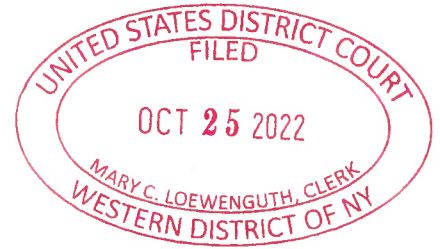


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



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

Plaintiffs,

- vs -

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

Defendants.

**STIPULATION AND
ORDER FOR SECOND
AMENDED CONSENT
DECREE**

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

WHEREAS, 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];

WHEREAS, on December 8, 2020, the Court entered its Order [Docket #34] granting the Plaintiffs' Motion, and certifying the classes and subclasses described therein;

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

WHEREAS, Interim Benchmark and Final Goal No. 1 incorporated into Exhibit E to the Initial Consent Decree required the Defendants to achieve objective benchmarks and goals to measure progress towards increasing the proficiency of students with disabilities with Individualized Education Plans ("SWD"), to be expressed as an increase in the percentage of

students who achieved proficient-level scores on the Grades 3-8 New York English Language Arts and Mathematics standardized tests; and

WHEREAS, at that time, New York State had announced changes to the state assessments following the implementation of Next Generation Learning Standards but had not yet released a plan for implementation of the revised standards. In addition, standardized tests were not conducted during the 2019-2020 school year due to the pandemic and school closures, and testing during the 2020-2021 school year was impacted by the pandemic; and

WHEREAS, the Initial Consent Decree accordingly contemplated that the parties would continue to negotiate the quantitative elements of Interim Benchmark and Final Disengagement Goal No. 1, and that the parties would present an Amended Consent Decree, including an Amended Exhibit E setting forth the final and complete provisions of the Interim Benchmarks and Final Disengagement Goals;

WHEREAS, the Court approved entry of an Amended Consent Decree incorporating an Amended Exhibit E on March 8, 2022 [Docket #49]. At that time, the State had not yet released its plan for Next Generation Learning Standards assessments and the New York State Department of Education had requested a waiver of accountability determinations for data for the 2021-2022 school year. Accordingly, the Amended Consent Decree anticipated and provided for the parties to continue to negotiate Interim Benchmark and Final Goal No. 1, and extended the period of time to achieve the Final Goal to be determined to the end of the 2023-2024 school year; and

WHEREAS, the parties have now completed their negotiations and finalized their agreement on the objective benchmarks and goals to be used to measure progress towards increasing the proficiency of SWD, expressed as an increase in the percentage of students who

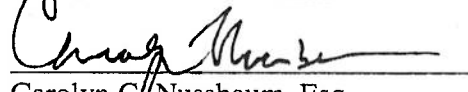
achieved proficient-level scores on the Grades 3-8 New York English Language Arts and Mathematics standardized tests.

IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

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

DATED: October 5, 2022

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DATED: October 6, 2022

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SO ORDERED

A handwritten signature in cursive script, appearing to read "D. Larimer", written over a horizontal line.

Hon. David G. Larimer
United States District Judge

October 24, 2022

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

EXHIBIT “E” (as revised September 1, 2022)

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 2023-2024 school year, as set forth in the table below.

School Year	Past Performance	Past Performance	Interim Benchmarks				Final Goal (Disengagement Standard) ¹
	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023 ²	2023-2024
Percentage of SWD with Proficient-Level ELA Scores	2%	2%	Not reported – no testing	No Benchmark ³	No Benchmark ⁴	5%	8%
Percentage of SWD with Proficient-Level Math Scores	2%	3%	Not reported – no testing	No Benchmark	No Benchmark	6%	9%

¹ To be measured under the Next Generation Learning Standards.

² To be measured under the Next Generation Learning Standards.

³ In February 2021, the United States Department of Education directed states to administer standardized assessments. Many states, including New York State, applied for a waiver. For the 2020-2021 school year, the District will report the outcomes of any assessments that are administered, however, the parties agreed that those outcomes for the 2020-2021 school year will not be used for benchmark purposes.

⁴ On December 22, 2021, NYSED again requested a waiver of accountability determinations for data for the 2021-2022 school year. The parties agreed to renegotiate the measurable interim performance benchmark for the 2021-2022 school year, 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 were to begin within 30 days after New York State released its plan for the 2021-2022 Next Generation Learning Standards assessments. Because New York State did not release its plan for Next Generation Learning Standards assessments before the end of the 2021-2022 school year, there are no Interim Benchmarks for the 2021-2022 school year.