

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

J.S.M., by her parent, E.M.;
E.M., individually and on behalf of J.S.M.;

B.M., by his parents, M.C. and L.M.;
M.C. and L.M., individually and on behalf of B.M.;

C.G., by his parent, L.G.;
L.G., individually and on behalf of C.G.;

P.W., by his parents, T.F. and P.R.W.;
T.F. and P.R.W., individually and on behalf of P.W.;

Q.T., by his parents, W.J.T. and W.H.T.;
W.J.T. and W.H.T., individually and on behalf of Q.T.;

A.N., by her parent, T.N.;
T.N., individually and on behalf of A.N.;

A.S., by his parent, T.T.;
T.T., individually and on behalf of A.S.;

K.M.E., by her parent, E.N.;
E.N., individually and on behalf of K.M.E.;

S.F., by her parent, A.F.;
A.F., individually and on behalf of S.F.;

S.S., by her parent, D.C.;
D.C., individually and on behalf of S.S.; and

W.W., by her parent, S.J.;
S.J., individually and on behalf of W.W.,
on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION;
RICHARD A. CARRANZA, as Chancellor of the New
York City Department of Education; NEW YORK STATE
EDUCATION DEPARTMENT; and SHANNON TAHOE,
as New York State Interim Commissioner of Education,

Defendants.

Case No. 20-cv-705-EK-RLM

**STIPULATION AND
ORDER FOR CLASS
CERTIFICATION**

WHEREAS, on February 7, 2020, Plaintiffs filed a Complaint (ECF No. 1) against Defendants, the New York City Department of Education and its Chancellor, Richard A. Carranza, sued solely in his official capacity as Chancellor (the “DOE”), and the New York State Education Department and Interim Commissioner Shannon L. Tahoe (the “State Defendants”; DOE and the State Defendants are collectively referred to herein as the “Defendants”; Defendants and Plaintiffs are collectively referred to herein as the “Parties”); and

WHEREAS, on March 20, 2020, Plaintiffs filed an Amended Complaint against the Defendants (ECF No. 21), alleging that thousands of New York City children with disabilities or children suspected of being children with disabilities are being denied the free appropriate public education to which they are entitled under federal and state law due to pervasive delays in receiving hearings and decisions on “impartial due process” complaints challenging the adequacy and appropriateness of the special education services offered to them; and

WHEREAS, on March 20, 2020, Plaintiffs filed a motion for class certification, seeking class-wide injunctive relief (ECF No. 22); and

WHEREAS, on April 17, 2020, the DOE and the State Defendants separately filed letters notifying the Court that they would not be submitting oppositions to Plaintiffs’ motion for class certification (ECF Nos. 24, 25); and

WHEREAS, the Parties agree that the proposed class as set forth in paragraph 1 below meets the requirements for class certification under Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure and that the action may be appropriately litigated as a Rule 23(b)(2) class action; and

WHEREAS, the Parties further agree that to resolve the litigation efficiently and expeditiously, without needless motion practice, it is in the Parties' joint interest to certify a plaintiff class as outlined in paragraph 1 below;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties that this action should be certified as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure on the following terms:

1. A class is certified as consisting of:

Individuals who file or have filed due process complaints, and the children on whose behalf due process complaints are filed, when the due process complaints are unresolved and the decisions on such complaints have not been timely provided under applicable federal and New York State law.

2. For purposes of this Stipulation and Order only:

- a. "Due process complaints" means the complaints described in 20 U.S.C. § 1415(b)(6) and (k)(3) that are filed against the New York City Department of Education and are pending at the New York City Impartial Hearing Office.
- b. An "unresolved" due process complaint is one that has not been settled, withdrawn, or for which a final decision has not been reached in the impartial hearing.
- c. "Not timely provided under applicable federal and New York State law" means that the due process complaint has been pending for more than 45 days after the expiration of the applicable resolution period described in 34 C.F.R. § 300.510(b)-(c), excluding any extension(s) of time permitted under federal and New York State law and regulations.

3. The proposed class meets the requirements for class certification under Rule 23(a) of the Federal Rules of Civil Procedure.

- a. The number of plaintiffs is so numerous that joinder of all class members is impracticable. There are over 1,000, and, Plaintiffs allege, as many as 7,000 or more, due process complaints filed with the New York City Impartial Hearing Office that are unresolved and for which the decisions on the due process complaints have not been timely provided under applicable federal and New York State law.
- b. Plaintiffs have alleged one or more questions of law or fact common to the class. These include whether (i) there are unresolved complaints for which Defendants systemically fail to timely provide due process hearing decisions under applicable federal and New York State law; and (ii) Defendants are violating the IDEA and Article 89 of the New York Education Law because of the delays in issuing those decisions and the failure to remedy those delays.
- c. The Named Plaintiffs have alleged claims that are typical of the claims of the class. Each class member's claims arise from the same alleged course of conduct and are based on common legal arguments regarding Defendants' conduct and all class members will benefit from the Plaintiffs' action. The Named Plaintiffs are all students or their parents who have filed due process complaints and allege that they have pending unresolved cases for which decisions have not been timely provided under applicable federal and New York State law.
- d. The Named Plaintiffs have been and are capable of fairly and adequately protecting the interests of the members of the proposed class. The Named

Plaintiffs' interests are consistent with those of the other proposed class members, and Plaintiffs' counsel have extensive experience in complex class-action litigation and will adequately represent the interests of the class.

4. The proposed class meets the requirements for class certification under Federal Rule of Civil Procedure 23(b)(2), as Plaintiffs allege that Defendants have "acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Specifically, Plaintiffs allege that there are unresolved complaints for which due process hearing decisions have not been timely provided under applicable federal and New York State law. The Amended Complaint seeks a declaration that Defendants' conduct violates the IDEA and corresponding portions of the N.Y. State Education Law, as well as injunctive relief enjoining Defendants, among other things, to remedy the deficiencies.
5. The Court appoints the New York Legal Assistance Group ("NYLAG") and Sullivan & Cromwell LLP as class counsel pursuant to Federal Rule of Civil Procedure 23(g).
6. The Court directs appropriate notice to the class pursuant to Federal Rule of Civil Procedure 23(c)(2).
7. Nothing contained herein shall be deemed to constitute a finding of wrongdoing or liability by the Defendants or that any of their alleged actions or omissions violated Plaintiffs' rights under any federal, state, or local law or regulation.

8. Nothing contained herein shall be deemed to constitute a waiver by the parties of any right they may have to seek the modification, alteration, or de-certification of the Plaintiff class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

