

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

Parents Leading for Educational Equity (PLEE); et al.  PLAINTIFFS,  v.  Providence Public School Department; et al.  DEFENDANTS.	C.A. 23-cv-00301-MSM-PAS
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**SETTLEMENT AGREEMENT**

WHEREAS, Plaintiffs, PARENTS LEADING FOR EDUCATIONAL EQUITY (PLEE); A.A. by next friend Rachel Cohn; Rachel Cohn; R.G., by next friend Dell Johnny; Dell Johnny; L.C., by next friend Lorena Rodriguez; and Lorena Rodriguez, each individually and on behalf of all persons similarly situated (collectively, the “Plaintiffs”) filed a class action complaint (the “Complaint”) in the United States District Court for the District of Rhode Island on or about July 17, 2023 in C.A. No. 1:23-cv-00301-MSM-PAS; and

WHEREAS, in the Complaint, Plaintiffs alleged that Defendants, RHODE ISLAND DEPARTMENT OF EDUCATION (“RIDE”), ANGÉLICA INFANTE-GREEN, in her official capacity as Commissioner of the Department of Education (the “Commissioner”) and the PROVIDENCE PUBLIC SCHOOL DEPARTMENT (“PPSD” and collectively, the “Defendants”), failed to timely provide evaluation, special education and related services to preschool students in violation of the Individuals with Disabilities Education Act (the “IDEA”), 20 U.S.C. § 1400 *et seq.*, Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (“Section 504”) and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.* (the “ADA”); and

WHEREAS, on August 24, 2023, the parties agreed to settle the claims in the Complaint pursuant to the following terms and subject to Court approval.

**I. RECITALS**

This Settlement Agreement (the “Agreement”) shall be binding on all parties, their successors, agents, employees, etc. upon approval by the United States District Court for the District of Rhode Island. Relief for class members provided by the Agreement does not resolve or release and expressly preserves individual claims re sufficiency of evaluations, eligibility determinations, individualized education plan (“IEP”), free appropriate public education (“FAPE”), placement, and claims for individualized prospective compensatory education, etc., subject to the IDEA requirements.

Any provisions that require implementation prior to final approval shall be undertaken by the parties notwithstanding that the date for



**A. Remedies as to Evaluation Subclass**

1. As to members of the Evaluation Subclass whose information includes evidence or significant indication of an affirmative finding of eligibility, and who have eligibility meetings scheduled for a date in September 2023, combine the eligibility/IEP meetings if the parent agrees.

2. Prioritize members whose eligibility meetings are over 70 days after the date of the referral or whose IEP meetings are over 80 days after the date of referral and who currently have meetings scheduled (or to be scheduled) for dates after September 30, 2023 to be provided earlier meeting dates made available by cancelled meetings or meeting appointments newly made available by the addition of staff or contractors or by any other scheduling changes.

3. Notify parents who are overdue on evaluation services that Defendants will pay providers for needed evaluation services at regional market value from a non-exclusive list of outside approved providers or other qualified service providers.

4. As to members of the Class identified as awaiting evaluations:

(a) By close of business on August 25, 2023, notify parent(s) that Defendants will consider evaluations provided by outside evaluators and request that any existing evaluations be provided to Defendants;

(b) Review existing evaluations and all evaluations provided by parent(s) within six business days of receipt and notify parent(s) if the evaluations have been accepted by Defendants;

(c) For students who have been determined eligible for EI services and have had at least one evaluation by the EI team conducted by a qualified provider(s) or are receiving EI services, Defendants must rely on the evaluation(s) of the EI team and may not delay preparation of an initial IEP and delivery of services while additional evaluations are sought;

(d) If it is determined that additional evaluations are required and have not been scheduled prior to September 15, 2023:

(i) Notify parent(s) of their right to obtain a qualified outside provider(s) to do the evaluation at regional market value from a non-exclusive list of approved service providers; and

(ii) Notify parent(s) that that Defendants will pay the qualified service provider directly for any evaluation obtained pursuant to subsection (d)(1).

- (e) For members whose information includes evidence or significant indication of an affirmative finding of eligibility, combine the eligibility/IEP meetings if parent(s) agrees.

The above format shall apply on a rolling basis to all future subclass 1 members who have not been evaluated.

5. For members of the Class who are referred by EI and have not yet had referral meetings, with the parent's consent, combine the referral, eligibility, and IEP meetings unless there is inadequate information to establish the student's eligibility for IDEA services; if additional information is needed, Defendants will notify parent(s) that they should bring any outside evaluations to the referral meeting. The requirements in paragraph 4 shall apply to these students.

6. For members of the Class who require an evaluation, eligibility meeting and/or IEP meeting to be rescheduled, respond to the request for a new date within three business days, offer the earliest date available, and place the student on a cancellation list.

- (a) If a parent does not show up for an appointment (evaluation, eligibility or IEP meeting), find out and document in writing if there are any obstacles to parent(s) attending the meeting and identify systemic barriers in order to address those barriers.

7. No later than September 20, 2023, establish and maintain at least three full time preschool evaluation teams for the school year 2023-24 staffed by Defendants' staff. Report back to Court and Plaintiffs by September 30, 2023 if this goal has been achieved, and, if not, what steps Defendants have taken to fill these positions and what alternatives have been put in place to increase the capacity to evaluate students.

8. At the conclusion of the 2023-24 school year, if the backlog has been eliminated, Defendants may maintain at least two full-time preschool evaluations times for the summer.

9. No later than September 20, 2023, establish and maintain throughout the 2023-24 school year at least one part-time preschool evaluation team with meeting times on one weekday evening and Saturday. Report back to Court and plaintiffs by September 30, 2023 if this goal has been achieved, and, if not, what steps Defendants have taken to fill these positions and what alternatives have been put in place to increase the capacity to evaluate students.

10. No later than August 25, 2023, execute and commence contract(s) with qualified provider(s), such as Presence or any other equivalent successor contracting entity, for sufficient evaluation teams to eliminate the currently existing backlog.

## **B. Remedies as to Services Subclass**

- 1. For each child whose IEP currently provides for a five day a week program:

- (a) No later than August 24, 2023, Defendants shall review each such IEP to determine whether the required services can be provided in a two-day program (for 3-year olds) or three-day program (for 4-year olds). Defendants shall base all special education program placements on the service needs set forth in each student's IEP. Any student who requires special education and related services in a five-day program per the IEP shall be placed in a five-day program.
- (b) Every student placed in a two- or three-day program in September 2023 shall be reviewed for suitability of placement before the conclusion of the first quarter of the 2023-24 school year. Progress data will be collected and reviewed in an IEP meeting with parent(s) no later than 10 business days before the end of the quarter and a determination as to adequate progress will be made. If adequate progress is not established, the child will be moved to a five-day program and compensatory education services as determined by the IEP team shall thereafter be provided.

2. In integrated preschool classrooms, the students with IEPs shall receive the same number of days of programming as the nondisabled peers in their classroom.

3. Any open classroom seats within the Rhode Island Pre-K Program or integrated District preschool program will be prioritized for special education students whenever appropriate in order to meet the needs of the student's IEP, up to the maximum class size. In determining maximum class size, Defendants shall waive any local rule limiting class size, so long as such waiver would not affect the health and safety of students and staff or otherwise render Defendants in violation of IDEA requirements.

- (b) Defendants will widen the geographic contours of available placements and/or outside contractors to increase availability and, to the extent necessary, waive certification/licensure requirements so long as the service provider is certified/licensed in home state.

#### **IV. THIRD PARTY MONITORING AND CASE DISMISSAL**

##### **A. Independent Monitor**

Thru Consulting LLC (“Thru Co.” or “Monitor”) shall independently monitor compliance with this Agreement.

Defendants shall be jointly and severally responsible for paying all costs and expenses related to Thru Co.’s monitoring activity.

##### **B. Substantial Compliance**

For each subclass, substantial compliance is reached at 95% timeliness, or no more than 10 students whose evaluations or services are overdue, excluding parent appointment cancellations and/or no-shows.

##### **C. Monthly Progress Reports**

Monitor shall provide a written report to the Court each month on the first of the month, commencing on October 1, 2023 and continuing through October 1, 2024, unless extended by the Court by application, or otherwise agreed to by the parties.

The monthly report shall include:

1. Numerical, anonymized list of any and all Defendants’ preschool students who are overdue for:
  - (a) Evaluations as to eligibility for special education services;
  - (b) IEPs;
  - (c) Placements; or
  - (d) Special education services detailed in any student’s IEP.
2. As to any students who may be included above, a detailed explanation as to the reasons for the delay in providing the requisite evaluations and/or services;
3. Recommendations for corrective actions to remedy the unmet timelines, benchmarks, metrics and tasks referenced in the monthly report; and

4. Any additional information required by the Monitor.

**D. Termination**

Unless an earlier termination date is agreed to by the parties, this Agreement shall terminate July 1, 2025, unless extended by the Court by application.

**V. ATTORNEYS' FEES**

Defendants shall be jointly and severally liable for a reasonable attorneys' fee for Plaintiffs' attorneys.

**VI. SIGNATURES**

This Agreement may be executed in separate counterparts electronically or in handwriting and by facsimile or email, and each such counterpart shall be deemed an original with the same effect as if the Parties had signed the same document.

**For Plaintiffs:**

**Date** August 29, 2023

/s/ Ellen Saideman

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**For Defendants Rhode Island Department of Education; and Angélica Infante-Green, in her official capacity as Commissioner of Education:**

**Date** August 29, 2023

/s/ Anthony Cottone

Anthony Cottone (Bar No. 3922)

Chief Legal Counsel

Kaelyn R. Phelps Prigge (Bar No. 10171)

RI Department of Education