

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK**

M.F., a minor, by and through his parent and natural guardian YELENA FERRER; M.R., a minor, by and through her parent and natural guardian JOCELYNE ROJAS; I.F., a minor, by and through her parent and natural guardian JENNIFER FOX, on behalf of themselves and a class of those similarly situated; and THE AMERICAN DIABETES ASSOCIATION, a nonprofit organization,

Plaintiffs,

-against-

THE NEW YORK CITY DEPARTMENT OF EDUCATION; THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE; THE OFFICE OF SCHOOL HEALTH, THE CITY OF NEW YORK; ERIC ADAMS, in his official capacity as Mayor of New York City; DAVID C. BANKS, in his official capacity as Chancellor of the New York City Department of Education, ASHWIN VASAN, in his official capacity as Acting Commissioner of the New York City Department of Health and Mental Hygiene; and ROGER PLATT, in his official capacity as Chief Executive Officer of the Office of School Health,

Defendants.

No. 18-CV-6109 (NG) (SJB)

**~~PROPOSED~~ SECOND
STIPULATION
AMENDING
SETTLEMENT
AGREEMENT AND
ORDER**

This Second Stipulation Amending Settlement Agreement and Order (the “Second Stipulation”) is made and entered into by and between Plaintiffs M.F. (by and through his natural guardian Yelena Ferrer), M.R. (by and through her natural guardian Jocelyne Rojas), I.F. (by and through her natural guardian Jennifer Fox), on behalf of themselves and a class of those similarly situated and the American Diabetes Association (collectively, “Plaintiffs”) against the New York City Department of Education (“DOE”), the New York City Department of Health and Mental

Hygiene (“DOHMH”), the Office of School Health (“OSH”), the City of New York (the “City”), Chancellor Richard Carranza,¹ Acting Commissioner Oxiris Barbot,² and Chief Executive Officer Dr. Roger Platt³ (collectively, “Defendants”).

RECITALS

WHEREAS, on November 1, 2018, Plaintiffs filed a class action complaint alleging that Defendants’ systemic failures to provide students with diabetes a free and appropriate public education (“FAPE”) as well as equal access to school and all school-related programs and activities violate Section 504 of the Rehabilitation Act of 1973 (“Section 504”), the Americans with Disabilities Act (“ADA”), and the New York City Human Rights Law (“NYCHRL”), ECF No. 1.

WHEREAS, on September 29, 2022, the Parties executed a Settlement Agreement resolving this dispute (“Agreement”), ECF No. 131-1;

WHEREAS, on April 21, 2023, the Court entered an Opinion and Order Granting Final Approval of Class Action Settlement, ECF No. 156;

WHEREAS, on August 16, 2024, the Parties filed with this Court a proposed Stipulation Amending the Settlement Agreement and Order, ECF No. 170, which sought to amend the Agreement to reflect the replacement of the original External Monitor and to extend the terms of the Agreement for one additional year to account for the fact that the External Monitor had not been in place for much of the 2023-2024 school year;

¹ Chancellor Carranza resigned his commission on March 15, 2021. The current Chancellor of DOE is Melissa Aviles-Ramos.

² Acting Commissioner Barbot resigned her commission on August 4, 2020. The current Acting Commissioner of DOHMH is Michelle Morse.

³ Dr. Platt retired from City service in or about February 2021.

WHEREAS, the Parties also advised the Court that they were negotiating other necessary modifications after identifying a misalignment between the Agreement's reporting requirements (¶¶ 22-23) and compliance standards (¶¶ 39-41), as well as inconsistencies in the compliance standards themselves;

WHEREAS, on August 26, 2024, the Court entered the Stipulation Amending the Settlement Agreement and Order, ECF No. 171, specific to the External Monitor and settlement extension;

WHEREAS, the Parties have now reached agreement on how to reconcile the inconsistencies, while fulfilling the promise of the Agreement and ensuring the protection of all Class Members;

WHEREAS, the Parties' agreement that the data provided by Defendants under paragraphs 22 and 23(b)-(d), (j)-(l) will be aggregated by district and borough, instead of by District Borough Number ("DBN"), is made without prejudice to Plaintiffs' ability to reconsider the need for DBN for future reporting periods, Defendants' right to object, and to the External Monitor's ability to request follow-up information if warranted;

WHEREAS, the Parties have now reached agreement on the necessary modifications to address inconsistencies and improve clarity within the Agreement;

WHEREAS, the Agreement authorizes the Parties to modify its terms and directs the Parties to memorialize in writing any agreed-upon modification, sign the modification, and file it with the Court for approval. ECF No. 131-1, ¶ 52 ("If the Parties reach agreement on the required modification, it shall be reduced to writing, signed, and filed with the Court for approval.");

WHEREAS, the Parties have negotiated terms to amend the Agreement, as set forth below and identified in Exhibit A, which they believe will further the goals of the Agreement; and

WHEREAS, the Parties' amendments, as set forth below, do not in any way compromise or work to the detriment of any Party or member of the Class, and, to the contrary, benefit the Parties and the Class by ensuring that the Plaintiffs and External Monitor have the information necessary to evaluate compliance and by clarifying any inconsistent compliance standards.

THEREFORE, the Parties, by and through their respective counsel of record, STIPULATE that:

1. **The Definition of "New Students" and "Reporting Period" in the Agreement shall be amended as follows:**

III. Definitions

New Students – Students enrolled in a DOE school who are newly diagnosed with diabetes, or Students with diabetes enrolling in a DOE school for the first time (whether at the start of a new school year or after the school year has begun), or current DOE students who articulate or transfer to a new DOE school either at the start of a school year or after the school year has begun.

Reporting Period – Each reporting period is set forth below. Provided that the Order of Final Approval is entered on or before August 31, 2023, reports are due biannually, on January 31 and August 1 of each reporting year:

Initial Reporting Year (2023-2024)

Report 1: September 1-January 1

Report 2: January 2-June 30

Reports produced by Defendants during the Initial Reporting Year will not be used to assess Defendants' compliance with the Agreement.

Year 1 (2024-2025 School Year)

Report 1: September 1-January 1

Report 2: January 2-June 30

Year 2 (2025-2026 School Year)

Report 3: September 1-January 1

Report 4: January 2-June 30

Year 3 (2026-2027 School Year)

Report 5: September 1-January 1

Report 6: January 2-June 30

The August 1st report will include information regarding DMAFs and 504 Plans that were in effect during the prior School Year. It will not include information on DMAFs or 504 Plans renewed or created in the Spring for implementation in the following School Year. That information will be included in the subsequent January 31st report.

2. Paragraphs 22-23 (Data Collection & Reporting) shall be amended as follows:

VI. Data Collection & Reporting

22. Defendants will collect and provide to Plaintiffs, the Joint Expert, and the External Monitor the following data, based upon centrally reportable data (which may not be complete on the date of the biannual report) and available DOE or OSH records, and where possible disaggregated by grade level, district and borough, and whether OSH has received a DMAF for the Student for each Reporting Period for the duration of the Agreement. Any student level data will utilize a unique anonymized student identifier which shall be consistent across reports for each Reporting Period. All data reporting under this Agreement excludes Students with an IEP except where specified.

- a. Total number of Students with a DMAF, and for each of those Students:
 - i. Date OSH received the completed DMAF;
 - ii. Indicator noting if the DMAF submitted for the school year is the first DMAF submitted for the Student;
 - iii. Date the DMAF was reviewed by the school nurse or OSH Central;

- iv. If DMAF was held, the reason for and duration of the hold, where such information is available;
 - v. Date of the Finalized DMAF;
 - vi. Date the pre-meeting was held, if applicable; and
 - vii. Whether the Student has a final Section 504 Plan.
- b. Total number of Students with a Section 504 Plan, and for each of those Students:
- i. Indicator noting whether the Section 504 plan is new or a renewal;
 - ii. Date the Parent submitted a completed Section 504 request under Chancellor's Regulation A-710, if changes to the Section 504 Plan are required;
 - iii. Date the completed DMAF was received by the school nurse or OSH Central;
 - iv. Date the pre-meeting was held, if applicable;
 - v. Date the Section 504 meeting required by Chancellor's Regulation A-710 was held (or, if applicable, date 504 Coordinator confirmed with parent that a plan is being renewed without modification;
 - vi. Attendees of the Section 504 meeting by job title or position;
 - vii. Date the Section 504 Plan was finalized;
 - viii. Date the final Section 504 Plan was signed by the Parent(s);
 - ix. Accommodations and services requested on the Section 504 request form and Medical Accommodation Request Form, by category;
 - x. Accommodations and services to be provided as part of the final Section 504 Plan; and
 - xi. Accommodations and services requested by Parent and/or physician that were denied, and the reason(s) for denial.

- xii. Total number of Students assigned 1:1 Paraprofessionals or 1:1 nurses;
 - xiii. Total number of requests reviewed by OSH for 1:1 Paraprofessionals or 1:1 Nurses for diabetes care where a 1:1 Paraprofessional or Nurse was not assigned.
- c. Total number of Students who did not attend their first enrolled day of school, including mid-year enrollments, and for each of those Students:
- i. The reason entered for their absence, if related to diabetes accommodation;
 - ii. The status of that Student's DMAF approval; and
 - iii. How many days the Student was absent before they attended school.
- d. The following data pertaining to field trips:
- i. The total number of field trip nursing coverage requests for Students with a DMAF, and:
 - 1. The total number of fulfilled requests;
 - 2. The total number of unfulfilled requests.
 - ii. For each individual request:
 - 1. The date the request was made for nursing coverage;
 - 2. The date the request was fulfilled or unfulfilled;
 - 3. The contract nursing agency that fulfilled the request (covered) or, if applicable, reneged after agreeing to fulfill the request (reneged); or
 - 4. If applicable, if no coverage was identified (no coverage).
 - iii. For unfulfilled field trip nursing coverage requests for Students with a DMAF, the trip outcome, to the extent this information is available:
 - 1. The trip was cancelled;

2. The trip was postponed until diabetes care could be arranged;
 3. The trip proceeded without the Student;
 4. The Parent/their designee attended the trip; or
 5. Another outcome.
- e. A sampling of Trip Plans, as described in Para. 45(a)(iii) of the Stipulation, will be used to assess Defendants' compliance for Supervised and Independent Students. Trip Plans will be provided with the August Report.
- f. Total number of requests or complaints to the Section 504 Program Manager from Parents and/or Students enrolled in Non-Covered Extracurricular Programs pursuant to the Extracurricular Programs MOU, Section II(A)(3), and for each of those requests or complaints:
- i. The name and nature of the afterschool or extracurricular program;
 - ii. The date the request or complaint was made;
 - iii. The nature of the request or complaint;
 - iv. Any action taken as a result of the request or complaint.
- g. Total number of complaints made to the Section 504 Program Manager or DOE Health Director via the Emergency Relief process set forth below in Section VII, and for each of those complaints:
- i. The nature of the complaint;
 - ii. The date the complaint was made;
 - iii. What action was taken in response to the complaint;
 - iv. The date the complaint was resolved; and

- v. Whether the accommodation that is the subject of the complaint is now or will be provided, and if not, the reason.

23. Additionally, Defendants will collect and provide to Plaintiffs, the Joint Expert, and the External Monitor the following data with PII redacted, and where possible disaggregated by borough and school district:

- a. Certification that all newly hired Staff Nurses received Initial training prior to assignment to a school;
- b. A list of all Staff Nurses assigned to a school and the date (if any) that annual Refresher training was completed;
- c. A list of Staff Nurses assigned to schools who received Additional Training;
- d. A list of requests for Student-Specific Training for Nurses, including the date the training was requested, the Staff Nurses who then received Student-Specific Training for Nurses, and the date such training was provided;
- e. A list of all schools, by District Borough Number (“DBN”), of each Section 504 Coordinator designated by a school, whether the designee is new or returning, the date (if any) of 504 Coordinator training, whether a student at the school has a diabetes 504 Plan requiring Level 1 training of the 504 Coordinator, and the completion date, if any, for Level 1 training (or higher level of diabetes training);
- f. A list of school-based staff identified in Student Accommodation System (SAS) for Level 1 Training, including the DBN, the date that the staff member was identified for training, and the date such training was completed;

- g. A list of school-based staff identified in SAS for Level 1 + Glucagon Training, including the DBN, the date that the staff member was identified for training, and the date such training was completed;
- h. A list of school-based staff identified in SAS for Level 2 Training, including the DBN, the date that the staff member was identified for training, and the date such training was completed;
- i. A list of Paraprofessionals assigned to support a Student with a DMAF and Section 504 Plan, including the DBN, whether the Student to which the Paraprofessional is assigned has a new or renewal plan, the date that the Paraprofessional was added to the 504 Plan, and the date (if any) that Level 2 Training was completed;
- j. A list of requests for Student-Specific Training for Paraprofessionals, including a list of Paraprofessionals who received Student-Specific Training, including the date that training was requested and the date that such training was provided;
- k. A list of bus routes requiring Level 1 + Glucagon Training, including the date that the route was added to the list of routes requiring training, and the date that the bus driver and attendant, if applicable, completed Level 1 + Glucagon Training; and
- l. A list of bus routes requiring Level 1 + Glucagon Training that experienced a change in driver and/or attendant during the school year, including the date that OPT was notified of the change and the date that the new bus driver and/or attendant completed training.

3. Paragraphs 39-40 (Monitoring and Compliance) shall be amended as follows:

VIII. Monitoring and Compliance

39. Compliance with this Agreement as to Section 504 Planning as laid out in Exhibits B and C will be evidenced by Defendants meeting the following benchmarks:

a. Beginning in Fall 2023, the External Monitor will be required to attend ten (10) Section 504 meetings per year, upon consent of the Parent(s) and Student (if they are an emancipated minor or 18 years of age or older) and two (2) weeks advance notice to Defendants, and permitted to attend a reasonable number of additional Section 504 meetings if necessary to evaluate compliance with this Agreement.

i. The External Monitor(s) and Parties will select the Section 504 meetings together in advance as follows, with each meeting occurring at a different school:

1. Two (2) meetings each in the Bronx, Brooklyn, Queens, and Manhattan;
2. One (1) meeting in a District 75 school in any Borough; and
3. One (1) meeting in Staten Island.
4. Of these ten (10) meetings, one (1) will involve an Independent Student and two (2) will involve Supervised Students. The remaining seven (7) meetings shall be for Nurse-Dependent Students.

b. For the first year of the Agreement, eighty percent (80%) of Returning Students have a Section 504 meeting held, if new or modified accommodations are being requested, or outreach to confirm that no changes are required for the upcoming school year prior to the end of the school year (at the end of June) of each school year. For the second year of the Agreement, compliance with this measure will be eighty-five

percent (85%) of Returning Students, and for the third year of the Agreement, compliance will be ninety-five percent (95%) of Returning Students. Parent delay does not count against Defendants.

- c. For the first year of the Agreement, a Section 504 Plan has been finalized for eighty percent (80%) of Returning Students prior to the last day of the school year. For the second year of the Agreement, compliance with this measure will be eighty-five percent (85%) of Returning Students, and for the third year of the Agreement, compliance will be ninety-five percent (95%) of Returning Students. Parent delay does not count against the DOE.
- d. For New Students who submitted a Section 504 request prior to the start of the school year, eighty percent (80%) of Section 504 meetings were held prior to the first day of school whenever possible, and overall, ninety-five percent (95%) of Section 504 meetings for New Students were held no later than fifteen (15) school days after the first day of school, unless additional time was necessary to accommodate a Parent's schedule.
- e. For New Students who submitted a Section 504 request prior to the start of the school year, a Section 504 Plan was finalized ninety-five percent (95%) of the time within twenty-one (21) school days from the first day of school, unless additional time was necessary to accommodate a Parent's schedule.
- f. For New Students who submitted a request for Section 504 services during the school year, ninety-five percent (95%) of Section 504 meetings were held no later than fifteen (15) school days from the receipt of the 504 request, unless additional time was necessary to accommodate a Parent's schedule.

- g. For New Students who submitted a Section 504 request during the school year, a Section 504 Plan was finalized ninety-five percent (95%) of the time within twenty-one (21) school days from the date of the request, unless additional time was necessary to accommodate a Parent's schedule.
- h. For New Students who submitted a DMAF for the first time, the DOE convened a meeting (the "pre-meeting") ninety-five percent (95%) of the time within five (5) school days of DOE's receipt of the DMAF with the parties listed in Section II(C) of the New Students MOU (Exhibit C), to discuss the Student's needs between when the Finalized DMAF is available and when a final Section 504 Plan, if any, can be adopted and implemented, unless additional time was necessary to accommodate a Parent's schedule.

40. Compliance with this Agreement as to **Training** as laid out in **Exhibits D-H** will be evidenced by Defendants meeting the following benchmarks:

- a. The External Monitor and Joint Expert will be permitted to attend any or all trainings laid out in **Exhibits D-H**.
- b. Employees absent or on leave who receive training as soon as possible upon their return will not count against Defendants in the benchmarks set forth below.
- c. For the purpose of the training benchmarks set forth in paragraph 40, training recipients (Staff Nurses, Contract Nurses, Paraprofessionals, and Diabetes Training Recipients) will also include those caring for a Student in Covered Extracurricular Programs.
- d. Section 504 Coordinators:

- i. Eighty percent (80%) of new Section 504 Coordinators received Section 504 Coordinator training within ten (10) school days of the first day of school and all (one-hundred percent (100%)) of new Section 504 Coordinators received Section 504 Coordinator training by October 15. All (one-hundred percent (100%)) of returning Section 504 Coordinators receive training on Section 504 Training by April 15 of each school year.
 - ii. All (one-hundred percent (100%)) Section 504 Coordinators who have a student with a Diabetes 504 Plan at their school received at least one Level 1 Training (or Level 1 + Glucagon Training or Level 2 Training) during the same school year when staff members at their school are trained.
- e. Staff Nurses:
- i. Ninety-five percent (95%) of Staff Nurses received annual Initial training during their nursing orientation, which shall take place within six (6) weeks of the new nurse's first day of employment.
 - ii. Ninety-five percent (95%) of Staff Nurses assigned to schools received annual Refresher training on diabetes prior to the start of the school year or as soon as possible thereafter.
 - iii. All (one-hundred percent (100%)) Staff Nurses assigned to schools will have received Student-Specific Training for Nurses within five (5) school days after the date such training was requested.
- f. Contract Nurses:
- i. Consistent with the Contract Agency Nurses MOU, OSH will deliver to contract agencies the same training materials on diabetes as OSH provides to its staff

nurses, and will direct the contract agencies to utilize these training materials with their contract nurses.

g. Paraprofessionals:

- i. Excluding Paraprofessionals hired after the start of the school year, ninety-five percent (95%) of Paraprofessionals assigned to support a Returning Student received Level 2 Training before the start of the school year.
- ii. Ninety-five percent (95%) of Paraprofessionals assigned to support a New Student or hired after the start of the school year received Level 2 Training within ten (10) school days of assignment; for purposes of this requirement, a Paraprofessional is “assigned” to support a New Student on the date the Paraprofessional is added to the New Student’s 504 plan.
- iii. All (one-hundred percent (100%)) Paraprofessionals received Student-Specific Training for Paraprofessionals within ten (10) school days after the date such training was requested.

h. Diabetes Training Recipients:

- i. Ninety-five percent (95%) of school staff identified as Diabetes Training Recipients received Level 1 Training within ten (10) school days of being identified.
 - ii. Ninety-five percent (95%) of school staff identified as Diabetes Training Recipients who have volunteered to receive Level 2 Training received such training within fifteen (15) school days of being identified.
- i. Bus Drivers and Attendants:

- i. Ninety-five percent (95%) of bus drivers and bus attendants the DOE identifies as transporting a Student with a DMAF received Level 1 + Glucagon Training prior to the first day of school, or if after the first day of school within five (5) school days of their assignment to a route transporting a student with a DMAF.

Paragraphs 45 (Implementation and Enforcement) shall be amended as follows:

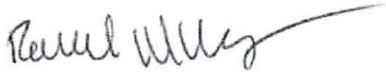
IX. Implementation and Enforcement

45. Each Reporting Period, the External Monitor will evaluate Defendants' compliance with this Agreement pursuant to Section VIII above. The External Monitor will issue a preliminary Compliance Report to Defendants and Plaintiffs within thirty (30) days of receipt of Defendants' Progress Reports and data that outlines each benchmark and identifies whether Defendants are in compliance with the benchmarks set forth in Section VIII. Defendants and Plaintiffs shall have 10 business days to review the report and dispute any findings that they deem inconsistent with the data together with additional data/documentation as appropriate. The External Monitor shall not publish the Compliance Report during this ten (10) day review period. The External Monitor shall publish the Compliance Report within five (5) business days after this review period ends. The External Monitor has the discretion to incorporate, reject, or note unresolved disputes in the final Compliance Report or take other appropriate action.

IN WITNESS WHEREOF, the Parties hereto have caused the Second Stipulation to be executed,

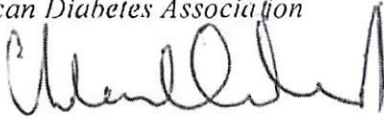
Dated: New York, NY

February 7, 2025



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*Attorneys for Plaintiff American
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So Ordered.

11/11/25
/s/ (NG)

March 10, 2025