

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOHN DOE #1, a minor by his parent and natural guardian PARENT #1; JOHN DOE #2, a minor by his parent and natural guardian PARENT #2; JOHN DOE #3, a minor by his parent and natural guardian PARENT #3; JANE DOE #4, a minor by her parent and natural guardian PARENT #4; JANE DOE #5, a minor by her legal guardian GRANDPARENT #5; JANE DOE #6 a minor by her legal guardian GRANDPARENT #5; JOHN DOE #7, a minor by his parent and natural guardian PARENT #7; JANE DOE #8, a minor by her parent and natural guardian PARENT #8; JOHN DOE #9, a minor by his parents and natural guardians PARENT # 9A and PARENT #9B; JANE DOE #10, a minor by her parent and natural guardian PARENT #10; JANE DOE #11, a minor by her parent and natural guardian PARENT #11; JANE DOE #12, a minor by her parent and natural guardian PARENT #12; JOHN DOE #13, a minor by his parent and natural guardian PARENT #13; JANE DOE #14, a minor by her parent and natural guardian PARENT #14; JANE DOE #15, a minor by her parent and natural guardian PARENT #15; JOHN DOE #16, a minor by his parent and natural guardian PARENT #16; JOHN DOE #17, a minor by his parents and natural guardians PARENT #17A and PARENT #17B; JOHN DOE #18, a minor by his parents and natural guardians PARENT #18A and PARENT #18B; JOHN DOE #19, a minor by his parent and natural guardian PARENT #19; JANE DOE #20, a minor by her parent and natural guardian PARENT #20; JOHN DOE #21, a minor by his parent and natural guardian PARENT #21; JOHN DOE #22, a minor by his parent and natural guardian PARENT #22; and JOHN DOE #23, a minor by his parent and natural guardian PARENT #23, on behalf of all persons similarly situated,

Plaintiffs,

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant.
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**PROPOSED STIPULATION
AND ORDER OF
SETTLEMENT**

16-CV-1684 (NGG)(RLM)

WHEREAS, a Second Amended Complaint was filed on August 31, 2016

alleging that Plaintiffs John Doe #1 through John Doe #23 ("Plaintiffs") were subject to

harassment, bullying, and/or assault by other students, or by Defendant New York City Department of Education (“DOE”) staff, and that among other things, DOE failed to properly investigate these alleged incidents and take appropriate action in violation of DOE policy;

WHEREAS, solely for the purposes of this Stipulation and Order of Settlement (“Stipulation and Order”), the Plaintiffs and DOE (together, the “Parties”) agree this Court has jurisdiction over the Parties and the subject matter of the claims alleged in the Second Amended Complaint;

WHEREAS, DOE denies all wrongdoing alleged in this action and denies any liability whatsoever, and asserts that DOE has meritorious defenses;

WHEREAS, the Parties wish to voluntarily resolve the claims raised in the Second Amended Complaint, according to the terms set forth in this Stipulation and Order;

WHEREAS, nothing in this Stipulation and Order shall be deemed to be a finding or an admission that DOE has in any manner violated Plaintiffs’ rights as contained in the constitutions, statutes, ordinances, rules and regulations of the United States, the State of New York, or the City of New York;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties, through their respective attorneys, subject to approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, that all Settled Claims shall be compromised, settled, released, and dismissed with prejudice, subject to the following terms and conditions:

I. DEFINITIONS

For purposes of this Stipulation and Order, the following terms shall have the following meanings:

1. **Alleged Victim** means a Student identified as the target of Student-on-Student Bullying, Harassment, Intimidation, and/or Discrimination in a Bullying Complaint.
2. **Accused Student** means a Student who is alleged to have committed an act of Student-on-Student Bullying, Harassment, Intimidation, and/or Discrimination.
3. **Bullying Complaint** means an allegation of Student-on-Student Bullying, Harassment, Intimidation, and/or Discrimination as defined below and reported either through the electronic reporting system described below in Section IV (the “Electronic Reporting System”), or to a principal, the principal’s designee, the RFA Liaison or any DOE School staff member.
4. **Central Team** means a designated group of DOE employees, who have the responsibilities described in Section VIII below, and which includes a designated Director, who shall be appointed as described in Paragraph 54 below.
5. **Confirmation of Receipt** means the email confirming receipt of a Bullying Complaint that the Electronic Reporting System generates and sends to a Participating Parent, as described in Paragraph 43(d)(i) below.
6. **Confirmation of Processing** means the email with information about the Bullying Complaint that the Electronic Reporting System generates and sends to a Participating Parent, as described in Paragraph 43(d)(ii) below.
7. **Corporal Punishment Complaint** means an allegation of Staff-on-Student corporal punishment as defined by Chancellor’s Regulation A-420.
8. **Corporal Punishment and Verbal Abuse Complaint Electronic Reporting System** means the electronic reporting system described in Section VI below.

- 9. Effective Date** means the earliest date after which all of the following events have occurred: notice to the Settlement Class has been issued, the Fairness Hearing has been held, the Court has granted approval of this Stipulation and Order, the Court has entered the order and judgment, and the time to appeal such order and judgment has expired in the absence of any appeal filed, or if an appeal of the order and judgment is filed, then when all appeals are fully resolved in favor of final approval of the order and judgment.
- 10. Electronic Reporting System** means the electronic reporting system for Bullying Complaints described in Section IV below.
- a. “Launch of the Electronic Reporting System” refers to the first day of the 2019-2020 school year, at which time the Electronic Reporting System which contains each of the requirements set forth in Section IV will be operational.
- 11. Escalation Staff** means non-School-based DOE personnel, specifically authorized to assist in resolving Bullying Complaints, and who act at the direction of the Chancellor of DOE or their respective Superintendent.
- 12. Extenuating Circumstances** means circumstances that prevent the timely issuance of the Notice of Determination within the timeframe set forth in this Stipulation and Order. They may include, but are not limited to, unavailability of witnesses, significant interruptions to the regular school schedule, such as school testing dates or building evacuation/lockdown, or instances when the Accused Student does not attend the same School as the Alleged Victim. As used herein, administrative convenience shall not constitute Extenuating Circumstances.

13. Field Support Centers (“FSCs”) means DOE’s dedicated support centers, or their successors, designed to provide integrated support to non-District 75 Schools across areas of instruction and operations, including finance and human resource support, and student services, including health resources and counseling, support to English Language Learners, and support to students with disabilities. For District 75 Schools, the term “Field Support Center” shall refer to the District 75 Safety Director and/or the Supervisor of Psychologists.

14. IEP Team means the group of individuals responsible for developing and updating the individualized education program of a student with a disability, in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. §1400, et seq.

15. Individualized Support Plan (“ISP”) means a written plan developed by DOE or a School to support a Victim, which shall contain, among other things, interventions and supports for the Victim, and provisions for designated School staff to consult with the Victim and/or his or her Parents, at specified times, to determine whether the bullying, harassment, intimidation, and/or discrimination has terminated.

16. Material Incident means a substantiated Bullying Complaint which the School or DOE finds to be a violation of Chancellor’s Regulation A-832.

17. Notice of Determination means a notice to a Parent, whose child was the Alleged Victim in a Bullying Complaint, which contains: a) the determination of whether the Bullying Complaint constitutes a Material Incident; and b) where the Bullying Complaint is substantiated as a Material Incident, instructions for the Parent to contact the School to discuss interventions and supports for his or her child, where applicable.

- 18. Online Occurrence Reporting System (“OORS”)** means DOE’s electronic system of record for documenting and maintaining information about School-related incidents, or any successor system.
- 19. Parent** means the Student’s parent or guardian, or any person in a parental or custodial relationship to the Student. The definition of parent includes: birth or adoptive parent, step-parent, legally appointed guardian, foster parent and “person in parental relation” to a child attending a School. The term “person in parental relation” refers to a person who has assumed the care of a child because the child’s parents or guardians are not available, whether due to, among other things, death, imprisonment, mental illness, living outside the state, or abandonment of the child.
- 20. Participating Parent** means a Parent with a Verified E-Mail Address, who files a Bullying Complaint in the Electronic Reporting System alleging that his/her child is an Alleged Victim.
- 21. Receipt of a Bullying Complaint** means that DOE has received a Bullying Complaint either through the submission of such complaint via the Electronic Reporting System described below in Section IV or by notification of such complaint to the principal or the principal’s designee, or to the RFA Liaison.
- 22. RFA Liaison** means the School staff member(s) whom a principal designates as the individual to whom Bullying Complaints can be made pursuant to Chancellor’s Regulation A-832, and who serves as a resource on this issue for Students and staff.
- 23. School** means a school operated and managed by DOE, including Alternate Learning Centers, and does not include charter schools.

- 24. Suspension Office of Hearings Online (“SOHO”)** means DOE’s electronic system of record for documenting and maintaining information about student suspensions, teacher removals, guidance interventions and supports, or any successor system.
- 25. Student** means a student enrolled in a School as defined herein.
- 26. Student-on-Student Bullying, Harassment, Intimidation, and/or Discrimination** means conduct, by a Student enrolled in a School against another Student(s) enrolled in a School, prohibited by Chancellor’s Regulation A-832 and the Discipline Code. Such conduct may take many forms and can be physical, verbal, or written.
- 27. Verbal Abuse Complaint** means an allegation of Staff-on-Student verbal abuse as defined by Chancellor’s Regulation A-421.
- 28. Verified E-Mail Address** means the Participating Parent’s e-mail address of record on file in a DOE student information database (*e.g.*, NYC Schools Account).
- 29. Victim** means a Student who is the target of a Material Incident.
- 30. Settlement Class** means all present and future Students in grades K-12 who have been, become, or who will claim to be, the victim of behavior that violates one or more of the following DOE policies: Student-on-Student Bullying, Harassment, Intimidation, and/or Discrimination as prohibited by Chancellor’s Regulation A-832; Staff-on-Student Corporal Punishment as prohibited by Chancellor’s Regulation A-420; and/or Verbal Abuse as prohibited by Chancellor’s Regulation A-421.
- a. **Class Member** means a member of the Settlement Class.
- 31. Settled Claims** means any and all claims that have been, or could have been, asserted in the Second Amended Complaint or in any forum by Plaintiffs or Class Members, against DOE, which arise out of, relate to, or are based on the allegations,

transactions, facts, occurrences, representations and/or omissions involved in or set forth in the Second Amended Complaint except that a “Settled Claim” does not include a “Reserved Claim.”

32. Reserved Claims means:

- a. Any claim that would otherwise be available under law, and is not inconsistent with the provisions of this Stipulation and Order, for individual injunctive or declaratory relief asserted by or on behalf of an individual Class Member other than the Named Individual Plaintiff Class Representatives;
- b. Any claim that would otherwise be available under law, and is not inconsistent with the provisions of this Stipulation and Order, for individual damages relief asserted by or on behalf of an individual Class Member, including the Named Individual Plaintiff Class Representatives;
- c. Any claim that would otherwise be available under law for individual injunctive, declaratory, and/or damages relief that arises after the Effective Date of this Stipulation and Order and is asserted by or on behalf of an individual Class Member including the Named Individual Plaintiff Class Representatives;
- d. Any claims of DOE’s alleged systematic failures with the provisions described in Paragraph 72 which may give rise to a motion for enforcement, contempt, or for further relief under the terms of this Stipulation and Order; or
- e. Applications by Plaintiffs’ counsel for attorneys’ fees, described in Paragraphs 84 - 85 herein.

II. CHANCELLOR'S REGULATION AND RELATED ISSUES

33. DOE shall propose revisions to Chancellor's Regulation A-832 (the "Proposed Revisions") that: (a) identify an Electronic Reporting System for Participating Parents to electronically report a Bullying Complaint involving their child, and to receive a Notice of Determination as to whether the complaint has been substantiated as a Material Incident, (b) require Schools to enter interventions and supports for the Victim in SOHO after a finding of a Material Incident where warranted, and (c) require Schools to notify Parent(s) of the Victim of Bullying Complaint of the availability of such interventions and supports, except where it has been determined that it is unsafe to do so. DOE shall share the Proposed Revisions with Plaintiffs' counsel on a confidential basis at least ten business days before posting the regulation for public comment in connection with seeking approval by the Panel for Educational Policy ("PEP"), or by any other applicable approval process, and Plaintiffs shall share any comments within five business days thereafter. Nothing herein precludes DOE from submitting the proposed revisions set forth in (b) for PEP approval prior to submitting the proposed revisions set forth in (a) above for PEP approval.

34. DOE shall submit the Proposed Revisions described in Paragraph 33 for approval by no later than the first PEP meeting to be held during the school year at least forty business days after the Launch of the Electronic Reporting System. Notice of the Proposed Revisions to be submitted to the PEP shall be made available pursuant to N.Y. Ed. Law § 2590-g(8), which includes, among other things, notice via the PEP's official internet website.

35. Within five business days after the vote by the PEP on the Proposed Revisions, DOE shall notify Plaintiffs' counsel that a vote was held and provide Plaintiffs' counsel with a link to the revised regulation, assuming it is approved. DOE shall also publish the minutes of the PEP meeting at which the Proposed Revisions were considered consistent with the requirements of N.Y. Ed. Law § 2590-b(1)(e). If the PEP does not approve the Proposed Revisions, DOE agrees that it is nevertheless bound by this Stipulation and Order.

- a. DOE shall support and make good faith efforts to secure approval of the Proposed Revisions by the PEP.
- b. If the PEP does not approve the Proposed Revisions, DOE agrees that it will submit another set of Proposed Revisions, subject to Paragraph 33, to the PEP within ninety business days of the PEP's vote.

36. All centrally-produced brochures and posters issued after the Launch of the Reporting System that indicate the methods for reporting Student-on-Student Bullying, Harassment, Intimidation, and/or Discrimination, including the "Respect for All" brochures and posters required by Chancellor's Regulation A-832, shall identify the Electronic Reporting System as a mechanism for Parents to file a Bullying Complaint regarding their child, and the website for accessing the system. These posters and brochures shall be issued no later than the Launch of the Electronic Reporting System identified in Section IV. DOE shall share these with Plaintiffs' counsel on a confidential basis at least ten business days before they are finalized, and DOE shall consider Plaintiffs' counsel's comments that are provided within five business days thereafter.

37. DOE will take the following measures to communicate the requirements of the Stipulation and Order:

- a. Within the first ten school days of each school year, starting with the first full school year after the Effective Date, DOE shall communicate in writing to principals and superintendents the requirements set forth in Section III and information in Sections IV-VI and Sections VIII-X of this Stipulation and Order, except as to Paragraphs 37(b), 37(c)(i), 40(d)(ii), 40(d)(iii), 40(d)(iv), 40(e), 40(g), 44, 45, 60(b), and 61, which are not effective prior to the Launch of the Electronic Reporting System (the “Electronic Reporting System Provisions”). DOE shall share the communication with Plaintiffs’ counsel on a confidential basis at least ten business days before it is finalized, and DOE shall consider Plaintiffs’ counsel’s comments that are received within five business days thereafter.
- b. Within the first ten school days of each school year, starting with the first full school year of the Launch of the Electronic Reporting System, and each school year thereafter, DOE shall also communicate in writing to principals and superintendents the requirements of the Electronic Reporting System Provisions. DOE shall share the communication with Plaintiffs’ counsel at least ten business days before it is finalized, and DOE shall consider Plaintiffs’ counsel’s comments that are received within five business days thereafter.
- c. By October 31 of every school year during the pendency of this Stipulation, every principal of every School shall convene a meeting(s) with all teachers and relevant staff to instruct them on the requirements of Sections III – VI, Sections

VIII – XI of this Stipulation and Order and the Proposed Revisions set forth in Paragraph 33.

- i. Principals are not required to instruct teachers and relevant staff of the Electronic Reporting System Provisions prior to the Launch of the Electronic Reporting System.

- d. By December 15 of each school year, DOE shall notify Plaintiffs' counsel in writing that Schools have certified that these meetings have taken place.

38. By no later than the start of the school year following the Effective Date, DOE shall insert on DOE's website—in a place readily available to Parents in English and in the nine most common primary languages other than English spoken by persons living in New York City as identified by DOE pursuant to Chancellor's Regulation A-663—a webpage containing information on how Bullying Complaints, Corporal Punishment Complaints, and Verbal Abuse Complaints may be filed.

- a. Ten business days before the webpage becomes operational, DOE shall notify Plaintiffs' counsel of the placement of the webpage.
- b. If Plaintiffs' counsel raises concerns or objections regarding whether the webpage is "readily available," the Parties shall meet and confer in good faith to discuss its placement.

III. DOE'S RESPONSIBILITIES AS TO BULLYING COMPLAINTS

39. By no later than the start of the school year following the Effective Date, DOE shall require any School staff member who witnesses, knows about, or obtains notice or information about Student-on-Student Bullying, Harassment, Intimidation, and/or Discrimination to promptly report, either orally or in writing, the alleged act to the

principal, the principal's designee, or the RFA Liaison within one school day. In addition, DOE will notify staff that failure to report incidents of Student-on-Student Bullying, Harassment, Intimidation, and/or Discrimination, as described in this paragraph, may lead to disciplinary measures consistent with the applicable Collective Bargaining Agreements and applicable law.

- a. For incidents of Student-on-Student Bullying, Harassment, Intimidation, and/or Discrimination that (1) occur prior to the start of the school year following the Effective Date and (2) Plaintiffs' counsel believe have not been addressed in a manner compliant with DOE's current policies and procedures, including but not limited to Chancellor's Regulation A-832, Plaintiffs' counsel may provide DOE written notification of such incidents. The Parties shall meet and confer in good faith within ten school days of the written notification to discuss the alleged noncompliance, provided that Plaintiffs' counsel has obtained written consent from Students' Parent(s) to do so, where applicable.

40. Following the Effective Date, and for each year of the term of this Stipulation and Order, DOE shall issue, within the first ten school days of the school year, a written directive to principals/designees to do the following (except that information relating to the Electronic Reporting System Provisions need not be included until the first school year following the Launch of the Electronic Reporting System):

- a. Submit a Bullying Complaint into OORS within one school day after Receipt of a Bullying Complaint;
- b. For Bullying Complaints not filed by the Parent of the Alleged Victim: (i) notify the Parent(s) of the Alleged Victim(s) of the Bullying Complaint no later than two

school days after Receipt of the Bullying Complaint, except where the principal/designee believes it would be unsafe to do so in accordance with Chancellor's Regulation A-832, or where earlier notification is required by another applicable regulation or statute; and (ii) document in OORS the date on which the Parent of the Alleged Victim was notified or whether no notification was made because the principal/designee determined that it was unsafe to do so;

- c. Conduct an investigation of the Bullying Complaint ("Investigation") by interviewing and, where feasible, obtaining written statements from the Alleged Victim(s), Accused Student(s) and any witnesses, as well as, where feasible and available, reviewing relevant video surveillance and other pertinent information;
- d. By no later than ten school days after Receipt of a Bullying Complaint, or as soon as reasonably possible thereafter where there are Extenuating Circumstances:
 - i. Determine whether the Bullying Complaint is substantiated as a Material Incident and enter this determination into OORS;
 - ii. For Material Incidents, determine whether interventions and supports for the Victim are warranted and, following the Launch of the Electronic Reporting System, either (A) document such interventions and supports into SOHO, together with the name and contact information for School personnel responsible for providing such interventions and supports, or (B) document the determination that interventions and supports are not warranted;
 - iii. Following the Launch of the Electronic Reporting System, issue a Notice of Determination in a manner consistent with state and federal

law regarding student records privacy, except where it has been determined to be unsafe to so notify the Parent(s) of a Victim of a Bullying Complaint. The Notice of Determination may be delivered by any of the following methods: written or electronic notice sent to a Participating Parent via the Electronic Reporting System or sent to the Parent's mailing address of record or e-mail address of record, a text message or voicemail to the Parent's telephone number of record; provided, however, that, for Participating Parents, notice must be sent, at a minimum, via the Electronic Reporting System; and

- iv. Following the Launch of the Electronic Reporting System, and following issuance of a Notice of Determination for a Bullying Complaint that has been substantiated as a Material Incident, provide the Parent with an opportunity to discuss the Material Incident, either in-person or over the phone, including, as applicable, the interventions and supports recommended to be provided to the Victim;
- e. After the Launch of the Electronic Reporting System, where Extenuating Circumstances prevent the School from issuing a Notice of Determination within ten school days, document such circumstances in OORS;
- f. Provide interventions and supports, to the extent they have been determined to be warranted, for a Victim of a Material Incident. Such interventions and supports may include, but are not limited to, the following: referring the Victim(s) to the guidance counselor, school social worker, psychologist or other appropriate School staff or community-based organization; developing an ISP; assignment of

a mentor or coach; counseling; and, for any Victims who are Students with a disability, where warranted, referral to the Victim's IEP Team. The determination of what interventions and supports are provided should take into account whether the Student has been the Victim of one or more prior Material Incidents in the same school year; and

g. After the Launch of the Electronic Reporting System, develop and implement ISPs for Students who have been the Victim of two or more Material Incidents in the same school year and document the development of such ISPs in SOHO.

41. DOE shall provide to Plaintiffs' counsel a copy of the directive described above in Paragraph 40 by October 31 of each year of the term of this Stipulation and Order.

42. DOE shall provide a mechanism pursuant to which Plaintiffs' counsel may bring to DOE's attention, in writing, individual, Student-specific instances of non-compliance with Paragraphs 40(a) through (g), provided Plaintiffs' counsel has obtained authorization from the Student's Parent to do so. For any such instances brought to the attention of DOE pursuant to this mechanism, and in the absence of Extenuating Circumstances, DOE shall investigate the reported non-compliance within ten school days of receipt of written notification furnished by Plaintiffs' counsel in accordance with this mechanism and shall notify Plaintiffs' counsel of the findings and any actions taken to achieve compliance.

IV. THE ELECTRONIC REPORTING SYSTEM FOR BULLYING COMPLAINTS

43. As of the start of the 2019-2020 school year, DOE shall maintain an Electronic Reporting System which:

- a. Allows a Participating Parent to electronically file Bullying Complaints regarding his or her child and to receive email notifications, as further described below, regarding the Bullying Complaint at his or her Verified E-Mail Address;
- b. Includes an electronic Bullying Complaint form, which will be available in English and the nine most common primary languages other than English spoken by persons living in New York City as identified by DOE pursuant to Chancellor's Regulation A-663. DOE will provide a draft of this electronic Bullying Complaint form to Plaintiffs' counsel by no later than the end of the 2017-2018 school year, and DOE shall consider in good faith comments provided by Plaintiffs' counsel in writing within fifteen business days of receipt of such draft;
- c. Provides instructions on how Parents can obtain a Verified E-mail Address and provides a process that allows Parents to obtain such address without having to physically appear at a School or DOE building;
- d. Does the following:
 - i. Within one school day of the filing of a Bullying Complaint in the Electronic Reporting System, generates a Confirmation of Receipt advising the Participating Parent that the Bullying Complaint has been received, and that the Participating Parent shall receive further communication from the Electronic Reporting System within one school day;
 - ii. Within one school day of the Confirmation of Receipt noted above, except as set forth in Paragraph 43(d)(v), generates a Confirmation of

Processing email that advises the Participating Parent: (1) that the Bullying Complaint is under investigation; (2) of the tracking number associated with the Bullying Complaint; and (3) that the Participating Parent will receive a Notice of Determination within ten school days of the filing of the Bullying Complaint setting forth the outcome of the Investigation and, if there is a finding of a Material Incident, advising the Parent to contact the School for further information, including interventions and supports for the Victim, as applicable;

- iii. Upon the School's entry of the findings with respect to the Bullying Complaint into OORS as set forth above in Paragraph 40(d), generates an email to the Participating Parent containing a Notice of Determination;
- iv. If a Notice of Determination is not entered into OORS within ten school days after Receipt of a Bullying Complaint, generates an email to the Participating Parent which states that the Notice of Determination has not yet been issued, advises the Participating Parent that he/she may contact the School or Escalation Staff for more information, and provides the contact information for the relevant School personnel and Escalation Staff; and
- v. If the School determines that the complaint filed in the Electronic Reporting System (a) does not allege Student-on-Student Bullying, Harassment or Intimidation and/or Discrimination, or (b) does not set forth sufficient information to enable the School to conduct an

Investigation, generates an e-mail notification to the Participating Parent directing him/her to contact the School to address his/her concerns; and

- e. Permits Parents of Alleged Victims, who have Verified E-mail Addresses, and who file Bullying Complaints outside the Electronic Reporting System or who are advised of Bullying Complaints by the School, to elect to opt into the Electronic Reporting System and receive the notifications described in Paragraph 43(d) regarding the Bullying Complaint.

V. OORS

44. Simultaneously with the Launch of the Electronic Reporting System, DOE shall have OORS programmed to provide the following notifications with respect to all Bullying Complaints entered into OORS as set forth in Paragraph 40 above:

- a. Within five school days of the Receipt of a Bullying Complaint, and until such time as the principal/School enters findings with respect to the Bullying Complaint into OORS as set forth above in Paragraph 40(d), sends daily e-mails advising the principal/School to complete its Investigation of the Bullying Complaint and enter the determination as to whether the complaint has been substantiated as a Material Incident in OORS; and
- b. Within five school days of the Receipt of a Bullying Complaint, and until such time as the findings with respect to the complaint are entered into OORS, sends the daily e-mails described in Paragraph 44(a) to relevant FSC staff who are responsible for monitoring compliance with Chancellor's Regulation A-832.

45. DOE shall provide Plaintiffs' counsel with a copy of the standard notification forms described above in Paragraph 44(a) and 44(b) by October 31 of each school year for the term of the Stipulation and Order following the Launch of the Electronic Reporting System.

**VI. DOE'S RESPONSIBILITIES AS TO CORPORAL PUNISHMENT AND
VERBAL ABUSE COMPLAINTS**

46. By no later than the start of the school year following the Effective Date, DOE shall maintain a system for Parents to electronically report Corporal Punishment Complaints and Verbal Abuse Complaints (the "Corporal Punishment and Verbal Abuse Complaint Electronic Reporting System").

47. This electronic system shall be designed to provide Parents who electronically report Corporal Punishment Complaints or Verbal Abuse Complaints with a tracking number associated with such complaint at the time the Complaint is filed.

48. By no later than the start of the school year following the Effective Date, DOE shall advise Parents of the Corporal Punishment and Verbal Abuse Complaint Electronic Reporting System by placing notification of such system on the DOE website, and, by the Launch of the Electronic Reporting System, on the webpage for the Electronic Reporting System described in Section IV.

49. By no later than the start of the school year following the Effective Date, DOE shall further advise Parents of the availability of an Office for Special Investigation ("OSI") Information hotline for inquiries relating to OSI's procedures by placing notification of such hotline on the DOE website, and the Corporal Punishment and Verbal Abuse Complaint Electronic Reporting System.

50. Within the first ten school days of the school year following the Effective Date, DOE shall issue a directive to principals/designees that, in the event of a substantiated Corporal Punishment or Verbal Abuse Complaint investigated by OSI pursuant to Paragraph 51, Schools shall provide interventions and supports, as warranted, for the Student(s) who were subjected to Corporal Punishment or Verbal Abuse. DOE shall provide Plaintiffs with a copy of this directive. Such interventions and supports may include, but are not limited to, the following: referring the Student(s) to the guidance counselor, school social worker, psychologist or other appropriate School staff or community-based organization; developing an ISP; assignment of a mentor or coach; counseling; and, for any Students with a disability, where warranted, referral to the Student's IEP team. The determination of what interventions and supports are provided should take into account whether the Student has been subjected to one or more prior substantiated incidents of Corporal Punishment or Verbal Abuse in the same school year.

51. As of the start of the school year following the Effective Date, within ten school days of OSI completing an investigation and substantiating a Complaint alleging Corporal Punishment or Verbal Abuse in violation of Chancellor's Regulations A-420 or A-421, DOE shall notify the Parent and provide an opportunity to discuss interventions and supports where warranted.

VII. RELIEF FOR NAMED INDIVIDUAL PLAINTIFFS

52. Within twenty school days of the Effective Date, to the extent that such steps have not already been taken, DOE shall take the following actions with respect to Named Individual Plaintiffs:

- a. Make counseling available to JD5 as appropriate;
- b. Make counseling available to JD6 as appropriate;
- c. Provide JD9's parents notice of the outcome of the investigation of corporal punishment;
- d. Convene a meeting of JD11's IEP Team at a time to be agreed upon by JD11's parents and the IEP Team members;
- e. Make counseling available to JD14 as appropriate and expunge JD14's DOE disciplinary records relating to the December 14, 2015 incident (*see* Second Amended Complaint, Paragraphs 553 – 566), to the extent allowable under governing laws and regulations;
- f. Make counseling available to JD19 as appropriate; and
- g. Provide JD20's parents with notice of the outcome of the corporal punishment investigation concerning Teacher 20B and provide JD20's parents with copies of JD20's education records.

VIII. RESOURCES AND SUPPORT FOR DOE SCHOOLS

53. By no later than twenty business days prior to the start of the school year following the Effective Date, DOE will designate a Central Team to: (a) work with the FSCs and Superintendents to support DOE's Student-on-Student Bullying, Harassment, Intimidation, and/or Discrimination prevention and intervention programs, and (b) monitor and support Schools in complying with their obligations under Regulation A-832 and this Stipulation and Order as applicable in the given school year.
54. DOE shall appoint a Director of the Central Team.

55. Within twenty business days prior to the start of the school year following the Effective Date, DOE will identify to Plaintiffs' counsel the name of the Director of the Central Team and the names of the DOE offices represented on the Central Team.

56. As of the start of the school year following the Effective Date, the Central Team will be responsible for:

- a. Developing and providing resources, best practices, and professional development on preventing, reporting, investigating and addressing Student-on-Student Bullying, Harassment, Intimidation, and/or Discrimination to Schools;
- b. Developing guidelines for when it is appropriate to refer a Material Incident to a Victim's IEP team;
- c. Generating, reviewing, and distributing to FSCs and other relevant non-School-based staff monthly reports regarding: (i) Schools that have not entered the information described in Paragraph 40 in OORS and/or SOHO within the timeframes set forth in Paragraph 40 of this Stipulation and Order and Chancellor's Regulation A-832 (as applicable during the school year in question), and (ii) the total number of Material Incidents disaggregated by School, District, and FSC;
- d. Analyzing OORS data regarding trends in Material Incidents (as available during the school year in question), including the types of Material Incidents, and how many Material Incidents in a school year involve the same Victim(s) and/or Accused Student(s);
- e. Facilitating the provision of and/or directly providing, as appropriate, targeted intervention and support to Schools that, based on, among other things, monthly

reports and the data described in Paragraph 56(c) (as available during the school year in question), have disproportionate rates (taking into consideration School registers and district, borough and citywide averages) of: (i) Material Incidents; (ii) Notices of Determination not issued within the time frames set forth in this Stipulation and Order; and (iii) repeated incidents involving the same Victim(s) or Accused Student(s);

- f. Monitoring and enforcing Schools' compliance with training and orientations required by Chancellor's Regulation A-832 and this Stipulation and Order; and
- g. Developing, reviewing, and revising training and orientation materials and curricula based on its analysis of Schools' compliance with Chancellor's Regulation A-832 and this Stipulation and Order.

57. DOE shall provide Plaintiffs' counsel with a copy of the written material distributed by the Central Team describing the resources, best practices, and professional development referenced above in Paragraph 56(a), as well as a copy of the guidelines referenced above in Paragraph 56(b) by October 31 of each year of the term of this Stipulation and Order.

IX. ESCALATION STAFF

58. By no later than the start of the school year following the Effective Date, DOE shall designate Escalation Staff who are responsible for supporting Parents and Schools in addressing Bullying Complaints.

59. Within twenty business days of the start of the school year following the Effective Date, DOE will identify to Plaintiffs' counsel the names of the DOE offices in which the Escalation Staff work.

60. By no later than the start of the school year following the Effective Date, DOE shall direct Escalation Staff to coordinate the completion of an Investigation of a Bullying Complaint, if a Parent requests that Escalation Staff undertake such coordination and, if:

- a. The Parent alleges that he/she and/or the Alleged Victim has been retaliated against for making a prior Bullying Complaint;
- b. Beginning with the Launch of the Electronic Reporting System, the Bullying Complaint was reported to the School and the School failed to issue a Notice of Determination within ten school days of Receipt of the Bullying Complaint in the absence of Extenuating Circumstances (this instruction shall be included in the directive following the Launch of the Electronic Reporting System); or
- c. The Alleged Victim has been the Victim of two or more prior Material Incidents during the same school year.

61. Within ten school days after the Launch of the Electronic Reporting System, DOE shall direct the Escalation Staff to notify the Parent if and when the Escalation Staff is responsible for coordinating the completion of any Investigation of a Bullying Complaint as set forth in Paragraph 60.

62. In the event that Escalation Staff become responsible for coordinating the completion of any Investigation of a Bullying Complaint as set forth above in Paragraph 60, such Escalation Staff may refer the Bullying Complaint to appropriate non-School-based DOE personnel for further action or may assist the School in completing the Investigation. DOE shall notify Students and Parents of the contact information for

the Escalation Staff by posting such information on DOE's website and as set forth in Paragraph 38.

63. DOE shall provide Plaintiffs' counsel a copy of the directives issued to Escalation Staff referenced in Paragraphs 60 - 62 by October 31 of each year of the term of this Stipulation and Order.

X. TRANSFERS

64. By no later than the start of the school year following the Effective Date, DOE shall direct the Office of School Enrollment ("OSE") to approve any transfer request when it is made by a Parent of a Student that has been the Victim of one or more Material Incidents in a single school year, unless all Students responsible for the Student-on-Student Bullying, Harassment, Intimidation, and/or Discrimination are not and will not be attending the Victim's School while the Victim is enrolled at that School. Such transfer requests shall be approved in accordance with the procedures set forth in Chancellor's Regulation A-101. Nothing herein guarantees the Victim the right to transfer to any particular School.

65. By no later than the start of the school year following the Effective Date, DOE shall direct the OSE to approve any transfer request when it is made by a Parent on the grounds that the Parent's Student has been the Victim of a substantiated Corporal Punishment or Verbal Abuse Complaint and it is determined that the Student's continued presence in the School is unsafe for the Student. Such transfer requests will be approved in accordance with the procedures set forth in Chancellor's Regulation A-101. Nothing herein guarantees the Victim the right to transfer to any particular School.

66. By no later than the start of the school year following the Effective Date, DOE will publish on its website the right to request and be granted a transfer as set forth in Paragraphs 64 and 65 above, as of the Effective Date.

XI. TRAINING

67. Within the first ten school days of the school year following the Effective Date, DOE shall direct Schools to include the requirements set forth in Sections III through VI of this Stipulation and Order in yearly orientation sessions required by Chancellor's Regulation A-832 to be held by Schools for all School staff and consistent with Paragraph 37.

XII. MONITORING AND REPORTING

68. DOE shall provide to Plaintiffs' counsel semi-annual monitoring reports by March 31 (the "Fall Required Report"), and November 30 (the "Spring Required Report") (together, the "Required Reports") for each of the three full school years following the Launch of the Electronic Reporting System:

- a. DOE shall provide to Plaintiffs' counsel and post on its website the first Required Report on or before March 31, 2020. Each subsequent Fall Required Report shall be posted on DOE's website by March 31 of the school year.
- b. The Fall Required Report shall include data regarding the preceding Fall Semester and the Spring Required Report shall cover the preceding Spring Semester, and the information described in Paragraph 70(a) and (b). The Central Team will be responsible for generating the Required Reports, which shall provide data in a manner consistent with state and federal law regarding student records privacy. DOE will not report data that reflects or reveals a number of students between 0

and 5 due to FERPA, except that a “0” response will be reported when it does not reveal any personally identifiable information that, alone or in combination, is linked or linkable to a specific Student that would allow a reasonable person in the School community who does not have personal knowledge of the relevant circumstances outside of the data produced, to identify the Student with reasonable certainty.

- c. At least thirty days prior to the issuance of the first Required Report, DOE shall provide the template for the Required Reports to Plaintiffs’ counsel. Plaintiffs’ counsel shall have five business days to deliver in writing any concerns regarding the format of the template. Within five business days of receiving such a writing, DOE shall meet and confer with Plaintiffs to discuss such concerns.

69. Each Required Report shall contain the following data for community school districts (“CSD”).

- a. **Data for CSD:** Each Required Report shall include the data and information set forth below, disaggregated by each CSD and Districts 75 and 88:
 - i. The total number of Material Incidents;
 - ii. The number of unique (non-duplicate) Bullying Complaints submitted through the Electronic Reporting System and determined to contain allegations of Student-on-Student Bullying, Harassment, Intimidation and/or Discrimination (*i.e.*, for which a Confirmation of Processing email was issued);
 - iii. Data regarding the timely notification of Parents of Bullying Complaints under Paragraph 40(b) above;

iv. The following data on the timeliness of issuance of Notices of Determination as required by Chancellor's Regulation A-832:

1. The total number of Notices provided;
2. The number of Notices provided within ten school days after Receipt of the Bullying Complaint (*i.e.*, timely Notices);
3. The number of Notices provided more than ten school days after Receipt of the Bullying Complaint, because of Extenuating Circumstances;
4. The number of Notices provided more than ten school days after Receipt of the Bullying Complaint, but not because of Extenuating Circumstances (*i.e.*, untimely Notices);
5. The number of untimely Notices provided more than ten school days after Receipt of the Bullying Complaint, disaggregated and reported within ranges of the number of days the Notice was untimely (*i.e.*, number of Notices 1 to 5 days late, 6 to 10 days late, 11-29 days late, more than 30 days late); and

v. The following data on the recording of interventions and supports in SOHO pursuant to Paragraph 40(d)(ii):

1. Number of Victims of Material Incidents for whom a School failed to document its determination as to whether interventions and supports are warranted in SOHO;

2. Number of Victims of Material Incidents for whom a School determined interventions and supports were warranted as entered into SOHO; and
3. Number of Victims of Material Incidents for whom a School determined that interventions and supports are not warranted as entered into SOHO.

70. The Spring Required Reports shall also include the following additional information with respect to the preceding school year:

- a. The total number of Students who were the Victims of two or more Material Incidents within the same school year, including:
 - i. The number of ISPs developed to support Victims of two or more Material Incidents within the same school year, disaggregated by each CSD and Districts 75 and 88; and
 - ii. The number of Victims of two or more Material Incidents who did not receive an ISP, disaggregated by each CSD and Districts 75 and 88;
- b. A description of the resources and support provided by the Central Team and/or the FSCs to Schools with respect to preventing, reporting, and addressing incidents of Student-on-Student Bullying, Harassment, Intimidation, and/or Discrimination; and
- c. A description of trends reflected in the data including, but not limited to, the types of Material Incidents and timeliness of issuance of Notices of Determination, and a description of recommendations to address such trends, including, but not limited to training relevant staff members where appropriate.

71. Plaintiffs' counsel shall have fifteen business days from receipt of each Required Report to deliver concerns or objections in writing to DOE regarding such report's methodology, data, conclusions or recommendations, as well as any concerns relating to the efficacy of the enforceable provisions of this Stipulation and Order. Within five business days of receipt of such writing, or upon an alternatively agreed-upon time, the Parties shall meet and confer in good faith to discuss modifications to DOE's procedures and policies for addressing Bullying Complaints.

- a. Any such concerns or objections to a particular Required Report that are not delivered in writing to DOE within fifteen business days of Plaintiffs' counsel's receipt of such report shall preclude Plaintiffs from raising such concern or objection as a basis for an enforcement action pursuant to Section XIII below.
- b. DOE shall provide a draft of the Spring Required Report to Plaintiffs' counsel on a confidential basis by September 18. Neither DOE nor counsel for the Parties shall publicly disclose the contents of the draft report or the contents of any meet and confer regarding this draft, except:
 - i. DOE may disclose the draft report to personnel within the government of New York City on a confidential basis, provided that each recipient agrees not to disclose publicly the contents of such draft, and such draft shall have a watermark identifying the document as confidential;
 - ii. DOE may disclose the draft report to other stakeholders on a confidential basis, provided that each recipient executes a non-disclosure agreement prohibiting public disclosure of the contents of such draft; and

iii. The draft that DOE provides to Plaintiffs' counsel shall be marked "For Attorneys' Eyes Only" and Plaintiffs' counsel will not share the draft with anyone until it becomes public.

c. DOE shall publish the Spring Required Report on its website no later than November 30.

XIII. JURISDICTION OF THE COURT

72. Plaintiffs agree that, for the duration of this Stipulation and Order, they shall not:

- a. impose nor seek to have imposed, in this or in any other litigation, any additional systematic obligations upon DOE with respect to the issues that are subject to enforcement under this Stipulation and Order, except as a remedy should the Plaintiffs establish their entitlement to such a remedy in connection with a motion to enforce this Stipulation and Order, made in accordance with Paragraphs 73(d) or with the written consent of the Parties;
- b. move to enforce the Stipulation and Order under Paragraph 73(d) below unless:
 - i. DOE fails to implement any of the provisions in Section II through XII of this Stipulation and Order; or
 - ii. During the three full school years following the Launch of the Electronic Reporting System, Plaintiffs can demonstrate a "systematic failure" to comply with the following provisions, and, with respect to subparagraphs (2) – (5) below and subject to Paragraph 73(b), such failure exceeds the Quantitative Limitations set forth in Paragraph 72(b)(iii) below:

1. Take reasonable measures to ensure the proper functioning of the Electronic Reporting System;
2. Timely notify Parents of Bullying Complaints under Paragraph 40(b) above;
3. Timely issue Notices of Determination under Paragraph 40(d)(iii) above;
4. Record in SOHO the determination as to whether interventions and supports are warranted for Victims pursuant to Paragraph 40(d)(ii) and if determined to be warranted, record the interventions and supports to be recommended; and
5. Prepare ISPs pursuant to Paragraph 40(g) above;

iii. **Quantitative Limitation:** Plaintiffs shall not bring an action to enforce pursuant to Paragraph 72(b)(ii) unless:

1. During the 2019-2020 school year, the alleged failure pertains to (A) an individual CSD, and the alleged compliance rate is below 65%, or (B) the entire School system, and the alleged compliance rate is below 70%; or
2. During the 2020-2021 school year, the alleged failure pertains to (A) an individual CSD, and the alleged compliance rate is below 70%, or (B) the entire School system, and the alleged compliance rate is below 75%; or
3. During the 2021-2022 school year, and for any subsequent school year for which this Stipulation and Order is extended,

the alleged failure pertains to (A) an individual CSD, and the alleged compliance rate is below 75%; or (B) if the alleged failure pertains to the entire School system, and the alleged compliance rate is below 80%;

- c. move, in any motion to enforce the Stipulation and Order under Paragraph 74 for a sanction of contempt unless, by clear and convincing evidence, Plaintiffs can show that DOE has intentionally committed a systematic violation, as defined in Paragraph 72 above. To the extent Plaintiffs seek remedial action, in addition to a sanction for contempt, such remedial action requested shall be limited to the specific intentional and systematic violation proven.

73. Prior to making any motion under Paragraph 72(b), Plaintiffs' counsel shall deliver notice to DOE's counsel, in writing, of the nature and specifics of the non-compliance within twenty business days of becoming aware of the alleged failure. The Parties will meet and confer within five school days of the delivery of the above-referenced notice from Plaintiffs' counsel, or upon an alternatively-agreed upon time. In the event that Plaintiffs allege systematic non-compliance pursuant to any of the provisions in Paragraphs 72(b)(ii)(2)-(5) and 72(b)(iii), DOE shall provide, on a confidential, anonymous basis, School-level data pertaining to the provision(s) in Paragraph 72(b)(ii)(2)-(5) for which a CSD has allegedly not achieved the applicable compliance rate set forth in Paragraph 72(b)(iii). This anonymous School-level data shall be confidential, except that in publicly-available motions filed pursuant to Paragraph 73(d), Plaintiffs may include this data pertaining to the Schools located within the non-compliant CSD(s) that underlie the motion.

- a. Within twenty business days of notice by Plaintiffs' counsel, DOE shall notify Plaintiffs' counsel, delivered in writing, of the resolution of the concern raised by Plaintiffs' counsel.
- b. **Safe Harbor**. If the alleged failure concerns an individual CSD under Paragraph 72(b)(iii) above and, if the rate of compliance is at or greater than 50% (CSDs with a rate of compliance below 50% are ineligible for the Safe Harbor), DOE may provide notice to Plaintiffs that it intends to take either of the following unilateral actions:
 - i. Retrain relevant staff concerning the obligations of this Stipulation and Order, and obligations, in particular, related to the specific violation at issue, or
 - ii. Provide professional development concerning improving school climate and/or combatting bullying to relevant staff (as defined herein).

As used herein, "relevant staff" means each administrator, teacher or staff member who (1) has duties and responsibilities that include the task(s) or procedure(s) that underlie the CSD's non-compliance with the applicable thresholds set forth in Paragraph 72(b)(iii), and (2) is assigned to a School with a compliance rate below the applicable Citywide compliance rate. Staff assigned to Schools with compliance rates that meet or exceed the compliance rates applicable to the entire School system, as described above in Paragraph 72(b)(iii) do not need to be retrained for DOE to avail itself of this Safe Harbor. DOE will provide Plaintiffs' counsel with a certification of such retraining, as well as the

title/position of every person retrained under the Safe Harbor, on an anonymous basis, within forty-five school days of DOE's notification of the resolution of concern raised by Plaintiffs' counsel. Upon receipt of the foregoing notice, Plaintiffs shall be precluded from bringing an enforcement action based on that alleged violation unless DOE fails to provide the required proof of completion, or in the subsequent Required Report, the CSD still fails to meet the compliance standard set out in Paragraph 72(b)(iii).

- c. Within ten business days of either party's request to further meet and confer, or upon an alternatively agreed-upon time, the Parties shall meet in person to discuss any remaining compliance issues and work towards addressing the issues.
- d. If the Parties cannot agree on a resolution of the issues, Plaintiffs may make an application to the Court within fifteen business days of the meeting seeking appropriate relief for Systematic Failures.
- e. Nothing in the Stipulation and Order limits Plaintiffs or Plaintiffs' counsel from making any report to law-enforcement officials.

74. During the time that the Court retains jurisdiction, and subject to the limitations above, if Plaintiffs believe that DOE has been in non-compliance with this Stipulation and Order, Plaintiffs may make a motion for enforcement, contempt, or further relief. Plaintiffs shall bear the burden of proof.

- a. With respect to the first instance in which Plaintiffs move to enforce this Stipulation and Order pursuant to Paragraph 72(b), in the event that the Court grants such motion, the Parties agree that the sole relief requested shall be (i) action to specifically address the alleged deficiency or (ii) the extension of the

duration of this Stipulation and Order by one year only with respect to the specific alleged deficiency.

- b. Subject to the other limitations contained herein, Plaintiffs may seek any reasonable relief in a subsequent motion in the event their first motion was granted by the Court.

75. The Court's jurisdiction shall end sixty business days from the issuance of the last Required Report for the fourth school year (the "Termination Date") absent an intervening Order of extension by the Court, provided that no such extension shall expand the Court's jurisdiction more than two years beyond the Termination Date.

XIV. CLASS NOTICE

76. The Parties agree to submit a proposed form of notice to the Court for approval in connection with this Stipulation and Order. The fact that the Court may require changes in the form of notice does not invalidate this Stipulation and Order if the changes do not materially affect the substance of this Stipulation and Order.

77. Notice to the Settlement Class shall be provided as ordered by the Court.

XV. COURT APPROVAL

78. The final approval hearing will be held on such date as the Court, in its discretion, may order.

79. No later than fifteen business days after this Stipulation and Order is executed, the Parties shall jointly move for certification of a Settlement Class pursuant to Fed. R. Civ. P. 23(b)(2). The proposed Settlement Class shall be defined as:

All present and future Students in grades K-12 who have been, become, or will claim to be, the victim of behavior that violates one or more of the following DOE policies:

of Student-on-Student Bullying, Harassment, Intimidation, and/or Discrimination as prohibited by Chancellor's Regulation A-832; Staff-on-Student corporal punishment as prohibited by Chancellor's Regulation A-420; and/or verbal abuse as prohibited by Chancellor's Regulation A-421.

80. No later than fifteen business days after this Stipulation and Order is executed, the Parties shall jointly move, pursuant to Fed. R. Civ. P. 23(e), for Preliminary District Court Approval, approving the terms of this Stipulation, including certifying the proposed Settlement Class, approving the proposed method and form of notice to class members and scheduling the Fairness Hearing.

81. If certification of the proposed Settlement Class and/or Preliminary District Court Approval are denied, the Parties shall work together to remedy the basis or bases for such denial, and shall file a renewed motion for certification of a proposed Settlement Class and/or Preliminary District Court Approval as soon as practicable.

82. If the Parties are unable to obtain certification of a proposed Settlement Class and/or Preliminary District Court Approval notwithstanding their diligent efforts, then this Stipulation and Order shall become null and void in its entirety, and the Parties shall be restored to their positions immediately prior to the execution of this Stipulation and Order, except that if the Court only requires changes in the form of notices that do not materially affect the substance of this Stipulation and Order, then the Stipulation and Order shall not be invalidated.

83. The terms and conditions of this Stipulation and Order shall be deemed effective, and the Parties' obligations, rights and responsibilities hereunder shall commence on the Effective Date as specified herein. As the Parties believe that it is desirable to

provide the relief to the Individual Plaintiffs as set forth in Paragraph 52 above as soon as practicable, if Defendant provides any or all of this relief prior to the Effective Date, then Defendant's obligations pursuant to Paragraph 52 will be fulfilled to the same extent as if the relief had been provided on or after the Effective Date.

XVI. ATTORNEYS' FEES

84. DOE agrees that Plaintiffs are entitled to reasonable attorneys' fees and costs as though they are prevailing parties under applicable law. Plaintiffs' counsel will submit a request to DOE's counsel for reimbursement of fees and costs no later than thirty days after the Effective Date. If the Parties cannot reach agreement on the amount of reasonable fees and costs within ninety days of Plaintiffs' request, the Parties will proceed in accordance with the Court's direction.


85. DOE agrees that Plaintiffs are entitled to reasonable attorneys' fees for time spent executing and enforcing the terms of this Stipulation and costs accrued during the Stipulation Period pursuant to applicable law. Plaintiffs' counsel will submit a request to DOE's counsel for these fees and costs no later than June 30 of each calendar year and within sixty days following the Termination Date. If the Parties cannot reach agreement on the amount of fees and costs within ninety days of a request by Plaintiffs, then the Parties will proceed in accordance with the Court's direction. Plaintiffs' counsel will submit a request to DOE's counsel for these fees and costs no later than June 30 of each calendar year and within sixty days following the Termination Date. If the Parties cannot reach agreement on the amount of fees and costs within ninety days of a request by Plaintiffs, then the Parties will proceed in

accordance with the Court's direction. However, Plaintiffs may not seek, and cannot recover, attorneys' fees for any work in connection with any enforcement motion unless the motion is granted in whole or in part.

Dated: New York, New York
March 14, 2018

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By:


JIM WALDEN
JOHNSON LIN

SO ORDERED:

Dated: Brooklyn, New York
_____, 2018

NICHOLAS G. GARAUFIS
United States District Judge

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