

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CHARLES H., ISRAEL F., and MALIK Z.,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

DISTRICT OF COLUMBIA, *et al.*,

Defendants.

Civil Action No. 1:21-cv-00997 (CJN)

**ORDER PRELIMINARILY APPROVING
THE SETTLEMENT AGREEMENT**

Upon consideration of the Parties' Joint Motion to Lift the Stay and for Preliminary Approval of the Settlement Agreement, and the entire record herein, it is **ORDERED** that the Parties' Joint Motion is **GRANTED** and

IT IS FURTHER ORDERED AS FOLLOWS:

1. The Stay entered by this Court in a Minute Order on September 26, 2022, is lifted for the purposes of the Court's consideration of the Parties' proposed Settlement Agreement pursuant to Rule 23 of the Federal Rules of Civil Procedure and applicable law and the entry of appropriate orders related thereto.

2. Unless otherwise stated, the terms in this Order have the meaning set forth in the proposed Settlement Agreement, which is attached to the Parties' Joint Notice Lodging the Proposed Settlement Agreement with the Court, ECF No. 191-1.

3. The Court has jurisdiction over the Parties and subject matter of this litigation pursuant to 28 U.S.C. §§ 1331, 1343, 1367(a) and 20 U.S.C. § 1415(i)(2). Upon Final Approval,

the Court will retain jurisdiction over this action consistent with Paragraphs 145, 147, and 172 of the Settlement Agreement.

4. The Court recognizes that, under Paragraph 164 of the Settlement Agreement, “[t]he Parties agree that this Settlement Agreement is not a consent decree.”

I. Preliminary Certification of the Settlement Class, Class Representatives, and Class Counsel

5. Plaintiffs’ Unopposed Motion to Certify the Settlement Class (ECF No. 192) is **GRANTED** and the Settlement Class is preliminarily certified pursuant to Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure.

6. The Settlement Class consists of two subclasses as follows:

(a) The Compensatory Relief Subclass shall include all persons who (a) are entitled to relief under the Court’s Order of February 16, 2022 (ECF No. 101); and/or (b) for any period between March 24, 2020 through August 31, 2021 and/or February 1, 2022 through the Effective Date of September 22, 2023, were (i) entitled to receive special education and/or related services under the Individuals with Disabilities Education Act (IDEA) and its federal and local implementing regulations, (ii) enrolled in the High School at the Department of Corrections Facilities (DOC Facilities),¹ and (iii) did not receive specialized instruction and/or related services in conformity with the specialized instruction and/or related services mandated by their Individualized Education Programs (IEPs) while in the DOC Facilities.

(b) The Injunctive Relief Subclass shall include all persons who, on or subsequent to the Effective Date of September 22, 2023, (a) are entitled to receive special

¹ DOC Facilities refers to the Central Detention Facility (CDF) and the Correctional Treatment Facility (CTF), including any facilities used in substitution or replacement thereof.

education and/or related services under the IDEA and its federal and local implementing regulations, and (b) are enrolled in the High School at the DOC Facilities.

7. The Court hereby preliminarily appoints Plaintiffs Charles H., Israel F., and Malik Z. as Class Representatives.

8. The Court hereby preliminarily appoints Terris, Pravlik & Millian, LLP, School Justice Project, and Washington Lawyers' Committee, Plaintiffs' attorneys of record, as Class Counsel.

II. Preliminary Approval of Settlement

9. The Court hereby grants preliminary approval of the terms and conditions contained in the proposed Settlement Agreement.

10. The Court preliminarily finds that the terms of the proposed Settlement Agreement are fair, reasonable, and adequate, and are within the range appropriate for possible final approval, pursuant to Rule 23(c) of the Federal Rules of Civil Procedure and applicable law, following notice to the Class and a Fairness Hearing.

11. The Court preliminary finds that the terms of the proposed Settlement Agreement comply in all respects with the Prison Litigation Reform Act, 18 U.S.C. § 3626(a), and makes all necessary findings to retain jurisdiction for the enforcement of the Settlement Agreement over its limited duration: (i) the provision of special education and related services at the DOC Facilities necessitate the remedial measures contained in the proposed Settlement Agreement; and (ii) the prospective relief in the proposed Settlement Agreement is narrowly drawn, extends no further than necessary to correct the violations of federal rights as alleged by Plaintiffs in their Complaint, is the least intrusive means necessary to correct these violations, and will not have an adverse impact on public safety or the operation of a criminal justice system.

12. Under this order of preliminary approval of the Settlement Agreement, Defendants are neither bound by nor obligated to comply with the District of Columbia Procurement Practices Reform Act of 2010, D.C. Code § 2-351.01 *et seq.*, or other District of Columbia or federal law relating to procurement, and any regulations thereunder, but only to the extent necessary to implement the terms of the proposed Settlement Agreement.

III. Notice

13. The Court hereby approves the form of the Class Notice attached in both English and Spanish as Exhibit 1 to the proposed Settlement Agreement (ECF No. 191-2) and the methods set forth herein for its distribution to the class.

14. The Clerk of the Court shall place the Class Notice on the Court's website (www.dcd.uscourts.gov/cases-interest) and shall make an entry in the docket for this case to reflect the date on which that notice was placed on the website.

15. Within ten (10) business days of this Order Granting Preliminary Approval, Defendants shall disseminate the Class Notice by the following means, and bear all costs for publication, translation into Spanish, and mailing:

(a) Defendants shall post the Class Notice at the Central Detention Facility and Correctional Treatment Facility in the law library, classrooms, and any other spaces in the DOC Facilities where Settlement Class Members receive educational or related services;

(b) Defendants shall hand deliver a copy of the Class Notice to every Settlement Class Member residing at DOC Facilities; and

(c) Defendants shall mail the Class Notice via first class mail, postage prepaid, to the current address(es) of each Settlement Class Member using good faith best efforts to

obtain a current address as described in paragraphs 97(a)(i)–(iii) of the proposed Settlement Agreement.

16. Within ten (10) business days of this Order Granting Preliminary Approval, Class Counsel shall each post the proposed Settlement Agreement and Class Notice on their respective firm and organization websites.

17. In all cases, the Class Notice shall be posted or distributed in both English and Spanish.

18. The Class Notice and the means for its distribution set forth herein constitute valid, due, and sufficient notice to the Settlement Class, and is the best notice practicable under the circumstances. The Class Notice and the methods for its distribution will apprise Settlement Class Members in a fair and neutral way of the existence of the proposed Settlement Agreement and their rights with respect to the proposed Settlement Agreement and satisfies the notice requirements of Rule 23(e) of the Federal Rules of Civil Procedure.

19. At least fourteen (14) days before the Fairness Hearing, counsel for Defendants and Class Counsel will jointly provide a report to the Court setting forth the manner in which they disseminated the Class Notice and notice of Class Counsel’s Unopposed Motion for an Award of Litigation Costs, Including Attorneys’ Fees, consistent with this Order and the proposed Settlement Agreement.

IV. Motion for Attorneys’ Fees and Costs

20. No later than ten (10) days following the date of this Order, Class Counsel shall file their Unopposed Motion for an Award of Litigation Costs, Including Attorneys’ Fees. Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, the Settlement Class shall be notified of the motion and of their right to object in the following manner:

(a) The Class Notice informs the Settlement Class that attorneys' fees and costs are being awarded to Class Counsel if the Settlement Agreement is approved by the Court and of their right to object to the award of attorneys' fees and costs.

(b) No later than twelve (12) days following the date of this Order, Class Counsel shall each post the Unopposed Motion for an Award of Litigation Costs, Including Attorneys' Fees, including all exhibits on their respective firm and organization websites.

(c) The Clerk of the Court shall place the Unopposed Motion for an Award of Litigation Costs, Including Attorneys' Fees, including all exhibits, on the Court's website (www.dcd.uscourts.gov/cases-interest) and shall make an entry in the docket for this case to reflect the date on which the Unopposed Motion for an Award of Litigation Costs, Including Attorneys' Fees was placed on the website.

V. Fairness Hearing

21. A hearing is appropriate to consider whether the Court should grant final approval to the Settlement Agreement, and to allow adequate time for members of the Class, or their counsel, to support or oppose this settlement and to allow an opportunity for members of the Compensatory Relief Subclass to opt-out if they wish to do so.

22. A Fairness Hearing pursuant to Rule 23(e) of the Federal Rules of Civil Procedure shall be held on December 18, 2023 at 10:00 A.M. o'clock in the United States District Court for the District of Columbia, 333 Constitution Avenue N.W., Washington D.C. 20001, Courtroom 17, to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court.

23. The Fairness Hearing shall be conducted in the courtroom and access to participate virtually via teleconference and video conference shall be provided upon request.

24. Defendants shall take all reasonable measures to ensure the virtual or in-person participation at the Fairness Hearing for any Settlement Class Member at the DOC Facilities who wishes to attend and/or submits a request to be heard.

VI. Procedures for Objections and Opt-Outs

25. Any member of the Settlement Class may object to the proposed Settlement Agreement. Any member of the Settlement Class who wishes to object must do so in writing, and all objections must be received by the Court no later than fourteen (14) days before the scheduled Fairness Hearing, at the following mailing or e-mail addresses, which are also listed in the Class Notice.

Charles H. Special Education Case
U.S. District Court for the District of Columbia
333 Constitution Avenue, N.W.
Washington, D.C. 20001

26. Any member of the Settlement Class may also request permission to speak at the Fairness Hearing by submitting a request in writing to the Court no later than fourteen (14) days before the scheduled Fairness Hearing, at the address set forth in paragraph 25 above and listed in the Class Notice.

27. Any Settlement Class Member who fails to properly and timely file and serve objections or comments shall be foreclosed from objecting to the Settlement Agreement, unless otherwise ordered by the Court.

28. Any member of the Compensatory Relief Subclass may opt out by submitting a request to opt-out in writing to Class Counsel or the Court no later than fourteen (14) days before the scheduled Fairness Hearing.

VII. Motion for Final Approval

29. The Parties shall file their Joint Motion for Final Approval of the Settlement

Agreement no later than ten (10) days prior to the Fairness Hearing.

SO ORDERED.

Date: October 18, 2023



CARL J. NICHOLS
UNITED STATES DISTRICT JUDGE