Board known as the Committee to Review Special Education Programs and Services on the basis of interest, experience, and expertise for the purpose of advising and recommending courses of action to the Board for its consideration in resolving issues related to school selection and placement.

Seconded by Member of the Board Commissioner Adams
Adopted 6-0 with Commissioner Evans absent

Motion to amend **Resolution No. 2017-18: 562** to read as follows: "Resolved, that the Board endorses, and encourages ~~teachers~~ all staff members to participate in, A Day of Understanding to Affirm that Black Lives Matter at School, to be held on Friday, February 16, 2018." Motion carries 6-0 with Commissioner Evans absent.

Resolution No. 2017-18: 562

By Member of the Board Commissioner Hallmark

Whereas, in response to both currently and historically disparate treatment of African Americans, a nationwide movement has arisen to assert that Black Lives Matter; and

EXHIBIT “B”

Report and Recommendations of the Special Advisory Committee on Special Education

April 30, 2018

On January 25, 2018, the Board of Education created a Special Committee to serve as an advisory body to the Board. Board Resolution No. 2017-18: 561. The Special Committee was asked to:

- review the Board’s policies on special education programing and services;
- review the District’s practices and protocols relating to special education programs and services; and
- propose solutions to the District’s challenges in special education.

The Members of the Board of Education and Empire Justice Center, which had threatened suit over the legal non-compliance throughout the District’s special education system, were asked to suggest possible members of the Special Committee. The President of the Board appointed a diverse group of individuals to the Special Committee. The Special Committee was chaired by Commissioner Funchess.

The members of the Special Committee included parents of students with disabilities, advocates for students with disabilities, individuals with knowledge of the particular issues involving students and parents whose primary language is not English, individuals with deep knowledge of what works to successfully assess, educate, and provide services to students with disabilities, District staff, including a related service provider, the Interim Executive Director of Special Education and an attorney from the Counsel’s Office for the District. The names of the members are attached.

The Special Committee met weekly from February 26, through April 23, 2018. Discussions were animated, but there was a remarkable degree of consensus about both the widespread scope of the problems, and the belief that they could be solved with appropriate actions by the District. The members reviewed:

- The Report from the Council of Great Cities Schools on special education prepared in 2008-09;
- The Report by Judy Elliott, Ph.D., prepared in April 2017, and presented to the Board of Education last summer;
- Information about the two reports of Patrick Tydings, Esq. on issues in the Committee on Education process prepared for Superintendent Vargas.

- Data about current District performance on a number of special education requirements that are subject to empirical measurement;
- Experiences of parents, advocates, administrators, school staff , and outside experts regarding the District's performance in evaluating and providing education and services to students with disabilities;
- Information from the District about current staffing levels and vacancies in special education;
- Information about findings of non-compliance from the State Education Department;
- Information on accountability structures or the lack thereof for key tasks in special education; and
- Information about the limits of the current data reporting system to provide front line staff and managers with the key information they need to ensure compliance with the law and quality programs and services

Based on the review, the Special Committee concluded that there are wide-spread and very serious problems in virtually every aspect of the District's special education programs and services. These problems both lead to non-compliance with the District's legal obligations and perhaps, more importantly, to the predictable failure of students with disabilities to succeed to the extent to which they are capable.

Problems identified in the reports and by the members of the Special Committee included:

- Parents are not treated as if they are full participants in all decisions involving special education for their children, as is required by law.
- Parents do not always receive written notices of CSE meetings within the legally required time, and meetings must be rescheduled with delays in decision and then in providing programs and services.
- Parents are not always provided with printed copies of fully completed IEPs and CSE minutes at the CSE meeting or within a few days thereafter.
- The low levels of academic performance of students with disabilities.
- Sometimes decisions made at CSE meetings are not reflected in the minutes or in the printed version of the IEP, and at other times, items on the IEP are changed without informed parental consent because of lack of space or services, or transfer to a program like Lynx.
- CSE meetings are rescheduled because not all the required evaluations have been completed on time. This delays the start of services or placement beyond the legally required time.

- Not enough trained staff are available to timely conduct all CSE meetings (including annual reviews and reevaluation reviews).
- Not enough trained and (where required) certified staff are available to deliver the programs and services on the IEPs of all students. This results in students illegally awaiting placements, and failing to receive services on IEPs.
- The District's lack of sufficient programs and services to meet the projected needs for placements and services has also resulted in: students not receiving their program and services in the school that they would have attended if they did not have a disability; being placed wherever there is an opening, rather than with students with similar needs; being placed in settings with more students with disabilities than is permitted; and having IEPs altered to provide for programs and services that are available, instead of those that the CSE believes are really needed.
- Students with disabilities are suspended at disproportional rates, and receive harsher penalties than non-classified students.
- The District's process for determining whether a potentially suspendable offense is a manifestation of a disability, relies on illegal criteria and fails to prevent suspension when the student is not receiving all the services on their IEP (in their primary language) or the staff has failed to comply with their BIP. Suspending children whose IEPs have not been implemented is illegal.
- Some building administrators use illegal strategies to avoid manifestation determinations including: repeat short term suspensions totaling more than 10 days; telling parents to keep children at home or sending children home without formally suspending them; and not determining whether students were receiving the program and all services on their IEPs before making truancy referrals.
- The District's CSEs fail to follow the state requirements for determining the appropriate classification of students with regard to certain disabilities, leading to inappropriate decisions about classification, and sometimes racial inequities in classification.
- The District's Special Education management information system does not currently permit senior managers to easily track and measure compliance (and the locations of non-compliance) with key quantifiable compliance metrics.
- The District does not conduct Functional Behavior Assessments (FBA's) or develop Behavior Improvement Plans (BIP's) for all students for whom they are required.
- When prepared, they are not consistently completed by appropriate staff and are not monitored for their continued effectiveness.

- RCSD does not have appropriate programs and services to adequately meet the needs of many of its students with emotional, psychological, or psychiatric disabilities.
- RCSD does not always provide qualified translators at all CSE meetings where the primary and preferred language of the parent and/or a child is other than English. This is even more true when the preferred non English language is not Spanish.
- RCSD does not translate all important documents concerning students with disabilities whose parents who would prefer the documents in their primary language. This prevents RCSD from obtaining informed consent and the required parental participation in shared decision making.
- RCSD does not have the bilingual staff needed to conduct all the evaluations and deliver all the programs and services which should be provided in the primary language of the student.
- RCSD fails to provide tutors who can communicate in the student's primary language, or alternative services in the student's primary language to ELL students with disabilities who are suspended.
- RCSD fails to provide the quarterly IEP Progress Reports to the parents of all students with IEPs on the same schedule as report cards as is required
- RCSD fails to conduct the required transition planning in the years for which it is required for students with IEPs, and fails to update transition plans as student needs change. Transition plans are not thoroughly completed and do not meet the legal requirements, resulting in a denial of a "free appropriate public education" to students.. This results in a lack of meaningful planning to prepare the student for either integrated, competitive employment or higher education.
- RCSD does not have the staff and services needed to provide effective transition services to all students with disabilities.
- RCSD CSEs conducting Annual Reviews often continue the same placement and services in cases where the student has made little or no progress toward achieving their expected level of performance during the past year.
- RCSD is unable to provide the full continuum of services needed by its students with disabilities. This results in CSEs recommending both inappropriate placements as the next best option and unnecessary out-of-district placements.
- RCSD restricts access to Extended School Year programming and services to students classified with intellectual disabilities and autism, rather than conducting an individualized analysis of regression for students classified in other categories.

- Students with disabilities are not included to fullest extent possible in both instructional and extracurricular activities and opportunities at all schools.
- Understanding of and compliance with RCSD's section 504 process is highly variable based on school settings, which results in frequent violations of section 504. The section 504 process is frequently not used in cases where providing services under section 504 might be appropriate to avoid an eventual need for classification.
- There are not sufficient trained behavior specialists and analysts to meet the significant behavioral needs of special education students in the district.
- The professional development needs, across the board, of the special education staff are not being met in order to provide the education to which all children are entitled.
- There is a significant lack of accountability in Special Education in the district, in part caused by lack of specificity of roles and responsibilities, and in part because of the lack of continuity of supervisors.

In addition to the issues listed above, the Special Committee identified many areas in which current systems could be improved to help children with disabilities succeed.

The consequences of these problems have a profound effect on children. Most children with disabilities, with appropriate programs and services can be expected to graduate and to go on to either market rate employment or higher education. But despite modest improvements over the past several years, fewer than one third of Rochester's students with disabilities graduate.

The Committee further noted that over the past several years the number of people leading and supervising special education in the District has been significantly reduced, and many of the written guidelines, procedures, and documented processes covering special education were suppressed or removed, creating confusion and non-compliance. The current leadership of the Department is beginning to address this issue. In addition, the revolving leadership of the Department, coupled with lack of processes to ensure continuity of initiatives to improve performance, has led to initiatives to fix problems which were begun by one leader, and then simply stopped when that leader left the District.

An example of the lack of continuity can be seen in the failed efforts to ensure that the District conduct the planning needed to allow it to have sufficient staff and space available to meet the needs to place children whose needs for program and services are identified by the Committees on Special Education throughout the year. In recent years the Department's budget has been developed, and space and staff secured, for the number of children with disabilities expected to be in place in September. But each year as the year goes on, hundreds

of students are newly classified and predictably they need programs and services. With space at a premium because of Facilities Modernization, and certified special educators and service providers not being available for hire midyear, the lack of planning for expected growth has led to significant problems.

After a series of years in which the District could not place children in programs and provide appropriate services to them because it did not have the space and staff, in early 2016 Dr. Otuwa, convened a workgroup to solve the problem by the beginning of the 2017-18 school year. When she left the District no one was tasked with completing the work. As a result, again this year, the District is unable to provide appropriate programs and services with certified staff to all children whom the Committee on Special Education has determined to need them.

The scope of the District's problems was so broad and deep that the Special Committee believed that it was impossible to recommend specific solutions to all of them within the two months allotted for the first phase of our work. Instead, we agreed upon a series of overarching core recommendations, and developed a process to develop a series of specific recommendations for the Board of Education in the following areas over the next six months.

Core Recommendations:

1. The Board of Education commit that the District will become fully compliant with all its legal obligations to students with disabilities and to those suspected of having disabilities within three years, and will meet a series of milestones for compliance in specific areas over that period of time.
2. The Board authorizes Counsel to make this commitment in a legally enforceable Consent Decree, containing specified consequences should the District fail to substantially comply with its obligations, in order to make it likely that the resources needed to fix the problems are made available to those charged with fixing them, even if District senior leadership changes over the three years.
3. These consequences for failure to substantially bring its programs into compliance with its legal obligations under the Consent Decree would include appointment of a Special Master to externally oversee compliance activities; appointment of an outside monitor to guarantee accurate reporting of the District's performance on its obligations; and awarding Empire Justice Center the statutory attorney's fees that it has agreed not to ask the District to pay, if the District substantially complies with its obligations under the Consent Decree.

The Special Committee believes that it will take complete support, discipline, and focus from the most senior levels in the District in order for these initiatives to succeed. While many of them can be carried out by the Special Education Department, others will require action by

other Departments and individuals who do not report through Special Education. The enumerated consequences are intended to make sure that Senior Leadership of the District take all the actions needed for the District to comply with its legal obligations.

The consequences proposed, are precisely those that would be likely to be Ordered if the District, instead of resolving these problems consensually through this process, lost a class action lawsuit and then failed to substantially comply with a Court Order to bring the District into compliance with the law within a fixed period of time set by the Court (which might well be less than three years). One significant benefit to the District is that, if it does substantially comply with its obligations to end the current widespread noncompliance with three years, it will incur no legal costs for counsel for the students. Under law, reasonable attorney's fees for lawyers for students who prevail in special education cases must be paid by school Districts. This provision would be likely to save the District well in excess of \$1 Million.

In addition, the Special Committee has discussed and has reached consensus that the Special Education Department currently is not sufficiently staffed to complete all the activities that it must complete under law. In order to bring RCSD back into compliance, the Special Committee is recommending a number of new initiatives (some of which were previously recommended by Judy Elliott and others who have looked at the District) that will require additional staff time above that which would be required to run the department.

4. We also recommend that the District put aside sufficient funding in the 2018-19 budget to retain an outside consultant who can look objectively at the work that needs to be accomplished over the next three years, and make recommendations to RCSD about the number, positions, skills, and levels of staffing needed to successfully carry out the reformation of services and instruction for children with disabilities in accord with our recommendations.

Should the Board of Education approve the recommendations above, the Special Committee will take up the topics below in smaller work groups, again consisting of parents, advocates, experts and District staff and leaders and it will complete its work within six months.

The Process to Develop and Recommend Concrete Solutions

We believe that the process of engaging, parents, advocates, District staff and outside experts has worked well. We recommend that the District commit to a process in which smaller work groups, established by the Special Committee, study particular issues and bring their recommendations back to the full Special Committee. After review by the Special Committee, the recommendations of the workgroups would go to the Board for their consideration of them.

In conducting their review of their specific areas each of the work groups will be asked to look at how the work in their respective areas can promote high expectations, and be responsive to the cultural, linguistic and economic makeup of the children in the District. They will also be asked to make recommendations in their area that promote true belonging and the affirming of all students

After the work groups conclude their work, the full Special Committee would also make recommendations to the Board on:

- Accountability Systems;
- Needed information system improvements;
- A Professional Development strategy; and
- Supervision Structure, and Needed staffing for both administration and program delivery.

The seven work groups that the Special Committee proposes to create will look at:

Issues that Occur Before the Meetings of the Committee on Special Education

A common theme in our review of previous reports and current experiences is that a significant number of children are classified as in need of special education programs and services because the District does not have effective tools short of classification to keep children from falling so far behind their peers that they need to be classified. At the same time, the reports reviewed and the experiences of the Special Committee demonstrated significant issues with whether the decisions by Committees on Special Education conformed to the criteria for various classifications set out in law and regulation. A work group will examine all the issues that occur before the actual meeting of the Committee on Special Education including:

- actions the District could take to avoid unnecessary classification of students by intervening earlier;
- the factors that cause the District to fail to identify students in need of help before they are very far behind their peers;
- referral processes for children suspected of having disabilities; and
- how to provide high quality, timely, and culturally appropriate assessments of students suspected of having disabilities.

Issues Involving Committee on Special Education Meetings and Placement

This work group will examine and make recommendations on all the issues involving the Committee on Special Education process. These will include:

- how to fix the widespread failure to convene CSE meetings, make decisions and provide Individualized Education Plans within the timelines required by law;
- how to eliminate the racial and other disparities in classification of students with disabilities;
- special issues involving the Preschool Committee on Special Education;
- issues involving the CSE meeting process and the quality of decisions and Individualized Education Plans;
- Issues that cause illegal and inappropriate placement of children (including the inability to timely place them or provide services; and
- Transportation Issues

Issues Involving Appropriate Program and Services

This work group will study and make recommendations about:

- Appropriate Range of Programs and how to end delays in placement because of lack of staff and space
- Ensuring students with disabilities have access to High Quality, Rigorous Academic Curriculum/Instruction (including Academic Pathways)
- Ensuring that all services and programs are timely delivered by appropriate staff
- Multi-Tiered System of Support

Four special area work groups will be convened to make recommendations about:

Evaluations and Services for Children on the Autism Spectrum

Transition Planning and Services

Behavior- suspensions, crisis intervention, and behavior specialists, including:

- Behavioral and Emotional Issues (including FBAs and BIPs)
- Disparities in Discipline
- Suspensions, Removals, and Manifestations

and

Special Issues involving Bilingual Students and Parents

Report and recommendations within accepted by the Rochester Board of Education on May 24, 2018.

EXHIBIT “C”

**Second Report and Recommendations of the
Special Advisory Committee on Special Education**

March 18, 2019

On January 25, 2018, the Board of Education created a Special Committee to serve as an advisory body to the Board. Board Resolution No. 2017-18: 561. The Special Committee was asked to:

- review the Board’s policies on special education programing and services;
- review the District’s practices and protocols relating to special education programs and services; and
- propose solutions to the District’s challenges in special education.

The Special Committee is chaired by Former Commissioner Funchess. Its members include the Executive Director of Special Education, the District’s Counsel for Special Education, a related services provider, outside experts in special education, disabilities and education of students who are English Language Learners, parents of students with disabilities, and advocates for students with disabilities.

The Special Committee identified twenty nine (29) systemic problems in special education, a list of which was contained in the Report, and proposed a process for resolving the problems within three years. It recommended that the Special Committee continue its work and make recommendations to the Board about:

- what actions the District should take to solve the twenty nine (29) problems it had identified and
- a set of measurable Disengagement Goals (with Interim Annual Benchmarks) that could be used to demonstrate to the Court that the District had made the changes in its practices that were needed to correct the root causes of the twenty nine (29) systemic problems identified in the Report.

On May 24, 2018 the Board of Education unanimously approved a motion to accept the Report and Recommendations of the Special Committee. A copy of the Special Committee’s original Report and Recommendations is attached.

In the summer of 2018 the Special Committee began its task of developing recommendations for solving the twenty nine (29) problems. It created eight workgroups consisting of several members of the Special Committee, augmented by District management and staff with expertise in the area, outside experts, parents, and advocates to study and make recommendations to the full Special Committee in the following areas:

- Issues that Occur Before the Meetings of the Committee on Special Education
- Issues Involving Committee on Special Education Meetings and Placement
- Issues Involving Appropriate Program and Services
- Evaluations and Services for Children on the Autism Spectrum
- Transition Planning and Services
- Behavior- suspensions, crisis intervention, and behavior specialists
- Issues involving Bilingual Students and Parents
- Partnering with Parents

Throughout the fall and winter those eight work groups met weekly and when they finished, reported their recommendations to the full Special Committee. The full Special Committee reviewed and approved them on February 15, 2019. A list of the recommended actions to remedy the twenty nine (29) problems sorted by area of focus of the work groups is attached.

Under the process approved by the Board in May, the full Special Committee was charged with making recommendations on Information Systems, Accountability, Staffing and Professional Development that would be needed to solve the twenty nine (29) problems identified in the original Report. The Special Committee developed recommendations for these areas which were approved on March 13, 2019. A list of the recommended actions in the areas of Information Systems, Accountability, Supervision and Staffing, and Professional Development is also attached.

The other major responsibility for the Special Committee was to develop a set of measurable Disengagement Goals (with Interim Annual Benchmarks) that could be used to demonstrate to the Court that the District had made the changes in its practices that were needed to correct the root causes of the twenty nine (29) systemic problems identified in the Report. In an attempt to find a successful model, the Special Committee looked for other major, diverse cities with large school districts which had solved the significant problems in their Special Education systems following litigation. The Los Angeles experience seemed to be the most successful over the shortest period of time.

After decades under a consent decree that tried to measure performance of every process in special education and required that all of them be performed pretty much perfectly, which was not leading to student success, the parties in Los Angeles renegotiated the agreement to provide that, if the District achieved a set of measurable outcomes, it would be eligible to be disengaged from Court supervision of its special education program. The Los Angeles District has 16 measures and within a reasonable time has achieved the required

metrics on 15 of them. Members of the Special Committee had conversations with the staff in the Office of the Independent Monitor in Los Angeles and reviewed the documents and reports on the Los Angeles litigation. They were advised to try to limit the Disengagement Goals to about a dozen so that the District leaders and staff could focus on what was most important to children.

After considerable discussion the Special Committee decided to recommend the establishment of Disengagement Final Goals for the following areas:

1. The average passing performance of classified students on state English Language Arts and Math assessment in grades 3 through 8.
2. Graduation Rate for classified students.
3. Reductions in Long Term Suspensions of Students with Disabilities and other involuntary out of classroom events (e.g. short term suspensions and asking parents to come and pick up children without suspending them). This Goal also includes a racial equity sub measure to eliminate the current racial disparities in suspensions among Students with Disabilities.
4. An increase in the percentage of classified students who are receiving their instruction in settings with students without disabilities.
5. A decrease in the percentage of classified students who are removed from the school they would have otherwise attended but for their classification. This measure excludes students with high or very specialized needs who are transferred to attend the certain programs for which there are low numbers of students in the District who require the program.
6. The percentage of students with disabilities in the relevant age group who have legally compliant Transition Plans.
7. Timely completion of all Committee on Special Education meetings (initial, annual, and reevaluation review).
8. Timely delivery of all programs and services on Individualized Educational Programs.
9. Increased parental participation in Committee on Special Education meetings.
10. The District will provide bilingual programming for bilingual students with disabilities that mirrors the special education programming for monolingual students with disabilities.
11. Increase in the percentage of teachers and other providers of services on Individualized Educational Programs who are appropriately certified or qualified.
12. Eliminate disparities in classification of students of color compared to white students.

13. Percentage of targeted staff members who receive the appropriate amount of qualifying (i.e. high quality and effective) professional development in areas to support the goals of the Consent Decree.

For each Final Disengagement Goal proposed the Special Committee then examined:

- The current level of performance;
- What commitments, if any, had already been made to improve performance on that goal to external entities like the New York State Education Department;
- Where applicable, what level of performance is required by law or regulation;
- What data measures are available or can be created with reasonable effort; and
- What level of improvement is achievable over the next three and a half years, including what Interim Benchmarks should be established to measure whether the District was on target for reaching each Final Goal?

Based on the review of that information, which was provided by the Executive Director of Special Education, the Special Committee made additional modifications to the proposed Interim Benchmarks and Final Goals, which were then accepted unanimously on February 19, 2019. The Special Committee recognized that some of the recommended Final Goals will leave the District still short of full compliance with its legal obligations at the end of the 2021-22 School Year but it did not believe that full compliance could be achieved within three and a half years. In those areas, the Special Committee adopted Final Goals that would be reasonably achievable within that time period, with the expectation that the changes made to achieve the goal would lead to full legal compliance in future years beyond the 2021-22 school year. The Final Disengagement Goals and Interim Benchmarks are attached.

The Special Committee also recommends that the Board of Education continue the Special Committee and assign it the tasks of:

- continuing to consult with the Board of Education and the Executive Director of Special Education to assist them with solving problems and issues that come up during implementation of the Consent Decree; and
- reporting annually to the Board of Education, to parents of students with disabilities, and the public on the progress made in remedying the issues in special education.

Report and Recommendations of the Special Advisory Committee on Special Education

April 30, 2018

On January 25, 2018, the Board of Education created a Special Committee to serve as an advisory body to the Board. Board Resolution No. 2017-18: 561. The Special Committee was asked to:

- review the Board's policies on special education programing and services;
- review the District's practices and protocols relating to special education programs and services; and
- propose solutions to the District's challenges in special education.

The Members of the Board of Education and Empire Justice Center, which had threatened suit over the legal non-compliance throughout the District's special education system, were asked to suggest possible members of the Special Committee. The President of the Board appointed a diverse group of individuals to the Special Committee. The Special Committee was chaired by Commissioner Funchess.

The members of the Special Committee included parents of students with disabilities, advocates for students with disabilities, individuals with knowledge of the particular issues involving students and parents whose primary language is not English, individuals with deep knowledge of what works to successfully assess, educate, and provide services to students with disabilities, District staff, including a related service provider, the Interim Executive Director of Special Education and an attorney from the Counsel's Office for the District. The names of the members are attached.

The Special Committee met weekly from February 26, through April 23, 2018. Discussions were animated, but there was a remarkable degree of consensus about both the widespread scope of the problems, and the belief that they could be solved with appropriate actions by the District. The members reviewed:

- The Report from the Council of Great Cities Schools on special education prepared in 2008-09;
- The Report by Judy Elliott, Ph.D., prepared in April 2017, and presented to the Board of Education last summer;
- Information about the two reports of Patrick Tydings, Esq. on issues in the Committee on Education process prepared for Superintendent Vargas.

- Data about current District performance on a number of special education requirements that are subject to empirical measurement;
- Experiences of parents, advocates, administrators, school staff , and outside experts regarding the District's performance in evaluating and providing education and services to students with disabilities;
- Information from the District about current staffing levels and vacancies in special education;
- Information about findings of non-compliance from the State Education Department;
- Information on accountability structures or the lack thereof for key tasks in special education; and
- Information about the limits of the current data reporting system to provide front line staff and managers with the key information they need to ensure compliance with the law and quality programs and services

Based on the review, the Special Committee concluded that there are wide-spread and very serious problems in virtually every aspect of the District's special education programs and services. These problems both lead to non-compliance with the District's legal obligations and perhaps, more importantly, to the predictable failure of students with disabilities to succeed to the extent to which they are capable.

Problems identified in the reports and by the members of the Special Committee included:

- Parents are not treated as if they are full participants in all decisions involving special education for their children, as is required by law.
- Parents do not always receive written notices of CSE meetings within the legally required time, and meetings must be rescheduled with delays in decision and then in providing programs and services.
- Parents are not always provided with printed copies of fully completed IEPs and CSE minutes at the CSE meeting or within a few days thereafter.
- The low levels of academic performance of students with disabilities.
- Sometimes decisions made at CSE meetings are not reflected in the minutes or in the printed version of the IEP, and at other times, items on the IEP are changed without informed parental consent because of lack of space or services, or transfer to a program like Lynx.
- CSE meetings are rescheduled because not all the required evaluations have been completed on time. This delays the start of services or placement beyond the legally required time.

- Not enough trained staff are available to timely conduct all CSE meetings (including annual reviews and reevaluation reviews).
- Not enough trained and (where required) certified staff are available to deliver the programs and services on the IEPs of all students. This results in students illegally awaiting placements, and failing to receive services on IEPs.
- The District's lack of sufficient programs and services to meet the projected needs for placements and services has also resulted in: students not receiving their program and services in the school that they would have attended if they did not have a disability; being placed wherever there is an opening, rather than with students with similar needs; being placed in settings with more students with disabilities than is permitted; and having IEPs altered to provide for programs and services that are available, instead of those that the CSE believes are really needed.
- Students with disabilities are suspended at disproportional rates, and receive harsher penalties than non-classified students.
- The District's process for determining whether a potentially suspendable offense is a manifestation of a disability, relies on illegal criteria and fails to prevent suspension when the student is not receiving all the services on their IEP (in their primary language) or the staff has failed to comply with their BIP. Suspending children whose IEPs have not been implemented is illegal.
- Some building administrators use illegal strategies to avoid manifestation determinations including: repeat short term suspensions totaling more than 10 days; telling parents to keep children at home or sending children home without formally suspending them; and not determining whether students were receiving the program and all services on their IEPs before making truancy referrals.
- The District's CSEs fail to follow the state requirements for determining the appropriate classification of students with regard to certain disabilities, leading to inappropriate decisions about classification, and sometimes racial inequities in classification.
- The District's Special Education management information system does not currently permit senior managers to easily track and measure compliance (and the locations of non-compliance) with key quantifiable compliance metrics.
- The District does not conduct Functional Behavior Assessments (FBA's) or develop Behavior Improvement Plans (BIP's) for all students for whom they are required.
- When prepared, they are not consistently completed by appropriate staff and are not monitored for their continued effectiveness.

- RCSD does not have appropriate programs and services to adequately meet the needs of many of its students with emotional, psychological, or psychiatric disabilities.
- RCSD does not always provide qualified translators at all CSE meetings where the primary and preferred language of the parent and/or a child is other than English. This is even more true when the preferred non English language is not Spanish.
- RCSD does not translate all important documents concerning students with disabilities whose parents who would prefer the documents in their primary language. This prevents RCSD from obtaining informed consent and the required parental participation in shared decision making.
- RCSD does not have the bilingual staff needed to conduct all the evaluations and deliver all the programs and services which should be provided in the primary language of the student.
- RCSD fails to provide tutors who can communicate in the student's primary language, or alternative services in the student's primary language to ELL students with disabilities who are suspended.
- RCSD fails to provide the quarterly IEP Progress Reports to the parents of all students with IEPs on the same schedule as report cards as is required
- RCSD fails to conduct the required transition planning in the years for which it is required for students with IEPs, and fails to update transition plans as student needs change. Transition plans are not thoroughly completed and do not meet the legal requirements, resulting in a denial of a "free appropriate public education' to students.. This results in a lack of meaningful planning to prepare the student for either integrated, competitive employment or higher education.
- RCSD does not have the staff and services needed to provide effective transition services to all students with disabilities.
- RCSD CSEs conducting Annual Reviews often continue the same placement and services in cases where the student has made little or no progress toward achieving their expected level of performance during the past year.
- RCSD is unable to provide the full continuum of services needed by its students with disabilities. This results in CSEs recommending both inappropriate placements as the next best option and unnecessary out-of-district placements.
- RCSD restricts access to Extended School Year programing and services to students classified with intellectual disabilities and autism, rather than conducting an individualized analysis of regression for students classified in other categories.

- Students with disabilities are not included to fullest extent possible in both instructional and extracurricular activities and opportunities at all schools.
- Understanding of and compliance with RCSD's section 504 process is highly variable based on school settings, which results in frequent violations of section 504. The section 504 process is frequently not used in cases where providing services under section 504 might be appropriate to avoid an eventual need for classification.
- There are not sufficient trained behavior specialists and analysts to meet the significant behavioral needs of special education students in the district.
- The professional development needs, across the board, of the special education staff are not being met in order to provide the education to which all children are entitled.
- There is a significant lack of accountability in Special Education in the district, in part caused by lack of specificity of roles and responsibilities, and in part because of the lack of continuity of supervisors.

In addition to the issues listed above, the Special Committee identified many areas in which current systems could be improved to help children with disabilities succeed.

The consequences of these problems have a profound effect on children. Most children with disabilities, with appropriate programs and services can be expected to graduate and to go on to either market rate employment or higher education. But despite modest improvements over the past several years, fewer than one third of Rochester's students with disabilities graduate.

The Committee further noted that over the past several years the number of people leading and supervising special education in the District has been significantly reduced, and many of the written guidelines, procedures, and documented processes covering special education were suppressed or removed, creating confusion and non-compliance. The current leadership of the Department is beginning to address this issue. In addition, the revolving leadership of the Department, coupled with lack of processes to ensure continuity of initiatives to improve performance, has led to initiatives to fix problems which were begun by one leader, and then simply stopped when that leader left the District.

An example of the lack of continuity can be seen in the failed efforts to ensure that the District conduct the planning needed to allow it to have sufficient staff and space available to meet the needs to place children whose needs for program and services are identified by the Committees on Special Education throughout the year. In recent years the Department's budget has been developed, and space and staff secured, for the number of children with disabilities expected to be in place in September. But each year as the year goes on, hundreds

of students are newly classified and predictably they need programs and services. With space at a premium because of Facilities Modernization, and certified special educators and service providers not being available for hire midyear, the lack of planning for expected growth has led to significant problems.

After a series of years in which the District could not place children in programs and provide appropriate services to them because it did not have the space and staff, in early 2016 Dr. Otuwa, convened a workgroup to solve the problem by the beginning of the 2017-18 school year. When she left the District no one was tasked with completing the work. As a result, again this year, the District is unable to provide appropriate programs and services with certified staff to all children whom the Committee on Special Education has determined to need them.

The scope of the District's problems was so broad and deep that the Special Committee believed that it was impossible to recommend specific solutions to all of them within the two months allotted for the first phase of our work. Instead, we agreed upon a series of overarching core recommendations, and developed a process to develop a series of specific recommendations for the Board of Education in the following areas over the next six months.

Core Recommendations:

1. The Board of Education commit that the District will become fully compliant with all its legal obligations to students with disabilities and to those suspected of having disabilities within three years, and will meet a series of milestones for compliance in specific areas over that period of time.
2. The Board authorizes Counsel to make this commitment in a legally enforceable Consent Decree, containing specified consequences should the District fail to substantially comply with its obligations, in order to make it likely that the resources needed to fix the problems are made available to those charged with fixing them, even if District senior leadership changes over the three years.
3. These consequences for failure to substantially bring its programs into compliance with its legal obligations under the Consent Decree would include appointment of a Special Master to externally oversee compliance activities; appointment of an outside monitor to guarantee accurate reporting of the District's performance on its obligations; and awarding Empire Justice Center the statutory attorney's fees that it has agreed not to ask the District to pay, if the District substantially complies with its obligations under the Consent Decree.

The Special Committee believes that it will take complete support, discipline, and focus from the most senior levels in the District in order for these initiatives to succeed. While many of them can be carried out by the Special Education Department, others will require action by

other Departments and individuals who do not report through Special Education. The enumerated consequences are intended to make sure that Senior Leadership of the District take all the actions needed for the District to comply with its legal obligations.

The consequences proposed, are precisely those that would be likely to be Ordered if the District, instead of resolving these problems consensually through this process, lost a class action lawsuit and then failed to substantially comply with a Court Order to bring the District into compliance with the law within a fixed period of time set by the Court (which might well be less than three years). One significant benefit to the District is that, if it does substantially comply with its obligations to end the current widespread noncompliance with three years, it will incur no legal costs for counsel for the students. Under law, reasonable attorney's fees for lawyers for students who prevail in special education cases must be paid by school Districts. This provision would be likely to save the District well in excess of \$1 Million.

In addition, the Special Committee has discussed and has reached consensus that the Special Education Department currently is not sufficiently staffed to complete all the activities that it must complete under law. In order to bring RCSD back into compliance, the Special Committee is recommending a number of new initiatives (some of which were previously recommended by Judy Elliott and others who have looked at the District) that will require additional staff time above that which would be required to run the department.

4. We also recommend that the District put aside sufficient funding in the 2018-19 budget to retain an outside consultant who can look objectively at the work that needs to be accomplished over the next three years, and make recommendations to RCSD about the number, positions, skills, and levels of staffing needed to successfully carry out the reformation of services and instruction for children with disabilities in accord with our recommendations.

Should the Board of Education approve the recommendations above, the Special Committee will take up the topics below in smaller work groups, again consisting of parents, advocates, experts and District staff and leaders and it will complete its work within six months.

The Process to Develop and Recommend Concrete Solutions

We believe that the process of engaging, parents, advocates, District staff and outside experts has worked well. We recommend that the District commit to a process in which smaller work groups, established by the Special Committee, study particular issues and bring their recommendations back to the full Special Committee. After review by the Special Committee, the recommendations of the workgroups would go to the Board for their consideration of them.

In conducting their review of their specific areas each of the work groups will be asked to look at how the work in their respective areas can promote high expectations, and be responsive to the cultural, linguistic and economic makeup of the children in the District. They will also be asked to make recommendations in their area that promote true belonging and the affirming of all students

After the work groups conclude their work, the full Special Committee would also make recommendations to the Board on:

- Accountability Systems;
- Needed information system improvements;
- A Professional Development strategy; and
- Supervision Structure, and Needed staffing for both administration and program delivery.

The seven work groups that the Special Committee proposes to create will look at:

Issues that Occur Before the Meetings of the Committee on Special Education

A common theme in our review of previous reports and current experiences is that a significant number of children are classified as in need of special education programs and services because the District does not have effective tools short of classification to keep children from falling so far behind their peers that they need to be classified. At the same time, the reports reviewed and the experiences of the Special Committee demonstrated significant issues with whether the decisions by Committees on Special Education conformed to the criteria for various classifications set out in law and regulation. A work group will examine all the issues that occur before the actual meeting of the Committee on Special Education including:

- actions the District could take to avoid unnecessary classification of students by intervening earlier;
- the factors that cause the District to fail to identify students in need of help before they are very far behind their peers;
- referral processes for children suspected of having disabilities; and
- how to provide high quality, timely, and culturally appropriate assessments of students suspected of having disabilities.

Issues Involving Committee on Special Education Meetings and Placement

This work group will examine and make recommendations on all the issues involving the Committee on Special Education process. These will include:

- how to fix the widespread failure to convene CSE meetings, make decisions and provide Individualized Education Plans within the timelines required by law;
- how to eliminate the racial and other disparities in classification of students with disabilities;
- special issues involving the Preschool Committee on Special Education;
- issues involving the CSE meeting process and the quality of decisions and Individualized Education Plans;
- Issues that cause illegal and inappropriate placement of children (including the inability to timely place them or provide services; and
- Transportation Issues

Issues Involving Appropriate Program and Services

This work group will study and make recommendations about:

- Appropriate Range of Programs and how to end delays in placement because of lack of staff and space
- Ensuring students with disabilities have access to High Quality, Rigorous Academic Curriculum/Instruction (including Academic Pathways)
- Ensuring that all services and programs are timely delivered by appropriate staff
- Multi-Tiered System of Support

Four special area work groups will be convened to make recommendations about:

Evaluations and Services for Children on the Autism Spectrum

Transition Planning and Services

Behavior- suspensions, crisis intervention, and behavior specialists, including:

- Behavioral and Emotional Issues (including FBAs and BIPs)
- Disparities in Discipline
- Suspensions, Removals, and Manifestations

and

Special Issues involving Bilingual Students and Parents

Report and recommendations within accepted by the Rochester Board of Education on May 24, 2018.

Goal State	Strategic Action Steps
Transition	
Continuous transition planning, implementation, and documentation	TR 1.1: Students will attend their CSE meeting from 5th grade on with discussion of future planning · Explore student led IEP's (WIHD has protocol) · Older students as peer mentors
	TR 1.2 Transition checklist for students, families, and teachers by grade 6
	TR 1.3 Develop a transition toolkit for each grade level (update each year) which must open the possibility of a broad spectrum of opportunities
Professional Development provided by subject matter experts	TR 2.1: Assess quality of current transition plans
	TR 2.2 Determine already existing transition planning tools
	TR 2.3 Develop 10 module transition training professional development program for teachers/admins
Appoint a Director of Transition	TR 3.1: Director of Transition requires change in organizational structure
	TR 3.2 Requires funding
	TR 3.3 Director of transition and director of CTE must work closely together
Autism	
Functional ASD Team	ASD 1.1 Assess ASD team's competencies & training
	ASD 1.2 Expand ASD team to minimum of 4 professionals with minimum of 1 BCBA/LBA
	ASD 1.3 Clarify ASD team job expectations

Adequately staffed ASD Team/Sustain appropriate levels of staffing & certifications	ASD 2.1 Increase repertoire & competency level of evidence- based practices ASD team members use/endorse
	ASD 2.2 Assess ASD team expansion options & use evidence-based practices for caseloads & models of service
	ASD 2.3 Inform, collaborate, & investigate to sustain licensing, certification, & endorsement associations
Sustain collaboration w/ UofR and CCP	<i>ASD 3.1 Initiate 2019-20 budgetary discussions</i>
	<i>ASD 3.2 Develop a multi-year plan that targets capacity building efforts</i>
	<i>ASD 3.3 Establish RCSD School Board investment to endure any district leadership changes</i>
Written Protocol for "embedded service delivery"	<i>ASD 4.1 University of Rochester's SCDD/CCP collaborates with ASD Team SLP to formalize protocol model for School #45</i>
	<i>ASD 4.2 Outcome measures identified to evaluate model's effectiveness</i>
	ASD 4.3 Assess teacher & SLP providers understanding/skills regarding embedded service models & collaborative practices
Align ASD Team under the office of Related Services	ASD 5.1 Place ASD team administratively under Related Services Providers
	ASD 5.2 ASD team engages with other related service teams to form the "Intensive School Supports" multidisciplinary team
	<i>ASD 5.3 "Intensive School Supports" multidisciplinary team functions with participation of ASD team</i>
ASD Team provided w/ PD	ASD 6.1 Develop professional development expectations for ASD team
	ASD 6.2 Identify professional development needs of current ASD team
	ASD 6.3 Identify timeframe for meeting ASD team's ongoing professional development
Provide a continuum (PK-21) of ASD programming	ASD 7.1 Form multidisciplinary committee to investigate a continuum of effective, evidence-based transition-age ASD classrooms with a proven long-term financial sustainability
	ASD 7.2 Identify who multidisciplinary team should share their investigation outcomes with

Include participation of ASD team member whenever a change in placement	ASD 8.1 Amend program determination process to include member of ASD team actively participating in CSE process when placement includes change to more or less restrictive educational environment
	ASD 8.2 Specify program determination process includes within district & out-of-district placement determinations
	ASD 8.3 Develop professional learning opportunity to increase special educator knowledge of evidence-informed process
	ASD 8.4 Continue ASD team member participation in 4-Go 5 meetings
Have experienced and trained staff transferring into ASD classrooms	ASD 9.1 Director of special education will define what constitutes a qualified staff member.
	ASD 9.2 Qualified staff are given seniority for ASD classroom transfers.
	ASD 9.3 Interviews should be completed for Para and TA Autism placements as a program not a school with a member of the Autism team participating in the process.
	ASD 9.4 ASD staff members with poor/failed evaluations should be moved out of the program.
Time should be allotted within contracts for trainings and team meetings	ASD 10.1 Superintendent days and professional development days should be scheduled between October and May
	ASD 10.2 There will be scheduled times on superintendent and professional development days that all ASD personnel must be released from their building to complete training at a central location
	ASD 10.3 Begin discussion to re-instate early Wednesday and/or build in one hour per week to increase ASD personnel's ability to attend PD and team meetings
Provide quality parent trainings with consistency across programs and schools	ASD 11.1 Director of special education will define what adequate parent training is, including a menu of training topics, and disseminate that information to CASEs
	ASD11.2 Measure attendance of parents to develop a plan of action to increase parent participation
	ASD 11.3 There will be monitoring by the CASEs and director of special education to ensure consistency across and programs
	ASD 11.4 Discussion should begin to set up a series of ASD training for the parents to attend throughout the school year
CASEs and psychologists will have a clear understanding of what the ASD program options look like, as well as what Autism is	ASD 12.1 There will be scheduled times on superintendent and professional development days that CASEs, school psychologists and building administrators are required to complete ASD training at a central location.

CSE and Placement

CSE 1.1 RCSD will provide adequate levels of appropriately trained and supervised Coordinators of SPED/504 personnel that are empowered to seek out, evaluate and determine eligibility for 504/SPED services. They will preside over timely Initial, Annual, Re-Evaluation Review, Program Review and Manifestation meetings.
CSE1.2 CSE meetings at which initial eligibility and re-evaluations will be discussed will be held centrally. Annual and program review CSE meetings will be held in the student's school building.
CSE 1.3 RCSD will provide adequate levels of appropriately trained and supervised School Psychologists and related service providers to support the SPED process, including timely evaluations (psychological, S/L, OT, PT, AT, autism, FBA/BIP) and re-evaluations, as needed.
CSE 1.4 RCSD will develop and maintain a process by which all parties can trigger the 504/SPED process. That will include the means/timeline by which consent will be provided to parent/legal guardian for signature. RCSD commits to completing the process within ____ days.
CSE 1.5 Legally compliant 504/CSE meetings will convene within legal time limits. Parents/legal guardians will be notified 10 days in advance of 504/SPED meetings by phone/text and letter in the family's preferred language. Notification will inform parents/legal guardians of all options for attendance, who can attend (natural and professional supports) and how to re-schedule, if necessary. Help with transportation/accessibility? Quality interpretation services will be available. A draft 504/IEP will be sent in family's preferred language.
CSE 1.6 A 504/IEP will be designed to provide a FAPE to students in the Least Restrictive Environment.
CSE 1.7 CSE/504 will consider and determine appropriate classification based on evidence of student disability.
CSE 1.8 RCSD commits to providing a full continuum of programs and related services from which the committee can select the appropriate level of support. Students will be placed based on similarity of need. At all times, the continuum will include trained 1:1 aides, specialized learning programs and assistive technology programs/devices in good working condition.
CSE 1.9 RCSD will develop a system that will enable CASE's and 504 personnel to identify and communicate to parents/legal guardians all placement options at CSE meetings. Students will be placed based on similarity of need and in their current school, as much as possible.
CSE 1.10 At Annual Review/Program Review, staff will provide accurate, updated Present Levels of Educational Performance. A review of the student's progress on IEP goals and academic measures will prompt additional programming and/or services, as necessary.
CSE 1.11 504 Plan/IEP and PWN and/or consent for initial provision of 504/SPED services will be finalized at the meeting and provided to the family (mailed if requested or unable to be physically present). Family will be provided access to IEP, evaluations and communications in their preferred language.

CSE 1.12 504/IEP programs and related services will be fully implemented within 60 school days of the initial referral at the correct level for the specified amount of time. Changes to an existing 504 Plan/IEP will be made consistent with due process and with the knowledge and consent of the parent/legal guardian.

CSE 1.13 For the upcoming school year, 504 Plans/IEPs will be available to schools (CASE, administrators, teachers, support staff) and staffing determined by August 15 preceding the start of the school year. RCSD will ensure that related services will begin the first week of the school year.

CSE 1.14 If a student is demonstrating an inability to function during his academic day the student will be maintained at the school and an expedited process to handle such situations will be established to address the concern.

CSE 1.15 RCSD will provide adequate levels of appropriately trained and supervised behavior specialists to identify and ensure that Functional Behavioral Assessments are completed and 504/CSE meetings are convened to discuss student need. From those meetings, Behavior Intervention Plans will be created and implemented with fidelity, including timely and appropriate reviews. School staff working with these students will have access to all necessary supports (calming rooms, therapies, etc).

CSE 1.16 RCSD will maintain a legally compliant LTS/Manifestation Determination process. This will include: notification of suspension/ISS to parent/legal guardian, ISS/parent pickup documented and treated as a suspension event, informal conference held before LTS, tutoring provided consistent with student's 504 Plan/IEP, referral for FBA.

CSE 1.17 Placement/SPED interface: Incoming SPED students that are new to RCSD will be provided the level of programming and services that they received in their previous district. Incoming students will be evaluated and have a 504/CSE meeting within ____ days of entering RCSD.

CSE 1.18 Placement will work with SPED department in determining the continuum of programs and related services and location of programming/services in a timely manner, but not later than ____ of the previous school year. The continuum will be designed to allow SPED students to remain in the same school as much as practicable.

CSE 1.19 Placement will work with SPED department to ensure that classes are available to meet the programming needs of all IEPs generated.

CSE 1.20 Should it be appropriate, RCSD will follow all legal requirements and timelines for declassification.

CSE 1.21 RCSD will continuously employ a Compliance Officer whose role is to monitor and report about issues related to legal compliance of all 504/CSE matters. The Compliance Officer will be supervised and report to the Legal Department.

Bilingual	
Staffing	Bil 1.1 Building our own interpreters and translators in the RCSD. The process requires vetting people from the community. The district can do PD for interpreters and translators for all languages. It is important to implement the right PD necessary to meet family needs.[Y1Q4-Y3Q4]
	Bil 1.2 Tap into local agencies and construct a partnership (e.g. Roberts Wesleyan,) to obtain certificate in translation. Training must ensure translation with fidelity[Y1Q4-Y3Q4]
	Bil 1.3 The NYSED must create reciprocity between Puerto Rico and New York State in order for the RCSD to obtain the certification of teachers from Puerto Rico. [Y1Q3 –Y1Q1]
	Bil 1.4 Create a Human Capital Initiative (HCI) strategy [Y1Q2 and execute Y1Q4]
	Bil 1.5 Hire Bilingual home instruction tutors Y1Q3
	Bil 1.6 Hire more Office of Parent Engagement staff who are bilingual (Spanish and low incidence languages). [Y1Q3]
	Bil 1.7 Replicate East High's Teaching and Learning program in RCSD high schools (Monroe & Edison) and programs (RIA& Bilingual Language and Literacy Academy) to create a pipeline for bilingual and special education teachers. [Y2Q2-Y3Q1]
	Bil 1.8 Hire 6 bilingual ENL special education coaches [Y2Q1]
	Bil 1.9 Hire Interpreters and cultural aides (based on Buffalo model) [Y2Q1]
	Bil 1.10 Hire an Associate Director for Bilingual Special Education (This position would oversee all efforts regarding bilingual special education). [Y1Q3-Y2Q1]
Parent Empowerment – How do we communicate with parents in regards to advocacy	Bil 2.1 Provide parent advocate during the CSE process. [Y2Q1]
	Bil 2.2 Engage bilingual community partners (e.g., Ibero, uses Padres Comprometidos parent education workshops) about the special education process.[Y2Q2]
	Bil 2.3 Host conversations about bilingual special education where parents are comfortable. Within each school zone host a special education advisory night with food at a recreation center and bus passes provided for transportation. [Y2Q2]
Document translation [Y1Q3 –Y2Q1]	Bil 3.1 Ensure that all documents are translated for parents in a timely manner. [Y1Q3 – Y2Q1]
	Bil 3.2 Given that majority of bilingual students are Spanish-speakers, all special education documents should be automatically provided to families in both English and Spanish. [Y1Q3 – Y2Q1]
	Bil 3.3 For languages other than Spanish, establish templates to distribute. [Y1Q3 – Y2Q1]

Bilingual Continuum of services	Bil 4.1 Expand the continuum of bilingual special education services each year– (offered ICT at School 28; 12:1:1 at #9 and Monroe; 15:1 at #35 and Monroe; offered Consultant Teacher and resource services at school #9,#17, #22, #35, Monroe, Bilingual Academy (1st-12th grades)) [Y2Q1 –Y3Q1]
	Bil 4.2 Bilingual continuum will expand 25% (6 classes) in Y2Q1 and 30% over the previous year in Y3Q1 (9 more classes)
	Bil 4.3 Implement bilingual special education home instruction tutors. [Y1Q3-Y2Q1]
Transition Planning	Bil 5.1 Develop plans that support the movement of students from bilingual special education programs (at RIA and Bilingual Language and Literacy Academy) to comprehensive school settings. There must be transition dialogues with staff at program and receiving schools to ensure that academic and socio-emotional needs (e.g. trauma) are supported. [Y1Q4]
	Bil 5. 2 Hire an ENL special education coach to serve as a case manager to create transition plans and work with teachers in receiving schools. [Y1Q3]
Mandated PD for all district employees (including but not limited to administrators, School Chiefs, Office of Parent Engagement, Directors, Placement staff, teachers, paraprofessionals, teaching assistants, clerical staff, security, SROs, related service providers, parent liaisons, home school assistants, community coordinators) on the following topics: [Y1Q4 – Y3Q4]	Bil 6.1 Mandated PD for all district employees (including but not limited to administrators, School Chiefs, Office of Parent Engagement, Directors, Placement staff, teachers, paraprofessionals, teaching assistants, clerical staff, security, SROs, related service providers, parent liaisons, home school assistants, community coordinators) on the following topics: [Y1Q4 – Y3Q4]
	Bil 6.2 Who are bilingual and ENL students, what programs are available for them, and what are the differences among these programs? [Y1Q4 – Y3Q4]
	Bil 6. 3 Understanding whether learning challenge is related to either language or disability for bilingual and ENL students. [Y1Q4 – Y3Q4]
	Bil 6.4 Language acquisition needs as a Special Education bilingual students. [Y1Q4 – Y3Q4]
	Bil 6.5 Cultural Understanding/Competency/Awareness[Y1Q4 – Y3Q4]
	Bil 6. 6 Social emotional/trauma/behavior concerns for ELLs with SWD [Y1Q4 – Y3Q4]
	Bil 6.7 Understanding the CSE process with an ENL student in mind. [Y1Q4 – Y3Q4]
CSE Process Recommendations	Bil 7.1 CSEs with interpreter should be allocated double time. [Y1Q3 –Y3Q4 never ends]
	Bil 7.2 CSE meetings should include bilingual parent advocate member. [Y2Q1 -
	Bil 7.4 Provide bus passes for parents to attend CSE meetings. [Y1Q4 -]

Partnering with Parents	
<p>Parents are full partners in the decision making process for their children. Parents receive the draft IEP and notice of the CSE meeting 10 days prior to the meeting, and they have the opportunity to review and discuss the draft IEP prior to the meeting. A fully functioning Parent Center assists parents on a daily basis with information, advocacy, and support. At the end of every CSE meeting parents receive a copy of the IEP and minutes of the</p>	PWP 1.1 Notice of Meeting is provided to parents 10 days in advance with a draft copy of the IEP
	PWP 1.2 The creation of a Special Education “Parent Center” that is staffed with parent peer advocates that are trained in all applicable laws pertaining to students receiving specialized service and with lived experience in diverse disability areas (mental health, developmental disabilities, physical disabilities, etc.) the center would serve as a hub for education, information, and support for families and students.
	PWP 1.3 The reintroduction of the “family Rep” to the CSE meeting. This individual would be charged with, along with the rest of the team, making sure that families understand and have equitable voice in the process. The parent rep will meet with the family prior to the meeting to assure that they have all the information they need to be an informed partner in the process.
	PWP 1.4 Centralization of Initial and Reevaluations to the CSE meetings to central office.
	PWP 1.5 5 IEPs will be finalized, printed, and given to parents at the close of every CSE meeting.
	Pre-CSE
<p>The district will provide high-quality Tier 1 instruction that is expected to meet the academic and social-emotional needs of all students in general education classrooms. General education staff must be required to implement, with fidelity, a district-wide Multi-Tiered Support System (MTSS) process as indicated in the revised MTSS guidelines and outlined in the MTSS implementation guide. Thereby, resulting in a reduction in the number of disproportionate special education referrals.</p>	PreCSE 1.5: Hire a Multi-Tiered System of Supports (MTSS) Director and instructional coaching team
	PreCSE 1.5a & 1.7: Establish an interdisciplinary MTSS team
	PreCSE Review and revise existing MTSS/RTI Guidance document based on current NYS Regs/laws and regular review of data (1.5d) annually for academics and social emotional support
	PreCSE 1.5b Use the RTI MTSS Guidance document as an outline to create an implementation manual for RCSD district wide RTI policy for academics and social emotional supports
	PreCSE 1.5c Every school will generate a resource and intervention summary document to provide building-level guidance for MTSS interventions for academics and social emotional supports
	PreCSE 1.5d Review school-level referral and identification rates to evaluate effectiveness of the MTSS process, and reduce disproportionality. (with a regular schedule of this review in future years)
	PreCSE 1.5e Create a universal job description for ELA and Math interventionists
	PreCSE 1.5f The MTSS Director must review all building resource and intervention summary documents annually. To ensure all schools have adequate Tier 1,2, and 3 Supports the MTSS Director will generate a document with staffing and resource recommendations to the Superintendent and CFO.
	PreCSE 1.7 The MTSS Director and team will develop, implement and evaluate a multi year professional development support plan

The district will provide high-quality Tier 1 instruction that is expected to meet the academic and social-emotional needs of all students in general education classrooms. General education staff must be required to implement, with fidelity, a district-wide Multi-Tiered Support System (MTSS) process as indicated in the revised MTSS guidelines and outlined in the MTSS implementation guide. Thereby, resulting in a reduction in the number of disproportionate special education referrals.

PreCSE 2.48 Ensure alignment and coordination of speech/language providers and early intervention reading teachers to provide more proactive and early intervention to general and special education students.

PreCSE 2.56 Provide appropriate number of school based psychologists to coach schools to be held accountable for the delivery of intervention with data-driven progress monitoring through the MTSS process prior to any referral for special education evaluation.

PreCSE Identify community partnerships to provide additional supports to students and families - CBO (e.g. Action for a Better Community, Monroe County Early Intervention (CPSE)
Community Partner
OPWDD-Starbridge, People

PreCSE Establish a system to provide families with consistent communication and support about MTSS

PreCSE a. Family Education Training- information night for all Tier II and Tier III students provided 2 times a year (school-based)

PreCSE b. Parent Engagement-Parents of students receiving Tier 2 or Tier 3 services receive quarterly progress reports

Programs and Services	
The District will implement a continuum of programs and services, Pre-K to 12 to offer to students in an Inclusive setting in their home school and/or school of choice.	Programs and Services 1.1 Continuum of Services will include Integrated Co-Teaching (K-12), in all schools, including East High School.
	Programs and Services 1.2 Professional Development will be mandated for all ICT teams to include special education teachers and general education teachers
	Programs and Services 1.3 The District will task a Director of multi-tiered systems of support, to develop a district wide plan that is sustainable and delivered to all staff and administration. The Director of multi-tiered systems of support and instructional coaching team will train school based leadership teams in the problem solving process and use of data to better inform decisions and actions necessary to accelerate outcomes for all students.
	Programs and Services 1.4 The District will offer more ICT programming across all grade levels to allow more students with disabilities to be instructed in general education settings. The District will decrease the number of special-class variations, beginning with 15:1 classes.
	Programs and Services 1.5 Pre-K Special Education Programs and Services will move under the supervision of the Department of Special Education.
The District will offer a full continuum of programs and services for students K-12, at their home school or school of choice, and provide specific and targeted support in self-contained classrooms.	Programs and Services 2.1 Continuum of Services will include 12:1:1 programming in all schools, including East High School.
	Programs and Services 2.2 Social Emotional Learning Curriculum will be implemented in <i>all</i> self-contained classrooms across the district.
	Programs and Services 2.3 12:1:1 classrooms will be supported by behavior interventionists
	Programs and Services 2.4 The District will re-assess the design of the current 8:1:2 program and begin to decrease the number of in district 8:1:2 classes as appropriate.
The District will design and implement, robust therapeutic programming for students in grades K-12.	Programs and Services 3.1 Continuum of Services will include K-12 therapeutic programming, located in a school building(s), that include an on site Special Education Administrator, Psychiatric Services, mental health therapists, Full time social workers, psychologists, behavior specialists and behavior interventions, Social Emotional Learning Curriculum.

<p>In order to ensure effective and consistent implementation of Special Education programs and services across, the District will re-design the position of Coordinating Administrator of Special Education.</p>	<p>Programs and Services 4.1 The District should establish specialized supervisory/administrative positions in the following Special Education programmatic areas: Bilingual Special Education, Transition, Lower Therapeutic Programming, Upper Therapeutic Programming, New York State Alternative Assessment/Growth and Education for Multiple Disability/Autism Spectrum Disorders, External Education, Specially Designed Instruction, Committee on Special Education for Elementary, Committee on Special Education for Secondary.</p>
	<p>Programs and Services 4.2 The District should re-design the position and the respective responsibilities of Coordinating Administrators of Special Education by establishing a position for a special education lead teacher. The building based, special education lead teacher will facilitate and chair the annual review process on an anniversary date cycle to become more efficient and inclusive of school administrators, special and general education teachers at the school site.</p>
	<p>Programs and Services 4.3 The District will move the current responsibilities of initial referrals, 3 year comprehensive re-evaluations and more restrictive placements to central office special education lead teachers.</p>
<p>Behavior</p>	
<p>Provide training and develop protocols designed to inform staff practices and empower parents on issues concerning disproportional suspension rates of students with disabilities</p>	<p>B1.0 Provide mandatory training for all staff on implicit bias and its consequences, the relationship model theory, classroom management/de-escalation techniques and functional approaches to managing behavior (understanding the connection between the behavior and the disability)</p>
	<p>B1.1 Develop and implement structural reforms for data integrity</p> <ul style="list-style-type: none"> a) develop an online referral process b use the online referral process to)track specific schools for disproportionality data c) work with collective bargaining units to develop disciplinary responses for staff who are not following BOE policy
	<p>B 1.2 mandate common planning time for all staff working with SWD's to understand the IEP and share out instructional strategies. Work with collective bargaining units to make building-level sharing mandatory</p>

<p>Elimination of practices that deprive students with disabilities, 504 students, and students presumed to have a disability, of their procedural right to a manifestation determination hearing</p>	<p>B2.0 Develop, refine and enforce MDR protocols and procedures promulgated by the Specialized Services Department. Disseminate MDR protocol and provide PD thereon to Principals, CASES and instructional staff. The new protocol must outline a step by step process for notification to the CASES of any disciplinary response taken concerning a student with a disability. The MDR protocol and related PD must develop clarity on the definition of a removal from program</p> <p>B2.1 Take corrective measures with respect to current systems, in order to align with MDR protocol [ex: take the illegal MDR sheet out of power school; require the MDR Chairperson to identify the evidence to support each finding on the manifestation checklist]</p> <p>B2.2 Ensure that systems for the MDR process are capable of delivering accurate and timely data. Develop an online referral process keyed to a 5 day early warning system such that every removal from class is electronically documented with an online referral form; maintain a more accurate count of removals, especially those that tend to be undocumented (student informally asked to leave the classroom, go to the office or parent asked to pick up the student; ensure that power school entries are accurate including attend actions vs. "action steps" (Billy) and VADIR coding aligned to the RCSD Code of Conduct</p> <p>B2.3 Accountability: Develop a system of checks and balances to monitor for fidelity to the MDR protocol. (a) early warning system should block a building administrator's ability to list a removed student's absence as "Ab/Unexc" (b) educate parents on their right to have a referral accompany any removal from class (c) Have MCDHS FACT and truancy programs inquire about the MDR process for any student that has been referred to family court for truancy</p>
<p>Assurance of targeted behavioral supports prior to CSE referral, timely FBA's and the development of quality BIP's to be implemented with fidelity</p>	<p>B3.0: Build capacity for all teachers, including Gen Ed teachers, Help Zone and other support staff to think "functionally" in understanding the connection between behavior and need (reasons for the behavior). Increase the capacity for intervening staff to conduct informal assessments of the correlation between need or disability, and behavior, to inform their instructional and student engagement practices. Capacity building shall include the development of a district-wide model of behavior intervention plan teams, professional development, training, increased staff participation on BIP teams, learning walks and collaborative planning .</p> <p>B3.1 Ensure that BIPs are properly written by appropriately qualified staff and with a multidisciplinary cross-functional approach. Ensure dissemination of BIPS to all staff working with the subject student</p> <p>B3.2 Ensure that all BIPS articulate a regular BIP review and progress monitoring component, that progress monitoring is occurring, that monitoring notes are recorded and updated for each review, and that staff and parent participation is documented.</p> <p>B3.3 Ensure that parents have opportunities for meaningful participation in BIP Review meetings, to include the use of interpreters and phone conferences for parents whose home language is not English, and may not be physically able to attend.</p>

<p>To the extent possible, develop adequate therapeutic programs and expand current programs to more robustly meet the specific and intensified needs of students with internalizing behaviors, and/or significant emotional, psychological, or psychiatric disabilities</p>	<p>B4.0: Ensure that such programs are available in-district to all students K-12 with demonstrated or IEP articulated need, that students in these programs have equitable access to the general education curriculum and that student groupings, if applicable, are occurring with respect to age range and not ability or disability.</p>
	<p>B4.1: Ensure that these programs and pre-referral intervention strategies are able to serve students with internalizing behaviors (not acting out) without compromising academic rigor. Promote the message that students with internalizing behaviors have needs that require support even though they may not be demonstrably "acting out"</p>
	<p>B4.2 : Ensure the existence of a pool of sufficiently trained behavior intervention specialists ; expand recruitment strategies and efforts; ensure that there is a referral process for central allocation of behavior intervention specialists</p>
	<p>B4.3 Build capacity with other staff roles such as paraprofessionals to address the demand; develop a tiered structure of paraprofessional positions; centralize the process of dispatching paraprofessionals in order to eliminate the current sense of "building ownership" of paraprofessionals and guarantee the availability of paras to students with the correlating need</p>

Recommendations Requiring System Changes

Accountability System	Information Systems	Professional Development	Supervision Structure and Needed Staffing
The building-based Special Education Lead Teacher will meet weekly with the building Principal(s) to provide high level updates regarding all aspects of compliance related to the annual review process, Referrals to CSE and Central CSE Evaluation Packets (for initials, re-evaluations) through the use of a shared compliance log that will be reviewed by the building principal and central office.	The District will ensure that all documents are translated for parents in a timely manner.	TCI/CPI mandated training for all self-contained special education teachers, TAs and Paraprofessionals. Initial Certification and then re-cert. as required by program.	Supervisor of Pre-K with requisite experience that reports to the Department of Special Education.
There will be an accountability structure developed that will be aligned to the building Principals' overall evaluation that requires Principals to monitor and ensure the timeliness and quality of IEPs developed in their schools. (<i>Negotiations needed</i>)	The District will automatically provide all special education documents in both English and Spanish.	SDI mandated training for all special education teachers, monthly 1-2 hrs.	The District will hire an experienced project manager that reports to head of Special Education to manage high level projects, including but not limited to disengagement benchmarks, reorganization of the department, the transition of the continuum of services, embedded professional learning, etc.
Principals will be required to establish an interdisciplinary MTSS team that meets on a weekly basis. Team must include, an administrator, special education teacher, general education teacher, psychologist and social worker. Evidence of weekly meetings must be submitted to school chief to review students who are not making progress socially and/or academically.	The District will create templates for Frontline documents for languages other than Spanish.	Co-Teaching mandated for all special education and general education ICT teams, monthly 1-2 hrs.	The District must hire an information system expert, who reports to the Department of Special Education, to design data systems and programs to extract the specific data points required, which align with goals and the recommendations that must be measured and progress frequently monitored.
Accountability System	Information Systems	Professional Development	Supervision Structure and Needed Staffing

Review and revise existing MTSS/RTI Guidance document based on current NYS Regs/laws and regular review of data for academics and social emotional supports.	Use of ROC 3D management system to track SWD cohorts with credit accumulation and other graduation requirements. In addition, the information management system will be used to monitor student progress in ELA and Math on the NWEA benchmark assessments as a proficiency predictor for the NYS 3-8 ELA and Math Exams.	Social Emotional Learning Curriculum PD Mandated for All self contained teachers to receive SEL Kit.	The District will hire an administrator for Bilingual Special Education (This position would oversee all efforts regarding bilingual special education).
Use the RTI MTSS Guidance document as an outline to create an implementation manual for RCSD district wide RTI policy for academics and social emotional supports	The District must hire an information system expert, who reports to the Department of Special Education, to design data systems and programs to extract the specific data points required, which align with goals and the recommendations that must be measured and progress frequently monitored.	Professional Development for teachers, teaching assistants and paraprofessionals working with children with significant behavioral challenges.	The District will create a Special Education "Parent Center" that is staffed with parent peer advocates that are trained in all applicable laws pertaining to students receiving specialized service and with lived experience in diverse disability areas (mental health, developmental disabilities, physical disabilities, etc.) the center would serve as a hub for education, information, and support for families and students.
Every school will generate a resource and intervention summary document to provide building-level guidance for MTSS interventions for academics and social emotional supports		Professional development for school administrators on creating an inclusive environment in their schools.	The District will hire a Multi-Tiered System of Supports (MTSS) Director and instructional coaching team.
Accountability System	Information Systems	Professional Development	Supervision Structure and Needed Staffing

Review school-level referral and identification rates to evaluate effectiveness of the MTSS process, and reduce disproportionality. (with a regular schedule of this review in future years)		Professional development for CSE chairs, psychologists and team members on identification of specific disabilities and appropriate programs.	The District should establish specialized supervisory/administrative positions in the following Special Education programmatic areas: Bilingual Special Education, Transition, Lower Therapeutic Programming, Upper Therapeutic Programming, New York State Alternative Assessment/Growth and Education for Multiple Disability/Autism Spectrum Disorders, External Education, Specially Designed Instruction, Committee on Special Education for Elementary, Committee on Special Education for Secondary.
Family Education Training- information night for all Tier II and Tier III students provided 2 times a year (school-based)		Specific training for teaching assistants on effective instructional strategies.	The District should re-design the position and the respective responsibilities of Coordinating Administrators of Special Education by establishing a position for a special education lead teacher. The building based, special education lead teacher will facilitate and chair the annual review process on an anniversary date cycle to become more efficient and inclusive of school administrators, special and general education teachers at the school site.
Accountability System	Information Systems	Professional Development	Supervision Structure and Needed Staffing

Build capacity for all teachers, including Gen Ed teachers, Help Zone and other support staff to think “functionally” in understanding the connection between behavior and need (reasons for the behavior). Increase the capacity for intervening staff to conduct informal assessments of the correlation between need or disability, and behavior, to inform their instructional and student engagement practices. Capacity building shall include the development of a district-wide model of behavior intervention plan teams, professional development, training, increased staff participation on BIP teams, learning walks and collaborative planning .		Professional development for high school special education teachers and administrators on writing effective transition plans.	The District will move the current responsibilities of initial referrals, more restrictive placements and 3 year, comprehensive re-evaluations to central office special education lead teachers or administrators..
Ensure that FBAs and BIPs are compliant and written by qualified staff through a multidisciplinary, cross-functional approach. Ensure dissemination of BIPS to all staff working with the subject student			The District will employ a Special Education Attorney, that reports to the Department of Special Education, that has special education experience, and assists with all CSE/504 related compliance issues and suspensions of SWDs in the MDR office.
Ensure that all BIPS articulate a regular BIP review and progress monitoring component, that progress monitoring is occurring, that monitoring notes are recorded and updated for each review, and that staff and parent participation is documented.			The District will continue to employ an administrator of compliance that reports to the Department of Special Education. The Compliance administrator will support the department with the corrective action plans from NYSED, components of the Consent Decree including quality and timeliness of evaluations, CSE meetings and programming.
Accountability System	Information Systems	Professional Development	Supervision Structure and Needed Staffing

Ensure that parents have opportunities for meaningful participation in BIP Review meetings, to include the use of interpreters and phone conferences for parents whose home language is not English, and may not be physically able to attend.			The position of Associate Director of Compliance should be converted to Director of Compliance so that this position will be a 12-month position to support compliance throughout the year.
Principal Evaluations tied to CSE compliance related specifically to the following areas FBA/BIP, Suspensions, timelines, MDR.			There needs to be a transition specialist at each high school.
Implementation of district-wide behavioral structure.			The Medicaid Compliance Officer and Assistant Medicaid Analyst will report directly to the Department of Special Education.
There will be an accountability structure that requires principals to monitor and ensure that recommendations from specialized teams from Central Office including but not limited to (ASD, Behavior Specialists, Special Education Instructional Coaches, Transition Teams, Special Education Leadership etc.) are implemented with fidelity.			The District will fill the position of Ombudsman.

Special Advisory Committee on Special Education

Recommended Disengagement Goals and Interim Benchmarks

1. **Performance of classified students on state assessments.** *RCSD is already using improvement in this item as part of its Strategic Action Plan for New York State.*

A. The current level of performance.

According to the Rochester City School District - New York State Report Card [2017- 2018], two percent of students with disabilities in grades 3-8 demonstrated proficiency in English language arts and mathematics.

B. What commitments, if any, have already been made to improve performance on that goal to external parties like The New York State Education Department?

Through the exposure to grade level curriculum and rigorous instruction, the Rochester City School District will increase the percentage of students with disabilities [grades 3-8] who demonstrate proficiency in English language arts and mathematics by a minimum of three percent, as indicated by the results of the 2018- 2019 New York State English language arts and mathematics tests.

C. What level of performance is required by law or regulation?

The New York State Receivership Law indicates minimum metrics for performance for Rochester City School District schools.

D. What data measures are available or can be created with reasonable effort?

The Rochester City School District - New York State Report Card indicates the average proficiency of students with disabilities in English language arts and mathematics, grades 3-8. The Northwest Evaluation Association (NWEA) benchmark assessment is administered each fall, winter and spring. The assessment is used to progress monitor proficiency rates and predict student performance on the 3-8 New York State tests. Furthermore, the data is monitored by the Department of Special Education through the ROC3D Dashboard after each benchmark assessment.

E. What level of improvement is achievable over the next three and a half years?

The District will increase the percentage of students with disabilities who demonstrate proficiency on the New York State English language arts and mathematics tests by three percentage points per year, bringing the overall proficiency rate to a minimum of fourteen percent by the end of the 2021-22 school year.

	Current Performance	Interim Benchmarks			Disengagement Standard
School Year	2017-18	2018-2019	2019-2020	2020-2021	2021-22
Percent Passing with score of 3 or 4	2%	5%	8%	11%	14%

2. **Graduation Rate for classified students.** *RCSD is already using improvement in this item as part of its Strategic Action Plan for New York State.*

A. The current level of performance.

As of June 2018, the Rochester City School District - New York State Report Card [2017-2018}, indicated the June graduation rate for students with disabilities is 34.3%.

B. What commitments, if any, have already been made to improve performance on that goal to external parties like The New York State Education Department?

The Special Education Strategic Action Plan outlines the Rochester City School District's goal to increase the graduation rate for students with disabilities by a minimum of five percent, from 34.3 to 39.3 percent, by June of 2019.

C. Where applicable, what level of performance is required by law or regulation?

None

D. What data measures are available or can be created with reasonable effort?

Data to measure the improvement will be taken from the Rochester City School District - New York State Report Card [2018- 2019]. Additionally, progress monitoring measures include, but are not limited to student transcripts and ROC 3D dashboard to track credit accumulation for students with disabilities.

E. What is the level of improvement that is achievable over the next three and a half years?

After the 2018-2019 school year the District will continue to increase the graduation rate of students with disabilities by a minimum of 4 percentage points each year, ending in a graduation rate of at least 50.3% in the 2021-22 school year.

	Current Performance	Interim Benchmarks			Disengagement Standard
School Year	2017-18	2018-2019	2019-2020	2020-2021	2021-22
Graduation Rate	34.3%	38.3%	42.3%	46.3%	50.3%

3. Specified Reductions in both Long Term Suspensions and Other Involuntary Out of Classroom Events (e.g. short term suspension, asking parents to come and pick children up without suspending them, etc.); coupled with a requirement that to be disengaged the District must eliminate the current disparity in suspension of students with disabilities as compared to other students, and the disparity in the rate of suspension of students of color with disabilities as compared to white students with disabilities.

A. The current level of performance.

In the 2016-2017 school, the Rochester City School District suspended students with disabilities for ten or more days, at a rate of four percent. Subsequently, the District was cited for State Performance Indicator 4a for disproportionately suspending students with disabilities and 4b for disproportionately suspending students with disabilities by race and ethnicity. In the 2017-2018 school year, students of color with disabilities were suspended at a rate of three percent as compared to white students with disabilities who were suspended at a rate of one percent.

B. What commitments, if any, have already been made to improve performance on that goal to external parties like The New York State Education Department?

The District is currently receiving technical assistance from the Technical Assistance Center on Disproportionality (TAC-D) through a partnership with New York University. District staff receive training on disproportionality, implicit bias and culturally responsive education. In addition, the Special Education Department developed a Manifestation Determination Review protocol to ensure that students with disabilities are not suspended disproportionately.

C. What level of performance is required by law or regulation?

According to the New York State target for the suspension, no more than 2.7% of students with disabilities shall be suspended greater than ten days in a school year.

D. What data measures are available or can be created with reasonable effort?

The Rochester City School District - New York State Report Card reports the rate of suspension for students with disabilities of ten days or more. Additionally, the Department of Special Education uses ROC3D Dashboard and PowerSchool to monitor suspension rates of students with disabilities.

E. What level of improvement is achievable over the next three and a half years?

The District will decrease the number of students with disabilities, suspended ten or more days, by .5 percentage points per year, bringing the overall suspension rate to two percent by the end of the 2021-2022 school year. Furthermore, the District will decrease the disparity between the number of students with disabilities of color and white students with disabilities who are suspended ten or more days by .5% each year ending in zero percent disparity in the 2021-2022 school year.

	Current Performance	Interim Benchmarks			Disengagement Standard
School Year	2017-18	2018-2019	2019-2020	2020-2021	2021-22
Suspension Rate for all SWDS	4%	3.5%	3%	2.5%	2%
Disparity Rate between SWDs of color and white SWDs suspended 10 or more days	2% disparity	1.5% disparity	1% disparity	.5% disparity	No disparity noted in the suspension rates of SWDs of color and white SWDs.

4. An increase in the percentage of classified students who are receiving their instruction in settings with students without disabilities.

A. The current level of performance.

In the 2016-2017 school year, 23.6% of students with disabilities received less than forty percent of their instruction in the general education classroom, 17.9% of students with disabilities received 40-79% of their instruction in the general education classroom. Lastly, 51.8% of students with disabilities received their instruction eighty percent or more of the day in a general education classroom.

B. What commitments, if any, have already been made to improve performance on that goal to external parties like The New York State Education Department?

The Department of Special Education has increased inclusive programming on the continuum of services to enable students with disabilities to access to the general education setting.

C. What level of performance is required by law or regulation?

According to New York State, fifty nine percent of students with disabilities (SWDs) should receive their instruction in the general education setting for at least eighty percent of the day. There is no state target for SWDs who receive their instruction in the general education setting for 40-79% of the day. The state target for SWDs who receive their instruction in the general education setting less than 40% of the general education program is 20%.

D. What data measures are available or can be created with reasonable effort?

NYS Report Card

E. What level of improvement is achievable over the next three and a half years.

In order for the District to hit the high targets of proficiency in ELA and Math, the District should increase the number of students who receive their instruction more than 80% of their day in a general education classroom by 3.3% each year, bringing the total percentage of students who receive their instruction in general education more than 80% of the day to 65% in the 2020-2021 SY. The District should also decrease the number of students who receive their instruction 40% or less of their day in the general education classroom by 1.5% a year, bringing the total percentage of students who receive less than 40% of their day in the general education classroom to 17.6%.

	Current Performance	Interim Benchmarks			Disengagement Standard
School Year	2017-18	2018-2019	2019-2020	2020-2021	2021-22
In Gen. Ed. setting more than 80%	51.8%	55.1%	58.4%	61.7%	65%
In Gen. Ed. setting less than 40%	23.6%	22.1%	20.6%	19.1%	17.6

5. A decrease in the percentage of classified students who are removed from the school they would have otherwise attended but for their classification. *This measure excludes students with high or very specialized needs who are transferred to attend the following programs for which there are low numbers of students in RCSD who require the program:*

ASD 6:1+4, ASD 6:1+2, ASD 6:1+1, ASD Connect, Social Communication 12:1+3, Social Communication 12:1+1, Language Enriched Integrated Co-Teaching, STEPS, NYSAA 12:1+1, NYSAA 8:1+2, NYSAA 12:1+3, Diagnostic Transition Program 8:1+3 and GEM 12:1:(3:1).

A. The current level of performance.

We currently do not have a system in place that tracks this data point. This year, 317 students, or about 5% of the total students with disabilities, will have transferred to a new school in order to receive a program which is not available at their school.

B. What commitments, if any, have already been made to improve performance on that goal to external parties like The New York State Education Department?

The Department of Special Education has developed a continuum plan to increase the equity across the district. In increasing equity, schools will be able to provide more programs in buildings and as a result student will have to move less for services/programs.

C. What level of performance is required by law or regulation?

The Individuals with Disabilities Education Act requires that, where possible, students should attend the school they would have attended if they were not classified with a disability.

D. What data measures are available or can be created with reasonable effort?

The department will create a specific code that is clearly defined to be able to retrieve data from Frontline and/or PowerSchool

E. What level of improvement is achievable over the next three and a half years?

If all or most options of available programs are at all schools, the percentage of movement of students between buildings would be decreased significantly, to one percent. By the 2021-2022 all schools will have a continuum that is inclusive of Consultant Teacher and Resource Room Services, Integrated Co-teaching, Special Class options and related services.

	Current Performance	Interim Benchmarks			Disengagement Standard
School Year	2017-18	2018-2019	2019-2020	2020-2021	2021-22
Total # of student transitioning from building due to CSE recommendations	317 5%	240 4%	180 3%	120 2%	60 1%

6. The percentage of students with disabilities in the relevant age group who have legally compliant Transition Plans.

A. The current level of performance.

Currently, every student with a disability, age fifteen and older, has a transition plan that is developed and reviewed at the annual review. According to the most recent State Performance Review for Indicator 13: Secondary Transition, 63.3% of the IEPs reviewed included appropriate transition plans.

B. What commitments, if any, have already been made to improve performance on that goal to external parties like The New York State Education Department?

In the Fall 2018, all Coordinating Administrators of Special Education (CASES) and secondary Special Education Teachers, attended professional learning series designed to provide information and resources on a series of transition topics. The topics shared during these sessions included; The Transition Timeline and Regulations, Transition Assessments and Documenting Transition in the IEP, the CDOS Standards, the CDOS and Skills Credentials, Graduation Requirements and Safety Net Options and Community Resources. In addition, in the 2018-2019 school year all IEPs of students fifteen and older will have a transition plan uploaded the document repository in Frontline IEP.

C. What level of performance is required by law or regulation?

Beginning with the first individualized education program (IEP) to be in effect when the student turns age 15 (and at a younger age, if determined appropriate) and updated annually, the IEP must include: a statement (under the student's present levels of performance) of the student's needs, taking into account the student's strengths, preferences, and interests, as they relate to transition from school to post-school activities; appropriate measurable postsecondary goals; a statement of needed transition services; needed activities to facilitate the student's movement from school to post-school activities; and a statement of the responsibilities of the school district and, when applicable, participating agencies for the provision of services and activities that promote movement from school to post-school opportunities, or both, before the student leaves the school setting.

D. What data measures are available or can be created with reasonable effort?

Frontline IEP is used to determine if a student with a disability 15 years of age and older has a Transition Plan uploaded to the document repository. The District will develop a quality assurance protocol to assess high quality, legally compliant Transition Plans.

E. What level of improvement is achievable over the next three and a half years?

The District will increase the percentage of SWDs with legally compliant Transition Plans by 8 percentage points per year ending in 2021-22 SY, bringing the overall number appropriate Transition plans to 95.3%.

	Current Performance	Interim Benchmarks			Disengagement Standard
School Year	2017-18	2018- 2019	2019- 2020	2020- 2021	2021-22
Compliant Transition Plans	63.3%	71.3%	78.3%	87.3%	95.3%

7. Timely completion of all Committee on Special Education (CSE) meetings (initial, annual, and reevaluation review).

A. The current level of performance.

In 2017-2018 there were 1,712 meetings (28%) that were overdue/ out of 6,100 total meetings.

B. What commitments, if any, have already been made to improve performance on that goal to external parties like The New York State Education Department?

The District will use its fully functioning CSE process in order to reach full compliance with respect to: Annual Reviews, Reevaluations, and Initial Referrals for Special Education across all District schools and programs. The District has hired an Associate Director of Special Education Compliance.

C. What level of performance is required by law or regulation?

The New York Regulations for Students with Disabilities require that 100% of SWD's will have a timely annual review.

D. What data measures are available or can be created with reasonable effort?

Frontline IEP, Data Report created to measure and ensure compliance.

E. What level of improvement is achievable over the next three and a half years?

95% of SWD's will have a timely annual review, reevaluation and initial review meeting. The District will decrease the number of overdue meetings by 6% each year ending in no more than 5% of overdue meetings in the 2021-22 SY.

	Current Performance	Interim Benchmarks			Disengagement Standard
School Year	2017-18	2018-2019	2019-2020	2020-2021	2021-22
Percentage of Overdue Meetings	28% Overdue	22% Overdue	16% Overdue	10% Overdue	5% Overdue

8. Timely delivery of all programs and services on IEPs.**A. The current level of performance.**

In the 2017-18 school year, 42 variances were submitted to allow students to be placed in a program. In the 2017-2018 school year, 69% of the required Occupational Therapy, 79% of required Physical Therapy and 65% Speech/Language Therapy sessions were reported on in Frontline IEP to have been provided by related service providers, for an overall average of 71% of sessions reported to have been delivered by related services providers.

B. What commitments, if any, have already been made to improve performance on that goal to external parties like The New York State Education Department?

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

C. What level of performance is required by law or regulation?

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. What data measures are available or can be created with reasonable effort?

Related Service delivery will be tracked in the RS Log by provider in Frontline IEP.

E. What level of improvement is achievable over the next three and a half years?

The District will decrease the number of variances each year at least fifty percent each year ending in 2021-22 SY bringing the overall number of variances to zero. The District will increase the percentage of related services reported in Frontline IEP by 4% each year, ending in 87% of services provided by the 2021-2022 school year.

	Current Performance	Interim Benchmarks			Disengagement Standard
School Year	2017-18	2018-2019	2019-2020	2020-2021	2021-22
Decrease the number of Variances by 50% each year	42	≤21	≤10	≤5	≤2
Reporting of Related Service Sessions Provided	71%	75%	79%	83%	87%

9. Increased parental participation in CSE meetings. *The lowest level of parental participation is for Annual Review CSE Meetings so we have focused there. The reforms adopted will apply to all meetings so we expect parental participation at them to increase as well.*

A. The current level of performance.

In the 2017-2018 school year, out of 6,400 Annual Review meetings held, parental attendance was 1,213 (19%).

B. What commitments, if any, have already been made to improve performance on that goal to external parties like The New York State Education Department?

The Department has an accountability protocol to ensure that meeting notices are mailed out in a timely fashion, as indicated by the Department's Strategic Action Plan in the 2017-2018 school year. In addition, the department determined schools in need of technical assistance in the area of compliant CSE process. One area of data included the number of CSE Meeting Notices that were mailed out less than five days before the meeting.

C. What level of performance is required by law or regulation?

Districts must take steps to ensure parent's presence and participation at meetings, including: Notifying parents of meeting, Scheduling at a mutually agreed on time and place. 200.5(d)

D. What data measures are available or can be created with reasonable effort?

The Department will use Frontline IEP to track the data and progress monitor this goal.

E. What level of improvement is achievable over the next three and a half years?

The District will increase the percentage of parent participation at Annual Review meetings by eight percentage points per year ending in 2021-22 SY at fifty-one percent parental participation.

	Current Performance	Interim Benchmarks			Disengagement Standard
School Year	2017-18	2018 - 2019	2019-2020	2020-2021	2021-22
Parent Participation at Annual Review CSEs	19%	27%	35%	43%	51%

10. The District will provide bilingual programming for bilingual SWDs that mirrors the special education programming for monolingual students with SWDs.

A. The current level of performance.

Currently, we have twenty-six bilingual special education programs and most bilingual students must transfer to receive services or receive fewer services to be able to remain in their school of choice.

B. What commitments, if any, have already been made to improve performance on that goal to external parties like The New York State Education Department?

The District opened the Bilingual Language and Literacy Academy to begin the 2018-2019 school year with Consultant Teacher and Resource Room Services.

C. What level of performance is required by law or regulation?

Based on NYS regulation Bilingual students with disabilities must be provided the programming as outlined on their IEPs.

D. What data measures are available or can be created with reasonable effort?

The District's continuum of services will reflect the increase in bilingual programming, including specialized programming options.

E. What level of improvement is achievable over the next three and a half years?

The District will increase the bilingual programming offered in the special education continuum across its district schools by twenty five percent in 2019-2020 and then thirty percent in 2020-2021, increasing the total of bilingual programs to forty one by the end of the 2020-2021 SY.

	Current Performance	Interim Benchmarks			Disengagement Standard
School Year	2017-18	2018-2019	2019-2020	2020-2021	2021-22
Bilingual Programs (# of classes)	24	26	31 (20% increase)	39 (25% increase)	51 (30% increase)

11. Increase in the percentage of teachers and other providers of services on Individual Education Programs (IEPs) who are appropriately certified or qualified

A. The current level of performance.

Currently, In the 18-19 school year the District has 41.8 special education teacher vacancies. Additionally, the District has 30 bilingual special education teacher vacancies.

B. What commitments, if any, have already been made to improve performance on that goal to external parties like The New York State Education Department?

Permanent Salary Step Increase at the time of New Hire for Certified Special Education Teachers – Grades 7-12 and Certified Bilingual Special Education Teachers – Grades K-12 with a Bilingual Extension – this is Financially more rewarding than a differential. Through the Teachers of Tomorrow Grant a Stipend for those Certified Teachers in identified shortage area (ie. Special Education 7-12, All Certified Teachers with a Bilingual Extension working in a Bilingual Position.

C. What level of performance is required by law or regulation;?

Every child is entitled to receive instruction by a certified teacher.

D. What data measures are available or can be created with reasonable effort?

No State Target

E. What level of improvement is achievable over the next three and a half years?

The District, by increasing recruitment efforts, will decrease the vacancies by each year by hiring a net increase of ten more appropriately certified teachers each year to fill the vacancies, please reference the chart below.

	Current Performance	Interim Benchmarks		Disengagement Standard
School Year	2018-2019	2019-2020	2020-2021	2021-22
Teacher vacancy (FTEs)	41.8	31	21	≤10
Bilingual Teaching vacancy (FTEs)	30	22	15	≤8

12. Disparities in classification of students of color compared to white students**A. The current level of performance.**

In the 2017-18 school year student of color were classified as an SWD at rate of 21%. White students were classified at a rate of 18%. Based on 2017-18 data, students of color (black and 14Hispanic) comprise 85% of the total population and 90% of all students classified as having a disability. White students comprise 11% of the total student population and 10% of students classified as having a disability.

B. What commitments, if any, have already been made to improve performance on that goal to external parties like The New York State Education Department?

The District is engaged in ongoing technical assistance with NYU's TAC-D to address disproportionality system -wide. In addition, district wide trainings are underway to address implicit bias.

C. What level of performance is required by law or regulation?

According to the guidance of the New York State Education Department, under Indicator 10A, no school district will have disproportionality that is the result of inappropriate policies, practices and procedures.

D. What data measures are available or can be created with reasonable effort?

The department will utilize state reporting data to track the number of students classified by race and ethnicity.

E. What level of improvement is achievable over the next three and a half years?

The District will decrease the disproportionate classification of students of color, in comparison to their white peers, by .75% each year ending with no disparity in the 2021-2022 school year.

	Current Performance	Interim Benchmarks			Disengagement Standard
School Year	2017-18	2018-2019	2019-2020	2020-2021	2021-22
Disparity Rate between classification of students of color and white SWDs	3% disparity	2.25% disparity	1.5% disparity	.75% disparity	No disparity noted in the suspension rates of SWDs of color and white SWDs.

13. Percentage of targeted staff members who receive the appropriate amount of qualifying (i.e. high quality and effective) professional development in areas to support the goals of the Consent Decree.

A. The current level of performance.

In the 2018-2019 SY all special education teachers and administrators participated in one half - day professional development on Specially Designed Instruction, Transition in the IEP and Disproportionality.

B. What commitments, if any, have already been made to improve performance on that goal to external parties like The New York State Education Department?

The Department holds bi-weekly professional development for CASEs aligned with the District Special Education Strategic Action plan and goals. CASEs are required to turn-key information from bi-weekly meetings to their Special Education Staff in their buildings on (at least) a monthly basis.

C. What level of performance is required by law or regulation?

Currently in New York State, holders of a professional certificate who are practicing in a New York Public School or BOCES to complete 100 hours of professional development during each five year registration period.

D. What data measures are available or can be created with reasonable effort?

The department will keep documentation of teacher participation in such required trainings. The Department will track the number of special education teachers who register for professional learning through the District's online PD site, True North Logic.

E. What level of improvement is achievable over the next three and a half years?

The District will increase the mandatory offerings of high quality professional development for all Special Education Teachers and Administrators at a minimum of eight times per year ending in 2021-22 SY bringing the overall offering of professional development to eight mandatory trainings.

	Current Performance	Interim Benchmarks			Disengagement Standard
School Year	2017-18	2018-2019	2019-2020	2020-2021	2021-22
Number of Mandatory PDs	1	2	3 (50% increase)	5 (50% increase)	8 (50% increase)

Board Meeting: April 25, 2019

Resolved, that the Board hereby approves the expenditure of any additional funds necessary to permit the implementation of the terms of the Tentative Agreement for a 2019 Retirement Incentive.

**Seconded by Member of the Board Commissioner Powell
Adopted 5-1 with Commissioner Davis dissenting and Commissioner Hallmark absent**

Resolution No. 2018-19: 826

By Member of the Board Vice President Elliott

Whereas, the Board, has the authority, per the Advisory Bodies Policy No. 2260, to create advisory bodies that use the talents, resources, and interests available in the broader community to advise and recommend courses of action to the Board for its consideration, concerning the maintenance of a quality educational program in the schools of the District; and

Whereas, by Resolution No. 2017-18: 561, adopted on January 25, 2018, the Board authorized the appointment of an advisory body to the Board known as the *Committee to Review Special Education Programs and Services* (the “Committee”) on the basis of interest, experience and expertise, for the purpose of reviewing the Board’s policies on special education programming and services, reviewing the District’s practices and protocols relating to special education programs and services, and recommending courses of action to the Board for its consideration in resolving the District’s challenges in special education; and

Whereas, in a report dated April 30, 2018, the *Committee* provided recommendations to the Board, and at the monthly business meeting on May 24, 2018, the Board accepted the report and recommendations of the *Committee*; and

Whereas, the *Committee* has provided a second round of recommendations to the Board in a report dated March 18, 2019, a copy of which is on file with the Clerk of the Board; and

Whereas, the work of the *Committee* has formed much of the basis for the Settlement Agreement between the District and the Empire Justice Center, which was approved by the Board on December 20, 2018, by Resolution No. 2018-19: 555; therefore be it

Resolved, that the Board is grateful to all of the members of the *Committee*, the *Committee’s* Work Groups, and in particular to Melanie Funchess, former Commissioner of the Board of Education of the Rochester City School District, for their commitment and diligent efforts to assist the District in this area; and be it further

Resolved, that, having successfully completed the original assignment and effectively fulfilled its purpose, the *Committee to Review Special Education Programs and Services*, pursuant to the requirements of Advisory Bodies Policy No. 2260, is hereby discontinued; and be it further

Board Meeting: April 25, 2019

Resolved, that the Board hereby delegates the acceptance and approval of the aforementioned documents to the District's General Counsel and the representatives of the District negotiating the form of Stipulation to resolve the pending potential litigation being initiated by the Empire Justice Center.

Seconded by Member of the Board Commissioner Powell
Adopted 6-0 with Commissioner Hallmark absent

Board Meeting: June 20, 2019

By Member of the Board Commissioner Hallmark

Whereas, by Resolution No. 2014-15: 457, adopted on January 29, 2015, the Board authorized the revised Educational Partnership Organization (EPO) Contract with the University of Rochester to serve as the EPO for East High School, for a term of up to five years, commencing on July 1, 2015; and

Whereas, it is the recommendation of the *EPO Superintendent* to enter into an Agreement with Houghton Mifflin Harcourt Publishing Company; therefore be it

Resolved, that the *EPO Superintendent*, or designee, be, and hereby is, authorized to enter into an Agreement with **Houghton Mifflin Harcourt Publishing Company**, 125 High Street, Boston, MA, to provide materials, professional development, hosting and related services for System 44 and READ 180, whereby approximately 30 staff receive side-by-side individual coaching to provide professional learning before, during and after lesson delivery, with the goal to help students Grades 6 –12+ master the foundational reading skills required for success with the new standards, college, and career through explicit instruction in phonics, comprehension and writing, for the period July 1, 2019, or as soon thereafter as the Agreement is fully executed, through June 30, 2020, for a sum not to exceed One Hundred Fourteen Thousand Two Hundred Eighty Dollars Sixty Six Cents (\$114,280.66), funded by the East High EPO Administration (General Fund), contingent upon budget appropriations and contingent upon the form and terms of the Agreement being approved by Counsel to the District.

Strategic Goal: 1; Objective: C

Justification: Meet New York State requirements as a “Focus District.”

**Seconded by Member of the Board Commissioner Powell
Adopted 4-2 with Vice President Elliott and Commissioner Davis dissenting and
Commissioner LeBron absent**

Resolution No. 2018-19: 1008

Approve Goals & Benchmarks - Special Education

By Member of the Board Vice President Elliott

Whereas, for more than thirty (30) years, the Rochester City School District’s (“District”) ability to effectively deliver services to students with special needs has been the subject of much scrutiny, criticism and legal action by various constituencies which include the State Attorney General, the State Education Department’s Office of Vocational and Educational Services for Individuals with Disabilities (VESID), and the Empire Justice Center; and

Board Meeting: June 20, 2019

Whereas, by Resolution No. 2017-18: 360, adopted on October 26, 2017, the District's Board of Education ("Board") authorized and directed the creation of a new position whereby an attorney is assigned to work directly with the District's Office of Specialized Service for the purpose of monitoring and supporting various Special Education-related initiatives throughout the District, including Individual Educational Plans (IEP), Annual Reviews, due process and general administration, with the goal to improve compliance with statutory requirements and District Policy and ultimately provide better educational outcomes for students; and

Whereas, by Resolution No. 2017-18: 561, adopted on January 25, 2018, the Board authorized the appointment of an advisory body to the Board known as the Committee to Review Special Education Programs and Services (the "Committee") for the purpose of advising and recommending courses of action to the Board for its consideration in resolving issues related to school selection and placement; and

Whereas, on May 24, 2018, the Board accepted the report and recommendations of the Committee; and

Whereas, by Resolution No. 2018-19: 555, adopted on December 20, 2018, the Board approved the Settlement Agreement by and between the District and Empire Justice Center, and authorized and directed the President of the Board of Education and/or the General Counsel of the District to execute, on behalf of the District, all documents related to the Settlement Agreement; and

Whereas, in a report dated March 18, 2019, the Committee provided a second round of recommendations to the Board and, by Resolution No. 2018-19: 826, adopted on April 25, 2019, the Board delegated the acceptance and approval of those documents to the District's General Counsel and the representatives of the District negotiating the form of Stipulation to resolve the pending potential litigation being initiated by the Empire Justice Center; and

Whereas, pursuant to the Settlement Agreement, the Empire Justice Center has approved the Goals and Interim Benchmarks annexed to this Resolution, for settlement of the proposed class action lawsuit filed on behalf of the District's special education students; therefore be it

Resolved, that the Board hereby accepts and approves the aforementioned Goals and Interim Benchmarks; and be it further

Resolved, that the Board hereby authorizes and directs the District's General Counsel to execute, on behalf of the District, the Stipulation as contemplated by the Settlement Agreement.

**Seconded by Member of the Board Commissioner Powell
Adopted 5-1 with Commissioner Davis dissenting and Commissioner LeBron absent**

EXHIBIT “E”

1. The District will increase the percentage of students with disabilities with Individualized Education Plans (“SWD”) who achieve proficient-level scores on the Grades 3-8 New York English Language Arts (“ELA”) and Mathematics standardized tests.

A. The past levels of performance are as follows:

In the 2017-2018 school year, 2% of District SWD achieved proficient-level scores, i.e., Levels 3 and 4, on the Grades 3-8 ELA and Mathematics standardized tests.

In the 2018-2019 school year, 2.1% of District SWD achieved proficient-level scores on the ELA test, and 3.1% of District SWD achieved proficient-level scores on the Mathematics test.

There were no standardized assessments performed during the 2019-2020 school year as a result of the Covid-19 pandemic and school shutdown.

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

Through the exposure to grade level curriculum and rigorous instruction, the District will increase the percentage of SWD in grades 3-8 who demonstrate proficiency in English language arts and mathematics by a minimum of 3%, as indicated by the results of the 2018-2019 New York State ELA and Mathematics tests.

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

The Every Student Succeeds Act (“ESSA”), the main federal law for K-12 public education, requires that states hold public schools accountable for how students achieve. In 2018, SED established a new set of indicators to measure school performance. The indicators went beyond a narrow focus on measuring achievement in English language arts and mathematics. They included other core subjects, such as science and social studies, and have a much stronger focus on student growth and school progress. Assessments are still an important part, but the new accountability system offers a more complete look at how a school is performing. The new system also includes nonacademic measures of school performance.

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

The Rochester City School District – New York State Report Card, on the SED’s data website, indicates the average proficiency of students with disabilities in ELA and Mathematics, grades 3-8. The Northwest Evaluation Association (“NWEA”) benchmark assessment is administered each fall, winter and spring. The assessment is used to progress monitor proficiency rates and predict student performance on the 3-8 New York State tests. Furthermore, the data is monitored by the Department of Special Education through the ROC3D Dashboard after each benchmark assessment.

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

The District will increase the percentage of SWD who demonstrate proficiency on ELA and Mathematics tests, during the years in which SED administers ELA and Math tests, up to and including the 2022-2023 school year, to percentages to be negotiated by the parties,¹ as set forth in the table below.

	Past Performance	Past Performance	Interim Benchmarks			Final Goal (Disengagement Standard)
School Year	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023
Percentage of SWD with Proficient-Level ELA Scores	2%	2%	Not reported – no testing	To Be Negotiated	To Be Negotiated	To Be Negotiated
Percentage of SWD with Proficient-Level Math Scores	2%	3%	Not reported – no testing	To Be Negotiated	To Be Negotiated	To Be Negotiated

¹ The parties agreed to renegotiate the measurable interim performance benchmarks and the final goal disengagement standard due to the effects of the Covid-19 pandemic on education, and planned changes to New York State assessments following the implementation of Next Generation Learning Standards. Negotiations will begin two weeks after New York State releases its plan for the 2020-2021 Next Generation Learning Standards assessments, if any, but in any event, no later than February 1, 2021. Negotiations will be completed by March 31, 2021.

2. The District will increase the graduation rate of SWD.

A. The past levels of performance are as follows:

The SWD graduation rate in June 2018 was 36%.

The SWD graduation rate in June 2019 was 42.4%.

New York State did not release data regarding June 2020 SWD graduation rates prior to October 15, 2020. Preliminary internal data suggests that the District's June 2020 SWD graduation rate is approximately 47%.

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

The Special Education Strategic Action Plan outlined the District's goal to increase the graduation rate of SWD by a minimum of 5%, from 34.3% to 39.3%, by June 2019.

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

None.

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

The Rochester City School District – New York State Report Card, on the SED's data website, includes high school graduation rate information. Additionally, progress monitoring measures include, but are not limited to student transcripts and ROC 3D dashboard to track credit accumulation for SWD.

FINAL GOAL 2, SECTION "E," CONTINUED ON FOLLOWING PAGE

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

The District will increase the June graduation rate of SWD by a minimum of 4% per year, and achieve a graduation rate of at least 52% in the 2021-2022 school year, as set forth in the table below.

	Past Performance	Past Performance	Interim Benchmarks		Final Goal (Disengagement Standard)
School Year	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022
SWD June Graduation Rate	36%	42%	Not Reported ²	Not Reported ³	52%

² The District will provide any data released from New York State regarding June 2020 SWD graduation rates to Plaintiffs' counsel, for information purposes only, within two weeks of its publication by New York State. As stated above in Section 2(A), the District's unverified June 2020 SWD graduation rate is approximately 47%.

³ The District will provide any data released from New York State regarding June 2021 graduation rates to Plaintiffs' counsel, for information purposes only, pursuant to the reporting schedule in the Stipulation of Settlement.

3. The District will reduce the Long Term Suspension (“LTS”) rate for District SWD; eliminate any significant discrepancy in LTS for SWD as compared to general education students; and eliminate any significant discrepancy in LTS for African American and Hispanic SWD as compared to white SWD.

A. The past levels of performance are as follows:

In the 2016-2017 school year, District SWD were subject to LTS at a rate of approximately 4%. The District was cited by New York State regarding State Performance Indicator 4a, for disproportionately suspending SWD, and Performance Indicator 4b, for disproportionately suspending African American SWD as compared to white SWD.

In the 2017-2018 school year, District SWD were subject to LTS at a rate of approximately 4%. African American and Hispanic SWD were suspended at a rate of approximately 3%. White SWD were suspended at a rate of approximately 1%.

In the 2018-2019 school year, the rate of suspensions for SWD of over 10 days was 2.4%. The 2018-2019 racial disparity index of African American and Hispanic SWD LTS rate versus the white SWD LTS rate was 0.98.⁴

New York State has not released Indicator 4 data for the 2019-2020 school year. Preliminary internal data suggests that, for in-district SWD suspensions of greater than 10 days in 2019-2020, the overall rate is approximately 1.8%. The 2019-2020 racial disparity index of African American and Hispanic SWD LTS rate versus the white SWD LTS rate is approximately 1.88.

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 has received technical assistance from the Technical Assistance Center on Disproportionality (“TAC-D”) through a partnership with New York University. District staff receive training on disproportionality, implicit bias and culturally responsive education. In addition, the Department of Special Education developed a Manifestation Determination Review protocol to ensure that students with disabilities are not suspended disproportionately.

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

According to the New York State targets, no more than 2.7% of SWD shall be suspended greater than ten days in a school year, and there should be no significant discrepancies in the rates of suspensions of greater than ten days in a school year of SWD by race/ethnicity.

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

The Rochester City School District – New York State Report Card, on the SED’s data website, reports the rate of suspension for students with disabilities of ten days or more. Additionally, the Department of Special Education uses ROC3D Dashboard and PowerSchool to monitor suspension rates of students with disabilities.

⁴ An index of 1.0 indicates no disparity. An index number of more than 1.0 indicates a higher rate among African American and Hispanic SWD. An index number of less than 1.0 indicates a higher rate among white SWD.

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

The District will decrease the number of SWD subjected to LTS by .5 percentage points per year, bringing the overall SWD LTS rate to 2% by the end of the 2021-2022 school year. Furthermore, the District will eliminate any significant discrepancy between the number of African American and Hispanic SWDs and white SWD who are subject to LTS by the 2021-2022 school year, as set forth in the table below.

	Past Performance	Past Performance	Interim Benchmarks		Final Goal (Disengagement Standard)
School Year	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022
SWD LTS Rate	4%	2.4%	3%	Dependent on school reopening ⁵	2%
Racial Disparity Index of African American and Hispanic SWD LTS Rate Versus White SWD LTS Rate	2.5	0.98	1.83	Dependent on school reopening	1.0 or the standard deviation for the LTS Rate as calculated by New York State ⁶ , whichever is higher.

⁵There will be no reporting to the Court on the 2020-2021 benchmark if in-person learning does not resume during the 2020-2021 school year. While there is no reporting to the Court, the District will provide internal data on the SWD LTS rate, for information purposes only, pursuant to the reporting schedule in the Stipulation of Settlement.

If school resumes in person, full-time, five days per week, for all students in one or more grade levels, at any time during the 2020-2021 school year, for at least 60 consecutive school days, the District will report to the Court regarding the SWD LTS rate, and the Racial Disparity Index for SWD LTS suspension rates among African American and Hispanic SWD versus white SWD, during that period. The benchmark for 2020-2021 for SWD LTS rate is 2.5%. The benchmark for 2020-21 for the Racial Disparity Index is 1.42.

⁶ New York State standard for deviation for LTS rate is calculated yearly by New York State based on the statewide average for suspensions. The standard deviation is included in the State's report on State Performance Plan Indicator 4, Rates of Suspension and Expulsion, in the table titled "Relative Risk Calculations for Suspension of Students with Disabilities (SWD) for More than Ten Days" at Column E "Standard Deviation for Suspension Rate (all races)" and is stated in "Criteria for Notification and Explanation of Data Used for State Performance Plan Indicator 4 High Rates of Suspension and Expulsion." In the 2018-2019 Indicator 4 Report and Criteria for Notification, dated November 23, 2018, the standard deviation was 1.149%.

4. The District will increase the percentage of SWD who are receiving their instruction in settings with students without disabilities.

A. The past levels of performance are as follows:

In the 2017-2018 school year, the rate of SWD in general education settings for more than 80% of the school day was 51.8%. The rate of SWD in general education settings for less than 40% of the school day was 23.6%.

In the 2018-2019 school year, the rate of SWD in general education settings for more than 80% of the school day was 49.8%. The rate of SWD in general education settings for less than 40% of the school day was 22.1%.

In the 2019-2020 school year, the rate of SWD in general education settings for more than 80% of the school day was 57.2%. The rate of SWD in general education settings for less than 40% of the school day was 19.8%.

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

The Department of Special Education has increased inclusive programming on the continuum of services to enable students with disabilities to access to the general education setting.

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

According to New York State targets, at least 59% of SWDs should receive their instruction in the general education setting for at least 80% of the day. There is no state target for SWDs who receive their instruction in the general education setting for 40-79% of the day. The state target for SWDs who receive their instruction in the general education setting less than 40% of the general education program is 20%.

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

The Rochester City School District – New York State Report Card, on the SED's data website, reports the percentage of SWD receiving instruction in general education classrooms.

FINAL GOAL 4, SECTION "E," CONTINUED ON FOLLOWING PAGE

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

The District will increase the number of SWD who receive their instruction in general education classrooms for at least 80% of their day by 3.3% each year, bringing the total percentage of SWD who receive their instruction in general education classrooms more than 80% of the day to 65% by the end of the 2021-2022 school year. The District will also decrease the number of SWD who receive their instruction in general education classrooms less than 40% of their day by 1.5% a year, bringing the total percentage of students who receive their instruction in general education classrooms less than 40% of their day to 17.6% by the end of the 2021-2022 school year, as set forth in the table below.

	Past Performance	Past Performance	Interim Benchmarks		Final Goal (Disengagement Standard)
School Year	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022
In Gen. Ed. setting more than 80%	51.8%	49.8%	58.4%	Dependent on school reopening ⁷	65%
In Gen. Ed. setting less than 40%	23.6%	22.1%	20.6%	Dependent on school reopening	17.6%

⁷ There will be no reporting to the Court on the 2020-2021 benchmark if in-person learning does not resume during the 2020-2021 school year. While there is no reporting to the Court, the District will provide internal data on LRE, for information purposes only, pursuant to the reporting schedule in the Stipulation of Settlement.

If in-person learning resumes in person, full-time, five days per week, for all students, in one or more grade levels, at any time during the 2020-2021 school year, for at least 60 consecutive school days, the District will report to the Court regarding the LRE benchmarks during that period. The benchmark for 2020-2021 for SWD in the Gen. Ed. setting more than 80% is 61.7%. The benchmark for 2020-2021 for SWD in the Gen. Ed. setting less than 40% is 19.1%.

5. The District will decrease the percentage of current District SWD who are changed or transferred from the school they are attending because of lack of necessary classrooms or programs recommended by the Committee on Special Education (“CSE”).

A. The past levels of performance are as follows:

Prior to the 2018-2019 school year, a data measure did not exist to track current District SWD who were changed or transferred from the school they are attending because of lack of necessary classrooms or programs that are recommended by the CSE. The number of SWD who changed schools during the 2017-2018 school year under the code designations of ‘change due to special education service available’ and ‘transfer within the District’ was 463. As of May 2019, the number of students who changed schools during the 2018-2019 school year under those same code designations was 353.

In the 2018-2019 school year, the rate of SWD changing schools following a CSE recommendation was 4%.

In the 2019-2020 school year, prior to the Covid-19 school shutdown, the rate of SWD changing schools following CSE recommendation was approximately 3.7%.

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

The Department of Special Education has developed a continuum plan to increase the equity across the District. In increasing equity, schools will be able to provide more programs in buildings and as a result student will have to move less for services/programs.

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

The Individuals with Disabilities Education Act (“IDEA”) requires that, where possible, students should attend the school they would have attended if they were not classified with a disability.

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. A code designation will be created in Frontline for SWD who are changed or transferred from the school they are attending because of lack of necessary classrooms or programs that are recommended by the CSE.

FINAL GOAL 5, SECTION “E,” CONTINUED ON FOLLOWING PAGE

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

The District will decrease the percentage of current District SWD who are changed or transferred from the school they are attending because of lack of necessary classrooms or programs recommended by the CSE from approximately 7.3% to 1%⁸ by the end of the 2021- 2022 school year, by efforts including having a continuum that is inclusive of Consultant Teacher and Resource Room Services, Integrated Co-teaching, Special Class options and related services.

	Past Performance	Past Performance	Interim Benchmarks		Final Goal (Disengagement Standard)
School Year	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022
Percentage of SWD changing schools following CSE recommendation	7.3%	4%	4%	Dependent on school reopening ⁹	1%

⁸District SWDs who have high or very specialized needs, or who change schools or transfer programs to attend the following programs, will not be included in the reported percentage: Autism Spectrum Disorder ("ASD") 6:1+4, ASD 6:1+2, ASD 6:1+1, ASD Connect, Social Communication 12:1+3, Social Communication 12:1+1, Language Enriched Integrated Co-Teaching, School to Employment Programs ("STEPS"), New York State Alternate Assessment ("NYSAA") 12:1+1, NYSAA 8:1+2, NYSAA 12:1+3, Diagnostic Transition Program 8:1+3, Growth and Education for Students with Multiple Disabilities ("GEM") 12:1:(3:1), and all bilingual special education programming.

⁹If in-person learning for all students does not resume for the 2020-2021 school year, there will be no reporting to the Court on a 2020-2021 benchmark. While there is no reporting to the Court, the District will provide data on transfers of SWD students following a CSE recommendation pursuant to the reporting schedule in the Stipulation of Settlement, for information purposes only. In the event that full-time, five days per week, in-person learning, for all students, does resume for at least 60 consecutive school days, the District will report to the Court on the benchmark for that period. The 2020-2021 benchmark for SWD changing schools following CSE recommendation is 2%.

6. The District will increase the percentage of SWD who have legally compliant Transition Plans.

A. The past levels of performance are as follows:

In the 2017-2018 school year, 63.3% of Individualized Education Plans (“IEP”) for SWDs ages 15 and older included legally compliant transition plans according to New York State Indicator 13.

In 2018-2019, no data was provided to New York State under Indicator 13. A self-review of a random sample of transition plans demonstrated that, upon initial review, 71.3% were legally compliant. After corrections were made to the transition plans by CSE Chairs, upon a second review 100% of SWD had legally compliant transition plans.

In the 2019-2020 school year, prior to the Covid-19 school shutdown, the Department of Special Education conducted three internal transition plan reviews, consisting of a review of 30 IEPs from each quarter. During the February 2020 review, 20 out of 30, i.e., 67%, of the IEPs contained legally compliant transition plans. After corrections were made by CSE chairs, 100% of the reviewed transition plans met regulatory compliance.

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

In the fall of 2018, all Special Education administrators and teachers attended a professional learning series designed to provide information and resources on a series of transition topics. The topics shared during these sessions included; The Transition Timeline and Regulations, Transition Assessments and Documenting Transition in the IEP, the Career Development and Occupational Studies (“CDOS”) Standards, the CDOS and Skills Credentials, Graduation Requirements and Safety Net Options and Community Resources. In addition, in the 2018-2019 school year all IEPs of students fifteen and older will have a transition plan uploaded the document repository in Frontline IEP.

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

Pursuant to the Individuals with Disabilities Education Act (“IDEA”) and New York State Commissioner’s Regulations including Part 200.4(d)(2)(ix), beginning with the first IEP to be in effect when the student turns age 15 (and at a younger age, if determined appropriate) and updated annually, the IEP must include: a statement (under the student’s present levels of performance) of the student’s needs, taking into account the student’s strengths, preferences, and interests, as they relate to transition from school to post-school activities; appropriate measurable postsecondary goals; a statement of needed transition services; needed activities to facilitate the student’s movement from school to post-school activities; and a statement of the responsibilities of the school district and, when applicable, participating agencies for the provision of services and activities that promote movement from school to post-school opportunities, or both, before the student leaves the school setting.

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

Frontline will be used to determine if a SWD who is 15 years of age and older has a transition plan uploaded to the document repository. New York State's Quality Assurance Protocol, as modified by the District, will be used to assess high quality legally compliant Transition Plans.

In the school year(s) where data is not provided to New York State under Indicator 13, the District will continue to conduct three internal transition plan reviews of at least 30 IEPs. The District will report the percentage of compliant transition plans among those reviewed IEPs. The data for the Benchmark(s) and/or Final Goal for the school year(s) not subject to Indicator 13 reporting will be calculated based on the average of the percentage of legally compliant transition plans identified during the District's IEP three internal transition plan reviews conducted during that school year.

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

The District will increase the percentage of SWDs with legally compliant transition plans by 8% per year, bringing the overall number of transition plans to 95.3% by the end of the 2021-2022 school year, as set forth in the table below.

	Past Performance	Past Performance	Interim Benchmarks		Final Goal (Disengagement Standard)
School Year	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022
Percentage of SWD with Transition Plans	63.3%	71.3%	78.3%	87.3%	95.3%

7. The District will increase its timely completion of CSE meetings.

A. The past levels of performance are as follows:

In the 2017-2018 school year, out of 6,100 total initial, annual, or reevaluation review meetings for SWD, 1,712 (28%) were not timely completed.

In the 2018-2019 school year, the rate of overdue initial, annual, and reevaluation review CSE meetings was 15%

In the 2019-2020 school year, prior to the Covid-19 school shutdown, the estimated rate of overdue initial, annual, and reevaluation review CSE meetings was approximately 11.9%.

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 will use its fully-functioning CSE process in order to reach full compliance with respect to: Annual Reviews, Reevaluations, and Initial Referrals for Special Education across all District schools and programs. The District has hired an Associate Director of Special Education Compliance.

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 100% of SWDs have timely initial, annual, and reevaluation review meetings.

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

Frontline will be used to measure compliance.

FINAL GOAL 7, SECTION "E," CONTINUED ON FOLLOWING PAGE

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

The District will decrease the percentage of overdue initial, annual, and reevaluation review meetings from 28% to 5% by the end of the 2021-2022 school year. By the end of the 2021-2022 school year, 95% of SWDs will have timely initial, annual, and reevaluation review meetings.

	Past Performance	Past Performance	Interim Benchmarks		Final Goal (Disengagement Standard)
School Year	2017-2018	2018-2019	2019-2020 ¹⁰	2020-2021	2021-2022
Percentage of Overdue Meetings	28%	15%	16%	10%	5%

¹⁰Due 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.

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.

FINAL GOAL 8, SECTION "E," CONTINUED ON FOLLOWING PAGE

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

The District will decrease the number of variances 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. The District will also increase the percentage of related services reported in Frontline IEP by 4% each year, ending in 87% of services provided by the 2021-2022 school year, as set forth in the table below.

	Past Performance	Past Performance	Interim Benchmarks		Final Goal (Disengagement Standard)
School Year	2017-2018	2018-2019	2019-2020 ¹¹	2020-2021	2021-2022
Number of Variances due to Lack of Capacity	42	7	10	To Be Negotiated ¹²	2
Percentage of Providers Reporting Services in Frontline	71%	72%	79%	83%	87%

¹¹ 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.

¹²The Parties will meet and determine whether the 2020-2021 benchmark for the number of variances due to lack of capacity should be changed because of staffing and enrollment issues related to Covid-19, on or before November 30, 2020. Negotiations will be completed by March 31, 2021. The 2020-2021 benchmark agreed upon prior to the Covid-19 pandemic was 5.

9. The District will increase parental participation in CSE meetings.

A. The past levels of performance are as follows:

In the 2017-2018 school year, parents participated in 1,213 (19%) out of 6,400 Annual Review ("AR") meetings held.

In the 2018-2019 school year, the percentage of AR meetings with parent participation was 46.7%.

In the 2019-2020 school year, prior to the Covid-19 school shutdown, the percentage of AR meetings with parent participation was 59.8%.

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

The Department of Special Education has an accountability protocol to ensure that meeting notices are mailed out in a timely fashion, as indicated by the Department's Strategic Action Plan in the 2017-2018 school year. In addition, the Department determined schools in need of technical assistance in the area of compliant CSE process. One area of data included the number of CSE Meeting Notices that were mailed out less than five days before the meeting.

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

New York State Commissioner's Regulations Part 200.5(d) provides that school districts must take steps to ensure parents' presence and participation at meetings.

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

Frontline will be used to track the data and monitor this goal.

FINAL GOAL 9, SECTION "E," CONTINUED ON FOLLOWING PAGE

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

The District will increase the percentage of parent participation at AR meetings by 8% per year, bringing the parent participation rate to at least 51% by the end of the 2021-2022 school year, as set forth in the table below.

	Past Performance	Past Performance	Interim Benchmarks		Final Goal (Disengagement Standard)
School Year	2017-2018	2018-2019	2019-2020 ¹³	2020-2021	2021-2022
Percentage of AR Meetings with Parent Participation	19%	47%	35%	43%	51%

¹³Due 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.

10. The District will increase the bilingual programming offered for Spanish-speaking SWD.

A. The past levels of performance are as follows:

In the 2017-2018 school year, the District offered 24 bilingual special education programs.

In 2018-2019, the District offered 26 bilingual special education programs.

In 2019-2020, the District offered 29 bilingual special education programs.

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 opened the Bilingual Language and Literacy Academy to begin the 2018-2019 school year with Consultant Teacher and Resource Room Services.

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

New York State Commissioner’s Regulations Part 154 provides that students who are English Language Learners (“ELL”) must receive education supports in their native language, and ELL students have rights to Bilingual education if it is offered by a school district.

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

The District’s continuum of services will reflect the increase in bilingual programming, including specialized programming options. Frontline and PowerSchool will be used to provide program data.

FINAL GOAL 10, SECTION “E,” CONTINUED ON FOLLOWING PAGE

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

Conditioned on annual enrollment of Spanish-speaking ELL SWDs, the District will increase bilingual programming offered in the special education continuum, increasing the total number of bilingual programs by the end of 2021-2022 school year to a number to be negotiated by the parties,¹⁴ based on student enrollment, as set forth in the table below.

	Past Performance	Past Performance	Interim Benchmarks		Final Goal (Disengagement Standard)
School Year	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022
Bilingual Programs	24	26	29	To Be Negotiated	To Be Negotiated

¹⁴ Negotiations will begin on the 2020-2021 benchmark and the final goal disengagement standard no later than November 30, 2020. Negotiations will be completed by March 31, 2021. If enrollment of Spanish-speaking ELL SWDs declines so that the District believes that the agreed-upon number of programs are not necessary, the parties will meet, determine whether another number of programs would be sufficient to meet the needs of Spanish-speaking ELL SWDs, and whether the interim benchmark and/or final goal should be changed accordingly. If the parties are unable to agree on the number of programs during renegotiation, the parties may proceed with the Alternative Dispute Resolution procedures set forth in the Stipulation of Settlement.

11. The District will decrease the number of 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, there were uncertified individuals utilized for 46 full-time equivalent ("FTE") Special Education teacher positions.¹⁵

As of March 13, 2020, the number of necessary Special Education teachers not certified in New York in Special Education 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.

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.

FINAL GOAL 11, SECTION "E," CONTINUED ON FOLLOWING PAGE

¹⁵The term "uncertified" as used here includes teachers who lack New York State Special Education certification; those who are certified in another state, territory, commonwealth or country; retired teachers without a Special Education certification serving as substitutes; and substitutes who are not certified to teach in any state, territory, commonwealth or country.

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

The District will decrease the number of necessary Special Education teachers not certified in New York, to a number to be negotiated by the parties,¹⁶ as set forth in the table below.

	Past Performance	Current Performance	Interim Benchmark	Final Goal (Disengagement Standard)
School Year	2018-2019	2019-2020	2020-2021	2021-2022
Special Education Teachers Not Certified in Special Education in New York State	46	38	To Be Negotiated	To Be Negotiated

¹⁶Negotiations will begin on the 2020-2021 benchmark and the final goal/disengagement standard no later than November 30, 2020. The parties will conclude negotiations no later than March 31, 2021.

12. The District will reduce any significant discrepancy that exists in the classification of African American/black and Hispanic SWD, as compared to white SWD.

A. The past levels of performance are as follows:

In the 2017-2018 school year, 18% of white students were reported as SWD. 20% of African American/black students were reported as SWD. 23% of Hispanic students were reported as SWD. Overall, there was a 1.17 disparity between African American SWD and Hispanic SWD as compared to white SWD.

In the 2018-2019 school year, racial disparity index of African American and Hispanic SWD who were newly- classified as SWD versus the number of newly-classified white SWD was 0.90.¹⁷

In 2019-2020, prior to the Covid-19 school shutdown, the racial disparity index of African American and Hispanic SWD who were newly-classified as SWD versus the number of newly-classified white SWD was approximately 0.57.

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 engaged in ongoing technical assistance with New York University's Technical Assistance Center on Disproportionality ("TAC-D") to address disproportionality District-wide. In addition, the District has begun to offer District-wide trainings to address implicit bias.

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

According to SED Indicator 10A, no school district should have a significant discrepancy in the classification of students that is the result of inappropriate policies, practices and procedures.

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

The Rochester City School District – New York State Report Card, on the SED's data website, reports the total number of students and the number of SWD categorized by race/ethnicity. Powerschool and Frontline will be used to determine the rates of students who are newly-classified as SWD.

FINAL GOAL 12, SECTION "E," CONTINUED ON FOLLOWING PAGE

¹⁷ An index number of more than 1.0 indicates a higher rate of new classifications among African American and Hispanic SWD. An index number of less than 1.0 indicates a higher rate of new classifications among white SWD.

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

The District will reduce any significant discrepancy between the number of African American and Hispanic students who are newly-classified as SWD and white students who are newly-classified as SWD, due to any inappropriate policies, practices, and procedures by the District, as set forth in the table below.

	Past Performance	Past Performance	Interim Benchmarks		Final Goal (Disengagement Standard)
School Year	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022
Racial Disparity Index of Newly-Classified African American and Hispanic SWD Versus White SWD	1.17	0.90	1.10	1.05	1.0

13. The District will increase the number of mandatory Special Education-related professional development trainings for Special Education teachers, Special Education administrators, and other individuals acting as the Local Education Agency (“LEA”) for Committee on Special Education (“CSE”) meetings.

A. The past levels of performance are as follows:

In the 2018-2019 school year, all special education teachers and special education administrators participated in one half-day professional development training on Specially Designed Instruction, Transition in the Individualized Education Plan (“IEP”), and Disproportionality. The total number of Professional Development (“PD”) trainings for special education teachers and administrators was 2.

In 2019-2020, the total number of PD trainings for special education teachers and administrators was 3.

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

The Department of Special Education holds bi-weekly professional development for Special Education administrators aligned with the District Special Education Strategic Action plan and goals. Special Education administrators are required to turn-key information from bi-weekly meetings to their Special Education staff in their buildings on (at least) a monthly basis.

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

Currently in New York State, holders of a professional certificate who are practicing in a New York Public School or BOCES to complete 100 hours of professional development during each five year registration period.

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

The Special Education Strategic Action Plan will be used to provide information on professional development trainings of special education teachers and special education administrators.

FINAL GOAL 13, SECTION “E,” CONTINUED ON FOLLOWING PAGE

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

The District will increase the number of mandatory, high quality professional trainings required for all special education teachers, special education administrators, and other individuals acting as the LEA for CSE meetings, bringing the overall number of such trainings to eight by the end of the 2021-2022 school year, as set forth in the table below.

	Past Performance	Past Performance	Interim Benchmarks		Final Goal (Disengagement Standard)
School Year	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022
Mandatory PD Trainings	1	2	3	5	8

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.

B. The past levels of performance are as follows:

During the 2018-2019 school year, there were uncertified 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.

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.

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.

The parties will meet within thirty (30) days of delivery to the Board of Education of a strategic plan, but in no event later than March 31, 2021, to negotiate the applicable Interim Performance Benchmark(s) and Final Disengagement Goal(s) for the 2021-2022 School Year, after the completion of the planning process described above.

The parties will negotiate an objective Interim Performance Benchmark(s) and Final Disengagement Goal(s) for the 2021-2022 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") Day¹⁸ for the 2025-2026 school year) by teachers or other Special Education Providers who are both certified in New York State and bilingual in Spanish, as defined above.

The District will present the plan, along with the Benchmark and the Final Goal, to the Board during a public meeting of the Board on or before June 30, 2021.

The District will commit to carry out the action items set forth in each year of the plan, including those years that occur following disengagement from Court supervision.

¹⁸ BEDS Day is a date set by the New York State Education Department ("SED") as the deadline for submission for data from school districts to the SED'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>.

EXHIBIT “F”

Rochester City School District Mission, Vision and Values Statement

MISSION STATEMENT

The Mission of the Department of Special Education in the Rochester City School District is to provide high quality education programs whereby all students are empowered to reach their individual potential. We will continually strive for excellence and ensure that we are *intentional* in our practices, *innovative* in our strategies, and *inclusive* of every student, family, and community member.

VISION STATEMENT

We believe in the potential of all students, including those with disabilities. We are intentional with our planning and resources to effectively support full inclusion. We are deliberate in implementing accurate, objective and bias-free processes for supporting students with disabilities and for identifying students with a potential disability. We catch students before they fall and provide them with every resource to be successful. We know every student by face and name.

VALUES

BELIEVE IN ME

District leaders express their belief that all students can achieve at high levels and act on that by making sure everyone shares responsibility for the success of students with disabilities

On the building level all staff take responsibility for all students. Teacher teams regularly review and discuss data and progress of students with disabilities during common planning time.

INCLUDE ME

District leaders share a district-wide vision for inclusion of special education students as an explicit core value. This is clearly expressed in mission, vision and strategic planning.

District leaders expect and support general education teachers to build their expertise in special education, and special education teachers to develop greater content expertise. This could include professional development for the entire staff that is focused on special education topics, knowledge, and skills. It could also be integrating special education topics into general trainings.

The school has regular common planning time for general and special education teachers to plan instruction together. Both special education teachers and general education teachers collaborate, co-plan, co-teach, and work with small and large groups of students based on student need. Both deliver content and provide specific supports to struggling students.

FIND ME

The school and district takes steps to ensure the process for identifying students with a potential disability is accurate, objective and bias-free.

School teams collect data from a wide variety of sources including academic assessments, behavioral checklists, and early childhood development inventories for all students, including those in early grades. Teams use this data to conduct universal screenings and identify students who need additional support.

CATCH ME WHEN (OR BEFORE) I FALL

The district holds each school accountable for monitoring data to detect trends in student performance at the individual, classroom, and school level and adjusts instruction accordingly. Principals are evaluated based on their ability to do this, and their Chiefs intervene and support if they struggle

Teachers consistently use a shared school-wide system to monitor student data and provide support to both students with and without disabilities. A multidisciplinary team of teachers and staff is responsible for looking at school-wide data and designing interventions to address academic, behavioral, and social-emotional needs of all students.

The school's professional development calendar includes specific sessions on supporting students with disabilities into general education professional learning.

MEET ME WHERE I AM AND CHALLENGE ME

The district leaders train principals how to analyze data to make decisions about differentiating instruction and can explain how principals train teachers in that same process

The school team meets before any major transition in the student's education (e.g. moving from elementary to middle school and graduating high school) to align with the student and family on goals, anticipate challenges, and develop a support plan.

KNOW ME

The district leaders set policies that encourage school staff to frequently communicate with parents about student progress and provides technology that makes it easy to do so.

Teachers know and can articulate each student's strengths, interests and goals, beyond what's written in the IEP, and students know their data and can talk about where they are succeeding and where they need

EXHIBIT “G”**Reporting Schedule for Interim Benchmark Data**

Final Disengagement Goal	Reporting Frequency
1. The District will increase the percentage of students with disabilities with Individualized Education Plans (hereinafter “SWD”) who achieve proficient-level scores on the Grades 3-8 New York English language arts (“ELA”) and Mathematics standardized tests.	Annual
2. The District will increase the graduation rate of SWDs.	Annual
3. The District will reduce the Long Term Suspension (“LTS”) rate for SWD; eliminate any significant discrepancy in LTS for SWD as compared to general education students; and eliminate any significant discrepancy in LTS for African American and Hispanic SWD as compared to Caucasian/white SWD.	Quarterly
4. The District will increase the percentage SWD who are receiving their instruction in settings with students without disabilities.	Annual
5. The District will decrease the percentage of current District SWD who are changed or transferred from the school they are attending because of lack of necessary classrooms or programs recommended by the Committee on Special Education (“CSE”).	Quarterly
6. The District will increase the percentage of SWD who have legally compliant Transition Plans.	Annual
7. The District will increase its timely completion of CSE meetings.	Quarterly
8. The District will timely deliver programs and services required by the CSE.	Quarterly
9. The District will increase parental participation in CSE meetings.	Quarterly
10. The District will increase the bilingual programming offered for Spanish-speaking SWD.	Annual
11. The District will decrease the number of uncertified or otherwise unqualified necessary Special Education teachers.	Twice a year: 30 days after BEDS day (see FN in Final Goal 14), or October 31, whichever is later, and then as part of Annual Report
12. The District will reduce any significant discrepancy that exists in the classification of African American/black and Hispanic SWD, as compared to Caucasian/white SWD.	Annual

13. The District will increase the number of mandatory Special Education-related professional development trainings for Special Education teachers, Special Education administrators, and other administrators with Special Education responsibilities.	Quarterly
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.	Twice a year: 30 days after BEDS day (see FN in Final Goal 14), or October 31, whichever is later, and then as part of Annual Report

Final Goal 1				
Target Performance				
	Current Performance	Interim Benchmarks		Final Goal (Disengagement Standard)
School Year	2017-2018	2019-2020	2020-2021	2021-2022
Benchmark for Percentage of SWD with Proficient-Level ELA Scores	2%	6% or higher	9% or higher	12% or higher
Benchmark for Percentage of SWD with Proficient-Level Math Scores	2%	6% or higher	9% or higher	12% or higher
Actual Performance (ELA)		INSERT%	INSERT%	INSERT%
Actual Performance (Math)		INSERT%	INSERT%	INSERT%
Actual Performance minus Benchmark in (ELA)		INSERT%	INSERT%	INSERT%
Actual Performance minus Benchmark (Math)		INSERT%	INSERT%	INSERT%
Is a Remedial Action Plan Required?		YES	NO	
		2019-2020	2020-2021	2021-2022
Allowable performance= Benchmark minus 5% (ELA)		5.7% or higher	8.55% or higher	11.4% or higher
Actual Performance minus Allowable Performance (ELA)		INSERT%	INSERT%	INSERT%
Allowable performance= Benchmark minus 5% (Math)		5.7% or higher	8.55% or higher	11.4% or higher
Actual Performance minus Allowable Performance (Math)		INSERT%	INSERT%	INSERT%
Benchmark Analysis				
What actions has the District taken to achieve the benchmark?				
Did the District meet the benchmark? (Include details)				
What steps or resources are needed to meet the next benchmark?				

EXHIBIT “I”

ARBITRATION PROVISIONS

Scope of Arbitration

In the event that the Parties cannot agree on any term subject to Alternative Dispute Resolution in the Stipulation of Settlement, including the breach, termination or validity thereof, and the matter has not been resolved by mediation, as provided in paragraph 100 of the Stipulation of Settlement, or has not been resolved by the Court, the Party initiating the dispute may determine to resolve the dispute pursuant to the arbitration procedures set forth below.

The arbitration shall be conducted by a sole Arbitrator, to be selected pursuant to the provisions of paragraph 100 of the Stipulation of Settlement. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*, and judgment upon the award rendered by the Arbitrator may be entered by any court having jurisdiction thereof. The Arbitrator will apply the law of the State of New York, and Federal Law, when applicable. The place of the arbitration shall be Rochester, New York.

The arbitration procedures described in this section shall govern the arbitration except that where any of this section is in conflict with a mandatory provision of applicable arbitration law, that provision of law shall prevail.

Applicable Laws and Remedies

As stated above, the Arbitrator shall apply the substantive law(s) and rules of law of the State of New York, and Federal Law, if applicable. The Arbitrator shall decide the dispute in accordance with the terms of the Stipulation of Settlement and/or Consent Decree, if applicable.

The Arbitrator may grant any remedy or relief, including but not limited to specific performance, that is within the scope of the Stipulation of Settlement and permissible under the law(s) or rules of law applicable to the dispute.

Confidentiality

Unless the Parties agree otherwise, the Parties and the Arbitrator shall treat the proceedings, any related discovery, and the decisions, as confidential, except in connection with judicial proceedings ancillary to the arbitration, such as a judicial challenge to, or enforcement of, an award, and unless otherwise required by law or to protect a legal right of a Party. To the extent possible, any specific issues of confidentiality should be raised with and resolved by the Arbitrator.

Commencement of Arbitration

The Party commencing arbitration (the “Claimant”) shall address to the other Party or Parties (the “Respondent(s)”) a notice of arbitration and provide notice as set forth in paragraph 100 of the Stipulation of Settlement. The arbitration shall be deemed commenced as to any Respondent on the date on which the notice of arbitration is received by the Respondent. The Claimant shall also provide a copy of the notice of arbitration to the Arbitrator.

The notice of arbitration shall include in the text or in attachments thereto:

- a. A demand that the dispute be referred to arbitration pursuant to the Stipulation of Settlement;
- b. A statement of the Claimant's claim, in reasonable detail; and
- c. The relief or remedy sought.

Within ten (10) business days after receipt of the notice of arbitration, the Respondent(s) shall deliver to the Claimant a notice of defense. Failure to deliver a notice of defense shall not delay the arbitration; in the event of such failure, all claims set forth in the demand shall be deemed denied.

Any notice of defense shall include:

- a. Any comment on the notice of arbitration that the Respondent(s) may deem appropriate;
- b. A statement of the Respondent(s)' defense, in reasonable detail;
- c. Any counterclaim within the scope of the arbitration clause in the Stipulation of Settlement.

If a counterclaim is asserted, within five (5) business days after receipt of the notice of defense, the Claimant shall deliver to the Respondent(s) a reply to counterclaim which shall have the same elements as the notice of defense. Failure to deliver a reply to counterclaim shall not delay the arbitration; in the event of such failure, all counterclaims set forth in the notice of defense shall be deemed denied.

Claims or counterclaims within the scope of the arbitration clause of the Stipulation of Settlement may be added, amended or withdrawn only with the consent of the Arbitrator. Any notice of defense or replies to amended claims or counterclaims shall be delivered within five (5) days after the Arbitrator approves the addition or amendment of the claim or counterclaim.

Arbitration Proceedings

The Arbitrator may conduct the arbitration in such manner as the Arbitrator shall deem appropriate. The Arbitrator shall be responsible for the organization of conferences and hearings and any other necessary arrangements.

The proceedings shall be conducted in an expeditious manner. The Arbitrator is empowered to impose time limits the Arbitrator considers reasonable on each phase of the proceeding, including without limitation the manner of presentation of each Party's claims and defenses, time allotted to each Party for presentation of their case and rebuttal, if the Arbitrator determines that an in-person presentation is required. In setting time limits, the Arbitrator should bear in mind the obligation to manage the proceeding firmly in order to complete proceedings as economically and expeditiously as possible.

The Arbitrator may hold an initial pre-hearing conference for the planning and scheduling of the proceedings. Such conference shall be held promptly after Respondent(s)' notice of defense is served, unless the Arbitrator is of the view that further submissions from the Parties

are appropriate prior to such conference. The objective of this conference shall be to discuss all elements of the arbitration with a view to planning for its future conduct.

Matters the Arbitrator may consider in the initial pre-hearing conference include, *inter alia*, the following:

- a. Procedural matters (such as setting specific time limits for, and manner of, any request by the Arbitrator to the Parties for information;
- b. Bifurcation or other separation of the issues in the arbitration or consolidating the arbitration with any other proceeding;
- c. The scheduling of any and all conferences and hearings;
- d. The scheduling of pre-hearing submissions;
- e. The need for and type of record of conferences and hearings, including the need for transcripts;
- f. Whether to decide the dispute on written submissions;
- g. The mode, manner and order for presenting proof;
- h. The amount of time allotted to each Party for presentation of their case and for rebuttal, if an in-person presentation is deemed necessary;
- i. Whether expert witnesses are anticipated, and how expert testimony should be presented;
- j. The early identification and narrowing of the issues in the arbitration, including the possibility of early disposition of any issues;
- k. Any stipulations of fact or admissions the Arbitrator or the Parties believe will assist with the expeditious resolution of the dispute, solely for purposes of the arbitration, as well as simplification of document authentication; and
- l. Settlement negotiations, with or without the assistance of the Arbitrator;

The Arbitrator may make pre-hearing orders and instruct the Parties to file more detailed statements of claim and of defense, and pre-hearing submissions.

Provision of Information to the Arbitration

The Arbitrator may require the Parties to provide information that would assist in the expeditious resolution of the dispute. The Parties will not have any rights to conduct discovery, other than as the Arbitrator may order, after taking into account the needs of the Parties and the desirability of achieving an expeditious and cost-effective resolution of the dispute. The Arbitrator may issue orders to protect the confidentiality of student information, confidential information, proprietary information, and other sensitive information disclosed during the proceedings.

Evidence and Hearings

The Arbitrator shall determine the manner in which the Parties shall present their cases, and the elements of pre-hearing submissions, including whether to require the Parties to provide:

- a. A statement of facts;
- b. A statement of each claim and defense being asserted;
- c. A statement of the applicable law and authorities upon which the Party relies;

- d. A statement of the relief requested; and
- e. All evidence to be presented, including documents relied upon and the name, capacity and subject of testimony of any witnesses to be called, if the Arbitrator determines to conduct a hearing.

The Arbitrator may determine to resolve the dispute on written submissions. Upon the request of a Party, the Arbitrator may determine whether an oral hearing shall be held, including for the presentation of argument and/or evidence. Testimony may be presented in written and/or oral form as the Arbitrator may determine is appropriate. The Arbitrator is not required to apply the rules of evidence used in judicial proceedings, provided, however, that Arbitrator shall apply the attorney-client privilege and the work product immunity. The Arbitrator shall determine the applicability of any privilege or immunity and the admissibility, relevance, materiality and weight of the evidence offered.

The Arbitrator, in the Arbitrator's discretion, may require the Parties to produce evidence in addition to that initially offered.

The Arbitrator shall determine the manner and sequence in which any witnesses are to be examined. The Arbitrator shall have the right to exclude witnesses from hearings during the testimony of other witnesses.

Interim Measures

At the request of a Party, the Arbitrator may take such interim measures as the Arbitrator deems necessary including injunctive relief. A request for interim measures by a Party to a court shall not be deemed incompatible with the agreement to arbitrate or as a waiver of that agreement.

Arbitration Award

The Arbitrator may make final, interim, interlocutory and partial awards. With respect to any interim, interlocutory or partial award, the Arbitrator may state in the award whether or not the award is final for purposes of any judicial proceedings in connection therewith. The Arbitrator shall render the final award within fourteen (14) days of the written submission by the Parties, if no hearing is held, or the closing of the hearing.

All awards shall be in writing and shall state the reasoning on which the award rests unless the Parties agree otherwise. The award shall be deemed to be made at the seat of arbitration and shall contain the date on which the award was made. Executed copies of awards shall be delivered by the Arbitrator to the Parties.

The award shall be final and binding on the Parties, and the Parties will undertake to carry out the award without delay. If an interpretation, correction or additional award is requested by a Party, or a correction or additional award is made by the Arbitrator on the Arbitrator's own initiative, the award shall be final and binding on the Parties when such clarification, correction or additional award is made by the Arbitrator or upon the expiration of the time periods provided at law for such clarification, correction or additional award to be made, whichever is earlier.

Settlement

Either Party may propose settlement negotiations to the other Party at any time. The Arbitrator may suggest that the Parties explore settlement at such times as the Arbitrator may deem appropriate.

The Arbitrator will not be informed of any settlement offers or other statements made during settlement negotiations or a mediation between the Parties, unless both Parties consent.

If the Parties settle the dispute before an award is made, the Arbitrator shall terminate the arbitration and, if requested by all Parties and accepted by the Arbitrator, may record the settlement in the form of an award made by consent of the Parties. The Arbitrator is not obliged to give reasons for such an award.

Arbitrator Compensation

In light of the public interest in the matters at issue, the Parties will ask the Arbitrator to serve on a pro bono basis. In the event that the Arbitrator declines to serve pro bono, the Arbitrator shall be compensated on a reasonable basis determined at the time of appointment for serving as an Arbitrator and shall be reimbursed for any reasonable travel and other expenses. The compensation will be fully disclosed to all Parties by the Arbitrator. Due to the indigence of Plaintiffs, and their agreement not to pursue reimbursement of their attorney's fees other than as set forth in the Stipulation of Settlement, the District will be solely responsible for the fees, costs and expenses of the Arbitrator.

Failure of a Party to Comply with Arbitration Provisions

Whenever a Party fails to comply with these provisions, or any order of the Arbitrator rendered prior to the award, the Arbitrator, if appropriate, shall fix a reasonable period of time for compliance and, if the Party does not comply within said period, the Arbitrator may impose a remedy it deems just, including an award on default. Prior to entering an award on default, the Arbitrator shall require the non-defaulting Party to produce evidence and legal argument in support of their contentions as the Arbitrator may deem appropriate. The Arbitrator may receive such evidence and argument without the defaulting Party's presence or participation.

Waiver

A Party, knowing of another Party's failure to comply with any provision of this section, or any direction of the Arbitrator, and neglecting to state their objections promptly, waives any objection thereto.