

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

LUREATHA JACKSON, as next friend of
D.M., for herself and others similarly situated,

Plaintiff,

v.

THE BOARD OF EDUCATION OF THE
CITY OF CHICAGO, and JANICE K.
JACKSON, Chief Executive Officer of the
Chicago Public Schools

Defendant.

Case No.: 19-cv-5809

Hon. Young B. Kim

**JOINT MOTION FOR AND MEMORANDUM IN SUPPORT OF PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT AND CLASS CERTIFICATION**

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INTRODUCTION

Plaintiff Lureatha Jackson (“Plaintiff”) on behalf of herself and all others similarly situated (“Plaintiffs”), and Defendant, the Board of Education of the City of Chicago (“Defendant” or “CBOE” or “CPS”) (collectively, “the Parties”), submit this Joint Memorandum and Motion for Preliminary Approval of the Class Action Settlement and Class Certification (“Motion”). For the reasons explained below, the Parties’ proposed Settlement Agreement is fair, reasonable, and adequate and provides substantial benefits to the entire class while removing the delay, risk, and expense inherent in trial. In particular, the settlement provides for a monetary fund to reimburse class members who did not receive free breakfast and/or lunch regardless of their income; ensures all students with disabilities placed at non-public schools receive or have the cost covered of free breakfast and lunch; and, sets up a mechanism for class members to use in the event they experience any difficulties accessing free breakfast and lunch. The class likewise meets all requirements for class certification, as set forth under Rule 23 of the Federal Rules of Civil Procedure (“Fed. R. Civ. Pro.”). As such, it should be certified for the purpose of approving this meritorious settlement.

The Parties respectfully request that this Court grant preliminary approval of the proposed Settlement Agreement, attached to this Motion as Exhibit 1; adopt the Notice Plan; and schedule a Final Approval Hearing to address the fairness and adequacy of the proposed Settlement Agreement pursuant to Rule 23 (e) of the Federal Rules of Civil Procedure.

I. BACKGROUND

On August 29, 2019, Plaintiff Lureatha Jackson filed this lawsuit in the United States District Court for the Northern District of Illinois as next of friend of D.M. and on behalf of a putative class of Illinois students against Defendants CBOE and Janice K. Jackson, in her official capacity, alleging violations of the ADA (42 U.S.C. § 12132) and Section 504 of the

Rehabilitation Act (29 U.S.C. § 794). Dkt. #1. Specifically, Plaintiffs alleged that Defendants failed to provide free and reduced cost nutrition available under Illinois and federal law to students with disabilities that it placed in non-CBOE schools. *See* 105 Ill. Comp. Stat. 125/4, 42 U.S.C. § 1771.

On September 10, 2019, Plaintiffs filed a Motion to Certify Class and Memorandum In Support of Motion to Certify Class. Dkt. #11, 13. On November 12, 2019, CBOE filed an answer and affirmative defenses to Plaintiffs' Complaint and Defendant Janice K. Jackson filed a motion to dismiss for failure to state a claim.¹ Dkt. #32, 33. CBOE alleged, *inter alia*, that Plaintiffs' claims had not been exhausted, did not meet the class certification requirements, should be reduced by failure to mitigate, and were time barred. *Id.* Instead of briefing Plaintiffs' Motion to Certify Class, the parties agreed to discuss settlement with Magistrate Judge Kim.

On February 3, 2020, the Parties attended their first settlement conference in this matter. Dkt. #37. Thereafter, the Parties engaged in extensive arm's-length negotiations over the course of more than a year, and have now reached a final settlement agreement that is before the Court.

II. PRINCIPAL TERMS OF THE SETTLEMENT AGREEMENT

The terms of settlement between the Parties are set forth in the Settlement Agreement attached as Exhibit 1 and briefly summarized as follows:

A. Class Definition

The Settlement Class is divided into two subclasses. *See* Agreement, ¶2 (U), p. 5-6. "Subclass 1 Members shall mean and refer to all CPS students with disabilities who were placed by the Board pursuant to the students' [Individualized Education Program ("IEP")] IEPs at ISBE-approved non-public schools for the 2017–2018, 2018–2019, and 2019–2020 school years who

¹ On September 15, 2020, the parties agreed to dismiss Defendant Janice K. Jackson and proceed against CBOE only. Dkt. #69.

did not receive Free Nutritional Benefits.” *Id.* at 5 (internal quotations omitted). “Subclass 2 Members shall mean and refer to any student placed in an ISBE approved non-public school by the Board pursuant to the student’s IEP from March 17, 2020 to the termination of [the settlement] agreement . . . who does not receive Free Nutritional Benefits.” *Id.* at 6.

B. Settlement Payments for Plaintiff and Subclass 1

The Settlement Agreement creates a qualified settlement fund to reimburse Subclass 1 Members to settle their claims, to reimburse Plaintiff Jackson to settle her claim and to pay her a service award for a total of \$5,397.72, and to pay the Settlement Administrator. See Agreement,

¶ 8(M), The Settlement Funds shall reimburse Subclass 1 Members at a rate of:

- \$5.53 per attendance day for those who attended Acacia, Arlyn, Bridgeview, Centerview, Challenger, Chicago Autism Academy, Classroom Connections Day School, Elim Christian, Esperanza, Giant Steps, Helping Hand, Hyde Park Day School-Chicago, Hyde Park Day School-North, Keshet, Learning House, New Hope Academy, New Hope Academy East, Orchard Academy, Rush, Soaring Eagle Academy and did not receive breakfast and lunch;
- \$2.19 per attendance day for those who attended Laureate, Metro Prep, New Horizon, School of Expressive Arts and Learning (SEAL) and did not receive breakfast; and
- \$3.34 per attendance day for those who attended Hopewell Academy of Orland Park, Cove, and PACTT Learning Center and did not receive lunch.
- Subclass 1 Members who attended Arlyn, Cove, Hyde Park, Keshet, or Learning House and did not receive Free Nutritional Benefits may be eligible for an additional amount of \$1.97 per attendance days.

Id. ¶ 8(M), p. 13.

C. Injunctive and Prospective Relief for Subclass 1 and Subclass 2

Defendant agrees to “ensure that all CPS students with disabilities placed by the Board pursuant to the students’ IEP in a non-public school will have access to Free Nutritional Benefits at no cost to the student’s parent(s)/guardian(s).” *Id.*, ¶ 8(A), p. 7. Defendant has also agreed to develop a Free Nutrition Letter that will be provided to parents and guardians informing them of their ability to receive Free Nutritional Benefits and explaining the process through which to request them and file a complaint if they are not granted. *Id.*, ¶ 8(B)-(D), p. 8-9. This letter was

posted by the beginning of the 2020–2021 school year on the Board’s special education department’s website and is required to be translated into English, Spanish, Arabic, Chinese, Polish, and Urdu. *Id.*, ¶8 (B), p.8. CBOE will also create an internal review process to allow parents and guardians to submit complaints and receive reimbursement when a non-public school fails to provide Free Nutritional Benefits. *Id.*, ¶8 (D), p. 8-9. Each ISBE Nonpublic Facility

Placement Contract between the Board and non-public schools will require the non-public school to provide or cover the cost of free breakfast and lunch at no cost to all CBOE students regardless of financial eligibility. *Id.*, ¶8 (E), p. 9. Additionally, CBOE staff “responsible for placement of students in non-public schools pursuant to an IEP will receive annual training regarding the obligations contained in [the Settlement Agreement] and the Free Nutrition Letter for the duration of” the Settlement Agreement. *Id.*, ¶8 (F), p. 9. Finally, CBOE will document all complaints made about non-compliance and submit a report to class counsel on a bi-annual basis in accordance to the Agreement. *Id.*, ¶8 (G), p. 9-10.

D. Release of Liability

In exchange for this relief, Plaintiff Jackson, Subclass 1, and Subclass 2 Members agree to release of claims arising from the events described in the complaint, as outlined in the proposed agreement. *Id.*, ¶31, p. 27. Plaintiff Jackson and Subclass 1 Members release monetary and non-monetary claims that could have been brought in the Litigation. Subclass 2 members release non-monetary claims arising directly or indirectly out of the events, allegations, and claims that were the basis of this litigation.

E. Payment of Settlement Administrator and Administrative Costs

CBOE shall contribute \$25,000 to the Settlement Administrator through the Settlement Fund in order to fund the administrative costs and the costs of settlement notice. *Id.*, ¶8 (M)(iii), p. 13.

F. Payment of Attorneys

The Parties are moving forward with the proposed settlement now, and Plaintiffs' counsel will file a fee petition to be decided by the Court at a later date.

III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES.

A. Legal Standard

The Court must certify the class for settlement purposes before it can preliminarily approve the proposed Settlement Agreement and direct notice to the Settlement Class. This requires a finding that the Court “will likely be able to certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1)(B)(ii); *see Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). District Courts have broad discretion to decide whether class certification is appropriate. *Arreola v. Godinez*, 546 F.3d 788, 794 (7th Cir. 2008).

In order to receive certification, a settlement class must satisfy the requirements under Rule 23(a): numerosity, commonality, typicality, and adequacy of representation. Fed. R. Civ. P. 23(a); *see Amgen Inc. v. Conn. Ret. Plans and Tr. Funds*, 568 U.S. 455, 460 (2013). In a settlement that includes monetary relief, the settlement class must also satisfy the requirements of Rule 23(b)(3): that (i) common questions of law or fact predominate over individual issues and (ii) a class action is the superior device to resolve the claims. *Amchem*, 521 U.S. at 615–16. A certified class must be ascertainable, meaning that it is “defined clearly and based on objective criteria.” *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 659 (7th Cir. 2015).

Here, the proposed Settlement Class satisfies all of the Rule 23(a) and 23(b)(3) necessary requirements. The Court should therefore certify the class for settlement purposes.

B. The Numerosity Requirement is Satisfied.

The proposed class is sufficiently numerous to satisfy Fed. R. Civ. P. 23(a)(1). A class action may proceed when the proposed class is so numerous that joinder would be impractical,

see id. Further, “[a] plaintiff need not plead or prove the exact number of class members to establish numerosity under Rule 23(a)(1);” rather, “the court may make common sense assumptions to determine numerosity.” *Barnes v. Air Line Pilots Ass’n, Int’l*, 310 F.R.D. 551, 557 (N.D. Ill. 2015) (internal citations omitted). As a general matter, numerosity is satisfied when the class includes forty or more people. *Id.* (certifying class of 120 members).

Here, the class members include approximately 395 students over a three year period. Accordingly, the number of members in the class is well over the forty member threshold, warranting the conclusion that the class meets the numerosity requirement of Fed. R. Civ. P. 23(a)(1).

C. Common Issues of Fact and Law Predominate.

The proposed class meets the commonality requirement specified under Rule 23(a)(2). A court may only certify a class if there exist “questions of law or fact common to the class.” *Id.* In cases where the class seeks monetary relief, as in this case, the common questions must “predominate over any questions affecting only individual members.” Fed. R. Civ. P. 23(b)(3); *see also Bell v. PNC Bank, Nat’l Ass’n*, 800 F.3d 360, 374 (7th Cir. 2015) (“The question of commonality and predominance overlap in ways that make them difficult to analyze separately.”) Common questions are those “capable of class-wide resolution” such “that determining the truth or falsity of the common contention will resolve an issue that is central to the validity of each claim.” *Id.* (citing *Wal-mart v. Dukes*, 564 U.S. 338, 350 (2011)). *See also Wal-Mart*, 564 U.S. at 350 (quotation marks omitted) (“What matters to class certification . . . [is] the capacity of a class-wide proceeding to generate common answers apt to drive the resolution of [the] litigation.”). When “the same conduct or practice by the same defendant gives rise to the same kind of claims from all class members,” class treatment is appropriate. *Id.* (citations omitted). *Suchanek v. Sturm Foods, Inc.*, 764 F.3d 750, 756 (7th Cir. 2014) (quotation marks omitted, citation omitted).

In this case, common issues of fact and law predominate. In particular, all class members have alleged denial of access to free nutrition upon being transferred to non-public schools due to their disabilities. Dkt. 1 at ¶ 24. Further, class members have alleged that their lack of access to free nutrition at non-public schools to which they were transferred due to their disabilities violates the ADA and Section 504. *Id.* ¶ 25. Each such question raises a common issue of fact or law that is capable of classwide resolution and would predominate in litigation. The nature of the relief sought – reimbursement and access to free nutrition at nonpublic schools – involves allegations of conduct by CBOE that is common to all class members. *Id.* Thus, Plaintiffs have satisfied the commonality and predominance requirements.

D. The Typicality Requirement is Satisfied.

As with commonality and numerosity, the proposed class likewise meets the typicality requirement. The typicality requirement for class certification requires that a class representative's claims be typical of those of putative class members. In particular, there must be "enough congruence between the named representative's claim and that of unnamed members of the class to justify allowing the named party to litigate on behalf of the group." *Spano v. The Boeing Co.*, 633 F.3d 574, 586 (7th Cir. 2011). When a named plaintiff's claim "arise[s] from the same events or course of conduct that gives rise to the putative class members' claims," typicality is satisfied. *Beaton v. SpeedyPC Software*, 907 F.3d 1018, 1026 (7th Cir. 2018). Thus, when a plaintiff challenges a defendant's practices towards both the named plaintiff and the members of the proposed class, typicality is generally satisfied.

Here, both the named Plaintiff Lureatha Jackson on behalf of D.M. and the class challenge the denial of free nutrition to students with disabilities who require placement in non-public schools. D.M. is a student with disabilities who Defendant placed in a non-public school pursuant to her IEP and who was then denied free nutrition, just as the other class members. Because

D.M.’s claim “stand[s] or fall[s] on the same facts as the claims of the putative class members,” Ms. Jackson and D.M.’s claims are typical of the Settlement Class’s claims. *See Ziemack v. Centel Corp.*, 163 F.R.D. 530, 534 (N.D. Ill. 1995).

E. The Adequacy Requirement is Satisfied.

The final requirement under Rule 23(a) – adequacy – is met in this case as well. Under Fed. R. Civ. P. 23(a)(4), the class representative must be capable of “fairly and adequately protect[ing] the interests of the class.” *See also Starr v. Chi. Cut Steakhouse*, 75 F. Supp. 3d 859, 874 (N.D. Ill. 2014) (quoting *Retired Chi. Police Ass’n v. City of Chi.*, 7 F.3d 584, 598 (7th Cir. 1993) (explaining that Fed. R. Civ. Pro 23(a)(4) entails both “adequacy of the named plaintiff’s counsel, and the adequacy of representation provided in protecting the different separate and distinct interests of the class members”). To assess whether plaintiffs meet this requirement, courts consider three factors: Whether “the named plaintiff has [(1)] antagonistic or conflicting claims with other members of the class; or (2) has a sufficient interest in the outcome of the case to ensure vigorous advocacy; and (3) has counsel that is competent, qualified, experienced and able to vigorously conduct the litigation.” *Osada v. Experian Info. Sols., Inc.*, 290 F.R.D. 485, 490 (N.D. Ill. 2012) (quoting *Quiroz v. Revenue Prod. Mgmt., Inc.*, 252 F.R.D. 438, 442 (N.D. Ill. 2008)) (internal quotation marks omitted).

Plaintiff D.M. and proposed Class Counsel have already provided competent representation by securing full relief for members of the proposed class as well as by committing to the monitoring of the agreement’s implementation. Further, Plaintiff D.M.’s injury of not receiving free breakfast and lunch at the non-public school where she was placed due to her disabilities is the same injury suffered by other class members who did not receive free breakfast and lunch at the non-public school where they were placed. Thus, Plaintiff D.M. has sufficient interest in the outcome of the case since the injury she has alleged is the same as or similar to the

injuries alleged by the putative class. Plaintiff Lureatha Jackson on behalf of D.M. has no interests antagonistic to those of the Settlement Class or conflicting claims with other members of the class.

Lastly, the attorneys representing the class are competent and have experience representing plaintiffs in civil rights class actions, particularly actions involving the rights of people with disabilities.² Compl. ¶ 28. Courts have granted Legal Council attorneys appointment as class counsel in cases involving public benefits that have benefitted thousands of Illinois adults and children with disabilities. Chapman Decl. ¶¶ 6–7; *see, e.g., O.B. v. Norwood*, No. 15 C 10463, 2016 WL 2866132 (N.D. Ill. May 17, 2016) (granting class certification to class of medically complex children with Medicaid in Illinois, and naming Legal Council as class counsel); *M.A. v. Norwood*, No. 15 C 3116, 133 F. Supp. 3d 1093 (N.D. Ill. Sept. 23, 2015) (granting class certification to class of Illinois children receiving in-home nursing through Medicaid, and naming Legal Council as class counsel). Legal Council thus has experience to adequately represent the class.

Disability Rights Advocates (“DRA”) likewise has experience in representing plaintiffs in civil rights class actions. DRA is a nonprofit firm with over twenty years of nationwide experience litigating high-impact systemic class actions aimed at ensuring equal access to services as key as healthcare, transportation and education. Some of the cases where DRA has acted as class counsel include Brooklyn Center for Independence of the *Disabled v. Bloomberg*, 980 F. Supp. 2d 588 (S.D.N.Y. 2013), which litigated the systemwide inaccessibility of New York

² Nothing herein shall be construed as the Board’s agreement or stipulation to Plaintiff’s counsels’ experience and qualifications as they relate to any fee petition for attorneys’ fees and costs filed in this matter. Moreover, the Board reserves the right to raise any and all arguments relating to alleged attorneys’ fees and costs, including but not limited to, reasonableness of attorneys’ fees and costs, and counsels’ rates, hours, and/or duplicity in efforts.

City's emergency preparedness program; *United Spinal Association v. Board of Elections*, 752 F.3d 189 (2d. Cir. 2014), which litigated the failure of the New York City's Board of Elections to ensure accessibility of its 1,300 poll sites throughout New York City; *Center for Independence of the Disabled, New York, et al., v. City of New York*, Case No. 14 CV 5884 (GBD) (KNF) (S.D.N.Y. 2014), which litigated the inaccessibility of New York City's public rights of way; and, *City Taxi and Limousine Commission and the City of New York*, No. 11-cv-0237-GBD (S.D.N.Y.), which litigated the inaccessibility of New York City's yellow medallion taxi fleet. In each of these cases, DRA effectively performed its class counsel duties, securing systemic reform for hundreds of thousands of people with disabilities.

In short, class members' interests are protected since the named Plaintiff has no interests that conflict with or are antagonistic to the interests of the class, and they are adequately represented by counsel. The class therefore meets the adequacy requirement.

F. Class Action is a Superior Method of Resolving the Controversy.

In addition to meeting the elements of Rule 23(a), the proposed class satisfies Rule 23(b)(2), which entails showing that a class action is "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). In particular, all four factors courts consider under Rule (b)(2) weigh in favor of certification.

First, no class member has brought an individual suit against Defendant, and there is indeed no indication that the individual class members have any interest in individually controlling the action. *See* Fed R. Civ. P. 23(b)(3)(A) (defining "the class members' interests in individually controlling the prosecution or defense of separate actions" as the first relevant factor). As such, any individual class members' interest in independently controlling this suit is virtually non-existent, warranting the conclusion that the class action is the superior method of resolving issues this litigation raises.

Second, there are no other lawsuits pending concerning the conduct alleged here. *See* Fed. R. Civ. P. 23(b)(3)(B) (identifying “the extent and nature of any litigation concerning the controversy already begun by or against class members” as the second relevant factor.). “[T]he extent and nature of any litigation concerning the controversy already begun by or against class members’ is accordingly not a factor” weighing against certification here. *Bernal v. NRA Grp. LLC*, 318 F.R.D. 64, 76 (N.D. Ill. 2016) (quoting Fed. R. Civ. P. 23(b)(3)(B)) (internal quotation marks omitted).

Third, it is desirable to concentrate the litigation in this forum. *See* Fed. R. Civ. P. 23(b)(3)(C) (defining “the desirability or undesirability of concentrating the litigation of the claims in the particular forum” as the third relevant factor). As set forth above, the controversies at the heart of this litigation involve Illinois plaintiffs alleging injury by a Chicago governmental agency. *See Ramirez v. GLK Foods, LLC*, No. 12-C-210, 2014 WL 2612065, at *9 (E.D. Wis. June 11, 2014) (holding that events occurring in the forum that gave rise to a lawsuit supported concentrating litigation in the forum). The litigation was therefore commenced in the appropriate location, reinforcing the conclusion that class certification is appropriate in this case.

The fourth factor - namely, “the likely difficulties in managing a class action,” Fed. R. Civ. P. 23(b)(3)(D) - also weighs in favor of granting certification. Because common issues predominate in this litigation, the class action is the superior method for managing the issues the litigation has raised. Indeed, “[c]ourts generally hold that if the predominance requirement is met, then the manageability requirement is met, as well.” 2 NEWBERG ON CLASS ACTIONS § 4:72 (5th ed. 2011). The fact that the settlement agreement provides for a settlement fund with an administrator to disburse all monetary relief for Subclass 1 members further shows that the class action framework will generate economies of time and expense while also promoting legal

uniformity. The fourth factor thus weighs in favor of certification.

Finally, class action is desirable in this litigation under Rule 23's superiority standard. Generally, Rule 23's superiority standard requires that the court consider both "the costs and benefits of the class device." *Mullins*, 795 F.3d at 663 (emphasis in original). Here, requiring plaintiffs to bring individual cases "would make no sense," because "[p]arallel litigation for each class member here would entail the same discovery and require multiple courts to weigh the same factual and legal bases for recovery." *Bernal*, 318 F.R.D. at 76. Rule 23's superiority requirement likewise points toward class certification in this case.

G. The Class is Ascertainable

As with all previously discussed Rule 23 requirements, the proposed Settlement Class meets the requirement of "ascertainability." Courts have defined ascertainability as the requirement "that a class . . . be defined clearly and based on objective criteria." *Mullins*, 795 F.3d at 659. Whether a class is ascertainable depends on "the adequacy of the class definition itself" rather than on "whether, given an adequate class definition, it would be difficult to identify particular members of the class." *Toney v. Quality Res., Inc.*, 323 F.R.D. 567, 581 (N.D. Ill. 2018) (citation omitted).

The terms of Settlement Agreement define the Settlement Class as consisting of students with disabilities who are placed at ISBE-approved non-public schools pursuant to their IEP and did not receive Free Nutritional Benefits in the course of the specified school years. Further, the definition of Subclass 1 is limited to a list of the particular schools attended by students in the class for the relevant time period; similarly, the definition of Subclass 2 specifies that this Subclass only includes students placed in an ISBE approved school by CBOE who do not receive free nutritional benefits from March 17, 2020 forward. *See* Exhibit 2, Declarations by CPS Representatives. Because these criteria are plainly objective and permit Defendant to readily

identify the Settlement Class from its own records which students were placed in non-public schools during specified school year(s), the Settlement Class is readily ascertainable.

In sum, Plaintiffs have satisfied all the requirements for the certification of the proposed Class and this Court should accordingly certify the proposed Class for settlement purposes.

IV. PLAINTIFF’S COUNSEL SHOULD BE APPOINTED AS CLASS COUNSEL

Counsel for the Named Plaintiff respectfully urges the Court to appoint them as Class Counsel, and the Board does not oppose this request. Rule 23 requires that the court “appoint counsel . . . [with the] ability to fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B). To make this determination, the Court considers the proposed Class Counsel’s: (1) work in identifying or investigating the potential claim, (2) experience in handling class actions, other complex litigation, and the types of claims asserted in the action, (3) knowledge of the applicable law, and (4) the resources that the counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A)(i)–(iv). Courts may also consider “any other pertinent matters in accordance with Rule 23(g)(1)(B).” *Smith v. State Farm Mut. Auto Inc. Co.*, 301 F.R.D. 284, 288 (N.D. Ill. 2014). Legal Council for Health Justice and DRA have no conflicts of interest that interfere with their duties as Class Counsel and do not have any perverse or conflicting monetary incentives because the settlement relief is limited to injunctive relief and reimbursement to Class Members. Therefore, given the settlement efforts undertaken by Plaintiff’s counsel as described herein and as demonstrated by the Settlement Agreement, and given the qualifications of the counsel representing the Named Plaintiff and class members, as set forth in section III (D) above, the Court should appoint Legal Council for Health Justice and DRA as Class Counsel.³

³ Nothing herein shall be construed as the Board’s agreement or stipulation to Plaintiff’s counsels’

V. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL.

As set forth more fully below, the proposed settlement provides class members with full relief and, as such, warrants preliminary approval under the governing standard found in Rule 23 (e). Under Rule 23(e), the preliminary approval process requires the court to undertake an initial, pre-notification inquiry in order to determine whether it will “be able to approve the proposal under Rule 23(e)(2),” as sufficiently fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(1)(B). To that end, the Court must determine whether the proposed settlement is “within the range of possible approval” such that there is “reason to notify the class members of the proposed settlement and to proceed with a fairness hearing.” *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982). This stage of review “is a bit less strenuous than the final fairness assessment,” given that the Court must only determine whether the proposed settlement is “likely” to be found fair, reasonable, and adequate. *Wyms v. Staffing Sols. Se., Inc.*, No. 15-cv-0643-MJR-PMF, 2016 WL 639740, at *4 (S.D. Ill. Oct 28, 2016).

Further, to assess whether a proposed settlement is likely to be found fair, reasonable and adequate, courts employ a multi-factor test. *In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 345 (N.D. Ill. 2010) (quoting *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996)). This multi-factor test, outlined in Rule 23(e)(2), directs courts to consider whether: (1) the class representative and class counsel have adequately represented the class; (2) the settlement was negotiated at arm’s length; (3) the settlement treats class members equitably relative to each other; and (4) the relief provided for the class is adequate. Fed. R. Civ. P. 23(e)(2).

In this instance, the proposed settlement reimburses hundreds of families of students with

experience and qualifications as they relate to any fee petition for attorneys’ fees and costs filed in this matter. Moreover, the Board reserves the right to raise any and all arguments relating to alleged attorneys’ fees and costs, including but not limited to, reasonableness of attorneys’ fees and costs, and counsels’ rates, hours, and/or duplicity in efforts.

disabilities who received non-public school placements due to those disabilities in the period between August 2017 and March 2020 and did not receive free nutritional benefits. The reimbursement formula is carefully calibrated to provide adequate compensation for each family by taking into account whether the student received free breakfast, free lunch, or both, and sets a corresponding reimbursement rate. Agreement, ¶8 (M). Additionally, the reimbursement framework tracks students' attendance so that the reimbursement follows the benefit missed, *see id.*, while simultaneously ensuring that the students who were charged an excessive amount for their breakfast and/or lunch are able to claim an excess payment. *Id.*, ¶17(C). Finally, the settlement agreement accounts for the needs of future class members by providing for a system to ensure students with disabilities placed at non-public schools receive free breakfast and lunch regardless of their household income. *Id.*, ¶8 (A). For all these reasons, the proposed settlement meets the fairness, reasonableness, and adequacy requirements articulated in Rule 23 (e).

A. Plaintiff Lureatha Jackson (as next friend of D.M.) and Proposed Class Counsel Have Adequately Represented the Settlement Class.

The first factor under Rule 23(e)(2) looks to whether the class representative and class counsel have adequately represented the class. Fed. R. Civ. P. 23(e)(2)(A). Generally, this factor focuses “on the actual performance of counsel acting on behalf of the class” throughout the litigation and settlement negotiations. Fed. R. Civ. P. 23(e) Advisory Committee’s Note to 2018 Amendment. Courts particularly consider whether plaintiff and class counsel had adequate information to negotiate a class-wide settlement, taking into account (i) the nature and amount of formal and informal discovery completed, and (ii) the “actual outcomes” of other, similar cases. *Id.*; *see also In re AT&T Sales Tax Litig.*, 789 F. Supp. 2d 935, 966 (N.D. Ill. 2011) (approving settlement despite the parties’ lack of formal discovery after considerable informal discovery). This factor is generally satisfied where the named plaintiff participated diligently in the case and

where the class counsel fought hard on behalf of both plaintiff and the class throughout the duration of the litigation. *See Snyder v. Ocwen Loan Servicing, LLC*, No. 14 C 8461, 2018 WL 4659274, at *3 (N.D. Ill. Sept 28, 2018).

Plaintiffs meet this test. First, Ms. Jackson has been involved in nearly every aspect of the case, including helping her attorneys investigate the legal claims and prepare the class action complaint, attending settlement conferences, conferring with Class Counsel throughout the litigation, reviewing the Settlement Agreement and its terms with her attorneys, and signing the Settlement Agreement. Without Ms. Jackson stepping forward to represent the class and taking on these tasks as the lead Plaintiff, the relief secured for the Settlement class would not have been possible.

Second, the Settlement Agreement provides class members with all necessary injunctive and monetary relief, including an easy and practical method of administering that relief. The Settlement Agreement secures the rights of all class members by requiring CBOE to ensure access to free nutrition for students with disabilities who are placed in non-public schools due to those disabilities going forward. *Id.*, ¶8(A), p. 7-8. In addition, the Settlement Agreement ensures appropriate monetary relief through a carefully devised reimbursement formula. To start with, it allows a number of Subclass 1 Members to receive direct checks without having to take any action on their own. *Id.*, ¶22, p. 24. Further, the formula accounts for class members' varying circumstances by providing that each Settlement Subclass 1 Member who did not have access to free breakfast or lunch can receive \$5.53 per attendance day; each Subclass 1 Members who did not have access to free breakfast can receive \$2.19 per attendance day; and, each Subclass 1 Members who did not have access to free lunch can receive \$3.34 per attendance day. Agreement, ¶8 (M), p. 6. Finally, Subclass 1 Members at certain schools where the nutrition costs exceeded

\$5.53 per day are entitled to request an excess payment of \$1.97 per attendance day. *Id.*, ¶17(C), p. 20-21. Each of these amounts adequately reimburses Class Members for past costs incurred purchasing their breakfasts and/or lunches. The Agreement thus ensures all necessary and appropriate monetary and injunctive relief for the proposed class.

While the Parties did not engage in formal discovery in the resolution of this matter, the data being relied upon by the Parties is being verified by Defendant under penalty of perjury pursuant to 28 U.S.C. § 1746. *See* Exhibit 2. There is no indication that formal discovery in this case would have assisted the Parties in devising the proposed Settlement Agreement. *See In re AT & T Mobility*, 270 F.R.D. at 350 (approving settlement where “the focus of th[e] litigation appears to be more on legal than factual issues, and there is no indication that formal discovery would have assisted the parties in devising the [p]roposed [s]ettlement [a]greement”).

In sum, the Settlement Agreement fully and adequately compensates class members by providing injunctive relief while also ensuring monetary compensation for past nutritional benefits at issue in this litigation. Because there is no doubt that the Settlement Class will reap valuable benefits due to Plaintiff’s and proposed Class Counsel’s hard work in pursuing this case and representing the Class Members’ interests, the adequacy factor required under Rule 23(e)(2) is therefore satisfied.

B. The Parties Reached the Settlement as a Result of Arm’s-Length Negotiations.

The second Rule 23(e)(2) factor – namely, whether the parties negotiated the settlement at arm’s length – is likewise easily satisfied in this case. *See* Fed. R. Civ. P. 23(e)(2)(B). The Parties engaged in multiple rounds of vigorous negotiations concerning the terms and structure of the Settlement, exchanging approximately fifty different drafts over the course of about eighteen months of negotiations and relying upon the Court’s guidance and facilitation whenever

an impasse occurred. The arm's-length nature of these negotiations is further confirmed by the Settlement itself: the monetary reimbursements to the Settlement Class Members are not contingent in any way upon the attorney's fees to Class Counsel. A fee petition will be filed if and when final approval has been ordered. Moreover, an independent Settlement Administrator will facilitate the written notice, telephone notice, and skip trace while also calculating, issuing and mailing payments to the Class Members. Given all these facts, there should be no question that the Settlement here was the result of good-faith, arm's length negotiations, and is entirely free from fraud or collusion. *See Schulte v. Fifth Third Bank*, No. 09-CV-6655, 2010 WL 8816289, at *4 n.5 (N.D. Ill. 2010) (noting that courts "presume the absence of fraud or collusion in negotiating the settlement, unless evidence to the contrary is offered") (internal quotation marks omitted).

C. The Settlement Treats All Settlement Class Members Equally Based on Their Incurred Expenses.

As with the prior two factors, the Settlement Agreement easily meets the third Rule 23(e)(2) factor, which requires the court to consider whether the proposed settlement "treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). First, the Agreement provides each and every class member with access to free nutritional benefits going forward. Second, the Agreement gives each Class Member an identical pro rata monetary relief through a reimbursement formula that entitles each Settlement Class Member to receive the same reimbursement proportional to the number and type of meals that they did not receive. Agreement, ¶8(M), p. 12–13. For instance, Plaintiffs who did not receive free breakfast are set to receive \$2.19 per attendance day for compensation. *See id.* Plaintiffs who did not receive free lunch will receive \$3.34 per attendance day that they did not receive free lunch, while Plaintiffs who did not receive either meal will receive both payments at a total of \$5.53 per attendance day. *See id.* Finally,

families who paid a higher dollar amount for meals from the schools listed are entitled to an additional \$1.97 per day, reflecting the higher charge for meals at those schools. *Id.*, ¶17(C), p. 20-21. The settlement therefore treats Plaintiffs equally in terms of both injunctive and monetary relief and easily satisfies this particular factor.

D. The Relief Secured for the Settlement Class Is Adequate and Warrants Approval.

Finally, this Settlement Agreement plainly meets the test posed by the most substantive factor of Rule 23(e)(2): namely, whether the settlement provides adequate relief for the class. Fed. R. Civ. P. 23(e)(2)(C). This adequacy requirement involves consideration of several sub-factors, including (i.) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of the proposed method of distributing relief to the class; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any agreements made in connection with the proposed settlement. *Id.* As set forth more fully below and as demonstrated by the Agreement, each of these sub-factors are satisfied.

1. The cost, risk, and delay of further litigation compared to the Settlement's benefits favors final approval.

The Settlement Agreement meets the first factor of Fed. R. Civ. P. 23(e)(2) because it provides timely injunctive and monetary relief to the Settlement Class and avoids years of potential litigation. *See Goldsmith v. Tech. Sols. Co.*, No. 92 C 4374, 1995 WL 17009594, at *4 (N.D. Ill. Oct. 10, 1995) ("As courts recognize, a dollar obtained in settlement today is worth more than a dollar obtained after a trial and appeals years later."). Without this relief, Plaintiffs would need to litigate whether they were entitled to free nutritional benefits and the amount of damages incurred, if any, in response to CBOE opposition. While Plaintiffs believe they would have defeated these arguments during summary judgment or at a trial, the Settlement Agreement provides all necessary and appropriate relief to the Settlement Class without requiring the risk,

costs, or delays imposed by briefing or a trial on these issues.

Moreover, the Settlement Agreement ensures that the Parties will not have to expend time and resources litigating class certification. *See* Fed. R. Civ. P. 23(e)(2) Advisory Committee’s Note to 2018 Amendment (instructing that the likelihood of class certification should be considered by courts evaluating this sub-factor). While Plaintiffs believe that they would ultimately have prevailed in receiving certification in light of, among other considerations, the number of families involved and the uniformity of the alleged wrongful conduct, this process would have nonetheless taken time and entailed costs and an inevitable degree of risk. The alternative – namely, the securing of full and adequate injunctive and monetary relief as to all class members – is plainly preferable to undertaking those costs and risks.

In sum, litigation would not only impose risk on Plaintiffs but would also impose significant costs, including time and costs associated with discovery, motion practice, trial, and any potential appeals. In contrast, the proposed Settlement Agreement offers immediate and complete injunctive as well as monetary relief to the Settlement Class. As such, it is preferable to a potentially extensive and drawn-out litigation and warrants this Court’s preliminary approval. *See, e.g., Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) (“Settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation.”)

2. The Settlement provides an effective relief distribution method for the Subclass 1 Members, supporting preliminary approval.

The next sub-factor – the consideration of the effectiveness of the settlement’s proposed method of distributing relief - is easily satisfied as well. Fed. R. Civ. P. 23(e)(2)(c)(ii). It is well established that the distribution method is effective if it “get[s] as much of the available damages remedy to class members as possible and in as simple and expedient a manner as possible.” 4

NEWBERG ON CLASS ACTIONS § 13:53. Here, many of the Class Members will receive direct checks from Defendant without taking any action whatsoever – in particular, all “active students” will receive a direct check. Agreement, ¶22(A), p. 24. Only “inactive students” will need to complete a brief form updating their address information in order to receive the check. *Id.*, ¶22(B), p. 24. While a small number of Class Members may opt to complete and submit a slightly longer Excess Claim Form, they are still entitled to receive the check for the Standard Payment even if they do not complete the Excess Claim form. *Id.*, ¶22; ¶17(C). The proposed Settlement thus distributes the available damages to class members in a very simple way, thereby easily fulfilling this particular sub-factor.

3. The Settlement contains no provision for attorneys’ fees.

The third, and final relevant sub-factor here⁴, the adequacy of the relief provided to the class when taking into account “the terms of the requested attorney’s fees, including timing of payment,” see Fed. R. Civ. P. 23(e)(2)(c)(iii) – is plainly met. Because the Court will determine the reasonableness of the attorney’s fees via a fee petition and none of the Agreement’s terms are in way contingent on fees paid to Class Counsel, there can be no doubt that this particular factor, like all others, strongly counsels in favor of granting preliminary approval.

For all of the above reasons, the monetary and prospective relief provided by the Settlement Agreement necessitate a finding that the Settlement is fair, reasonable, adequate, and well within the range of possible approval. As such, it merits this Court’s preliminary approval.

VI. THE PROPOSED NOTICE PLAN WARRANTS APPROVAL IN BOTH FORM AND SUBSTANCE.

Rule 23 and the Due Process Clause require that for any “class proposed to be certified

⁴ The fourth sub-factor requires the parties to identify any side agreements made in connection with the settlement. Fed. R. Civ. P. 23(e)(2)(C)(iv). This sub-factor does not apply in this case as the Settlement Agreement represents the entirety of the Parties’ proposed Settlement. This lack of side agreements weighs in favor of preliminary approval.

for purposes of settlement under Rule 23(b)(3)[,] the court must direct the class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Similarly, Rule 23(e)(1) provides that “[t]he court must direct notice in a reasonable manner to all class members who would be bound by a [proposed settlement, voluntary dismissal, or compromise.]” Fed. R. Civ. P. 23(e)(1). This notice may be provided to the class via “United States mail, electronic means, or other appropriate means.” Fed. R. Civ. P. 23(c)(2)(B) (eff. Dec. 1, 2018). In substance, the notice must describe, in plain language: (a) the nature of the action, (b) the definition of the class to be certified, (c) the class claims and defenses at issue, (d) that class members may enter an appearance through counsel should they desire to do so, (e) that class members may request an exclusion from the Settlement Class, and (f) that the effect of a class judgment binds all class members. *See* Fed. R. Civ. P. 23(c)(2)(B).

This Settlement Agreement meets each of these requirements. Specifically, the Agreement contains a multi-part Notice Plan to ensure class members have adequate notice of all of their rights. The first part of the Plan provides that, no later than five business days after the court issues a Preliminary Approval Order, CBOE will mail a FERPA notice to all Subclass 1 Members to inform “the parent/guardian that certain student information will be released to the Settlement Administrator and Class Counsel.” Agreement, ¶16, p. 16. The second part requires the Settlement Administrator to mail “a copy of the Notice [], and Address Form [], and an Excess Claim Form [], with a postage pre-paid, self-addressed envelope to each Subclass 1 Member” no later than fifteen business days following the Preliminary Approval. *Id.*, ¶17, p. 16–17. This notice, which will be mailed in both English and Spanish, will (a) inform Subclass 1 Members of

the process they must undertake to submit a current address and receive payments, (b) link to Class Counsel's website with information about the case, and (c) provide a phone line at which Class Counsel can be reached. *See id.*, ¶17(A), p. 17. The Settlement Administrator must additionally conduct a second mailing of the Notice to all Subclass 1 Members whose notice was returned as undeliverable if possible. *Id.*, ¶18(B), p. 19-20. Finally, the Settlement Administrator must conduct a skip trace and making an attempt to reach Class Members by telephone twice for a forwarding address if the original notice was returned as undeliverable. *Id.*, ¶18(B)(ii)-(iv), p. 19-20.

The proposed methods for providing notice to the Settlement Class thus address each of the requirements set forth under Rule 23(b)(3). As such, they comply with both Rule 23 and Due Process and warrant this Court's approval. *Id.* at 20.

VII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an Order (i) granting preliminary approval of the Parties' proposed Class Action Settlement Agreement, (ii) certifying the proposed Settlement Class, (iii) approving the form and content of the Notice to the members of the Settlement Class, (iv) appointing Plaintiff Lureatha Jackson, on behalf of D.M., as Class Representative, (v) appointing Legal Council for Health Justice and Disability Rights Advocates as Class Counsel, (vi) scheduling a final approval hearing in this matter, and (vii) providing such other and further relief as the Court deems reasonable and just.

Respectfully submitted,

FOR PLAINTIFFS:

LEGAL COUNCIL FOR HEALTH JUSTICE DISABILITY RIGHTS ADVOCATES

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FOR DEFENDANT:

BOARD OF EDUCATION OF THE CITY OF
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Date: May 27, 2021

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LUREATHA JACKSON as Next)	
Friend of D.M., for herself and others)	
similarly situated,)	
)	
Plaintiff,)	Case No. 19-cv-05809
)	
v.)	
)	Hon. Judge Young B. Kim
BOARD OF EDUCATION OF THE)	
CITY OF CHICAGO,)	
)	
Defendant.)	

SETTLEMENT AGREEMENT AND GENERAL RELEASE

Lureatha Jackson, (“Plaintiff”) individually and on behalf of D.M., a minor and others similarly situated, and the Board of Education of the City of Chicago (“Board”) (collectively, the “Parties”) through their respective attorneys, for this Settlement Agreement and General Release (the “Agreement”) state:

1. This Agreement is made and entered into by and between Plaintiff, on behalf of a class as set forth herein, and the Board. The Class Members and the Board are each Parties to this Agreement and are referred to collectively as the “Parties.”

I. DEFINITIONS

2. When used in this Agreement, the following terms have the following meanings:

A. “Active Student” or “Current Student” means any Subclass 1 Member of the Settlement Class enrolled at CPS during the 2019-2020 school year as of March 17, 2020. All Active or Current Students shall receive a Reimbursement Check through the process

described in section VI below.

B. “Address Form” means the form that only Inactive Student Subclass 1 Members must submit to the Settlement Administrator providing a current address in order to receive reimbursement. The Address Form shall be provided to all Subclass 1 Members along with the Notice to Subclass 1 Members required by Fed. R. Civ. P. 23 (the Notice). The Notice is attached as Exhibit A, and the Address Form is attached as Exhibit B. The deadline for submission of the Address Form shall be the Claims Deadline.

C. “Board of Education,” “CBOE,” “CPS” or “Board” means the entity responsible for the governance, organizational and financial oversight of Chicago Public Schools (CPS).

D. “Chicago Public Schools” and “CPS” mean and refer to Chicago Public Schools, School District 299.

E. “Claims Deadline” means the date by which all Excess Claim Forms and Address Forms must be postmarked or submitted to the Settlement Administrator to be considered timely and shall be sixty days from the date the Settlement Administrator sends the first Notice.

F. “Class Counsel” means and refers to the nonprofit corporations Legal Council for Health Justice and Disability Rights Advocates, and all duly licensed attorneys who are employees of either organization.

G. “Class Member Data” means data provided by CBOE to the Settlement Administrator and Class Counsel, set forth in Paragraph 18(A).

H. “Dispute” means and refers to each and every dispute that may arise out of

this Agreement or its Exhibits, including, but not limited to, disputes concerning the interpretation, implementation, reporting, and modification of this Agreement or the Parties' compliance with its terms. All Disputes shall be resolved using the Dispute Resolution Procedure outlined in Section IV.

I. "Effective Date" means the first business day after which the last of the following events have occurred: i) this Agreement has been signed by the parties, ii) the Court has entered a Final Approval Order, and iv) the Final Approval Order is no longer appealable.

J. "Excess Claim Form" means the form that Subclass 1 Members, who were charged by Arlyn, Cove, Hyde Park, Keshet, or Learning House for meals, may submit to the Settlement Administrator declaring that the parent/guardian of the Subclass 1 Member paid the non-public school for meals in an amount exceeding \$5.53 per attendance day. The Excess Claim Form shall be provided with Notice required by Fed. R. Civ. P. 23 to every Subclass 1 Member. The Excess Claim Form is attached hereto as Exhibit C. The deadline for submission of the Excess Claim Form shall be the Claims Deadline.

K. "Excess Payment" means additional monies paid to reimburse Subclass 1 Members who were charged for meals in an amount exceeding \$5.53 per attendance day by Arlyn, Cove, Hyde Park, Keshet, or Learning House. The amount of the excess payment is \$1.97 per attendance day.

L. "Final Approval" means the order by the District Court granting final approval of this Agreement, after Notice and the Preliminary Approval of the Agreement.

M. "Free Nutritional Benefits" means and refers to free breakfast and free lunch

provided to students enrolled in Chicago Public Schools.

N. “Inactive student” means any Subclass 1 Member of the Settlement Class not enrolled at CPS during the 2019-2020 school year as of March 17, 2020.

O. “Non-Public Schools” means and refers to schools that are not owned or operated by the Board but in which CBOE students are placed by CBOE pursuant to the students’ IEPs. Such schools may be either for-profit or non-profit, and they are often known as therapeutic day schools.

P. “Parent/guardian” means a biological or adoptive parent; a foster parent; a surrogate parent; a guardian, but not if the child is a ward of State; an individual acting in place of a biological or adoptive parent, including grandparents, stepparents or other relative, with whom the child lives; an individual legally responsible for the child’s welfare; or a person primarily responsible for a Class Member.

Q. “Preliminary Approval” means and refers to the preliminary approval of this Agreement by the District Court.

R. “Reimbursement Check” means a single check that shall be issued to each parent/guardian of a Subclass 1 Member (or any Subclass 1 Member over 18 who has not delegated education rights) representing the full reimbursement that the Subclass 1 Member shall receive, calculated by adding the amount of the Standard Payment the Subclass 1 Member is entitled to plus any Excess Payment.

S. “Settlement Administrator” refers to Rust Consulting, 625 Marquette Avenue, Suite 900, Minneapolis, MN 55402; (612) 359-2988. The Settlement Administrator will be jointly designated by counsel for the Parties to administrate this

Agreement, in concert with counsel for the Parties, and to perform the responsibilities set forth in this Agreement.

T. “Settlement Class,” “Class,” and “Class Members” means and refers to the following subclasses:

- i. “Subclass 1 Members” shall mean and refer to all CPS students with disabilities who were placed by the Board pursuant to the students’ IEPs at ISBE-approved non-public schools for the 2017–2018, 2018–2019, and 2019–2020 school years who did not receive Free Nutritional Benefits. The parties understand that Subclass 1 Members includes those students placed at Acacia, Arlyn, Bridgeview, Centerview, Challenger, Chicago Autism Academy, Classroom Connections Day School, Cove, Elim Christian, Esperanza, Giant Steps, Helping Hand, Hopewell Academy of Orland Park, Hyde Park Day School-Chicago, Hyde Park Day School-North, Keshet, Learning House, Laureate, Metro Prep, New Hope Academy, New Hope Academy East, New Horizon, Orchard Academy, Rush, PACTT Learning Center, School of Expressive Arts and Learning (SEAL), and Soaring Eagle Academy for the 2017–2018, 2018–2019, and 2019–2020 school years who did not receive Free Nutritional Benefits. Subclass 1 Members shall be entitled to all relief under this Agreement.
- ii. “Subclass 2 Members” shall mean and refer to any student placed in an ISBE approved non-public school by the Board pursuant to the student’s

IEP from March 17, 2020 to the termination of this agreement set forth in Paragraph 32 who does not receive Free Nutritional Benefits. Subclass 2 Members shall be entitled to all non-monetary relief under this Agreement outlined in Section III (8)(A-G) and Section IV(9)(A-B).

W. “Standard Payment” shall mean the amount of reimbursement to Subclass 1 Members who did not receive Free Nutritional Benefits during the 2017-18, 2018-19 and 2019-20 (up to March 17, 2020) school years at \$5.53 per attendance day, representing \$2.19 for breakfast and \$3.34 for lunch, for those who did not receive free breakfast and lunch while attending Acacia, Arlyn, Bridgeview, Centerview, Challenger, Chicago Autism Academy, Classroom Connections Day School, Elim Christian, Esperanza, Giant Steps, Helping Hand, Hyde Park Day School-Chicago, Hyde Park Day School-North, Keshet, Learning House, New Hope Academy, New Hope Academy East, Orchard Academy, Rush, Soaring Eagle Academy; \$2.19 per attendance day for those who did not receive free breakfast while attending Laureate, Metro Prep, New Horizon, School of Expressive Arts and Learning (SEAL); and \$3.34 per attendance day for those who did not receive free lunch while attending Hopewell Academy of Orland Park, Cove, and PACTT Learning Center.

II. JURISDICTION AND PROCEDURAL HISTORY

3. Plaintiff and her attorneys, Legal Council for Health Justice and Disability Rights Advocates, (“Class Counsel”) filed a complaint dated August 29, 2019, against the Board in the United States District Court for the Northern District of Illinois (the “Litigation”) alleging that the Board violated Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101, et seq.,

and Section 504 of the Rehabilitation Act (“Section 504”), 29 U.S.C. § 794, for failing to provide CPS students placed in non-public schools because of their disabilities with Free Nutritional Benefits.

4. The Court has jurisdiction over this action pursuant to the ADA, Section 504, and 28 U.S.C. §1331.

5. On September 10, 2019, Plaintiff filed a motion for class certification, seeking certification of the class of current and future students placed in non-public schools by the Board who did not or will not receive free nutritional benefits.

6. In the interest of resolving this litigation, Plaintiff agreed to a stay of briefing the motion for class certification and to delay filing a fully drafted Motion for Preliminary Injunction and Memorandum in Support to allow the Parties the necessary time to pursue an amicable resolution.

7. Plaintiff and the Board have reached an agreement to settle this litigation that the Parties believe is fair, reasonable, and adequate to protect the interests of all Parties, and are entering into this Agreement for the sole purpose of compromising and settling all claims regarding the Litigation.

III. OBLIGATIONS

8. The Board in full settlement of the Litigation agrees to the following:

A. Beginning the 2020-21 school year, the Board will ensure that all CPS students with disabilities placed by the Board pursuant to the students’ IEP in a non-public school will have access to Free Nutritional Benefits at no cost to the student’s parent(s)/guardian(s).

B. The Board will develop a Free Nutrition Letter (the “Free Nutrition Letter”, Exhibit D¹) in collaboration with Plaintiff’s Counsel. The Free Nutrition Letter will be provided to the parent/guardian at the initial placement and sent to all parents/guardians of students placed at non-public schools by CBOE pursuant to their IEP for the 2020-21, 2021-22, and 2022-23 school years. The Free Nutrition Letter will affirm CBOE’s commitment to providing access to free nutrition to all students placed by CBOE in a non-public school, explain the process by which any student placed by the Board pursuant to an IEP in a non-public school who elects to receive Free Nutritional Benefits at no cost to the student’s parent(s)/guardian(s) receives such nutrition and how to file a complaint with CBOE if the student does not receive Free Nutritional Benefits.

C. By the first day of the 2020-2021 school year, the Board will post the Free Nutrition Letter on its special education department’s website, including translations into English, Spanish, Arabic, Chinese, Polish, and Urdu.

D. CPS will implement an internal process to address complaints that a non-public school is out of compliance with the Illinois State Board of Education (“ISBE”) contract described in Paragraph 8(E) by failing to provide Free Nutritional Benefits. The process will include timing of distribution of the Free Nutrition Letter; information to be tracked and reported, identify the rate of and how to calculate reimbursement, and if necessary, instruct that a family should receive reimbursement. The reimbursement rate shall be the same as the cost/rate per diem as identified in the contract referenced in Paragraph 8(E).

¹ Exhibit D is the letter agreed to by the parties for the 20-21 SY. The Free Nutrition Letter is subject to change by the CBOE if applicable.

E. The Board will include in the ISBE *Nonpublic Facility Placement Contract* (“Contract”), Exhibit E², for each student it places in a non-public school pursuant to an IEP requiring the non-public school to provide Free Nutritional Benefits, which includes breakfast and lunch, to each CBOE student placed at the school. The Contract will require the non-public facility to affirm its commitment to provide Free Nutritional Benefits to all CBOE students at no cost to the parents/guardians and will require the non-public school to provide or cover the cost of free breakfast and lunch at no cost to all CBOE students regardless of financial eligibility. If applicable, the Contract will include a cost/rate per diem for CBOE to reimburse the non-public school at a specific amount to provide or cover the cost of free breakfast and lunch and an affirmation that those funds will be used to cover costs of breakfast and lunch to all CBOE students at no cost to the parents/guardians.

F. The Office of Diverse Learner Supports and Services (“ODLSS”) staff who are responsible for placement of students in non-public schools pursuant to an IEP will receive annual training regarding the obligations contained in this Agreement and the Free Nutrition Letter for the duration of this Agreement.

G. Reporting: The Board shall maintain a document in electronic format documenting all complaints made pursuant to Paragraph 8(D). After the appropriate FERPA Order and Confidentiality Order are entered, CBOE will submit a report to Class Counsel with the information listed below in subsections (i-iv) of this paragraph twice per school year. The information will be provided to Class Counsel no later than January 28, 2022 (for the time period covering September 7, 2021 to January 21, 2022); July 11, 2022 (for the

² This is ISBE’s standard contract for the 20-21 SY. The contract is subject to change by ISBE and by the CBOE if applicable.

time period covering January 22, 2022 to June 30, 2022); January 30, 2023 (for the time period covering September 10, 2022 to January 23, 2023); July 10, 2023 (for the time period covering January 24, 2023 to June 30, 2023); January 29, 2024 (for the time period covering September 7, 2023 to January 22, 2024); and July 8, 2024 (for the time period covering January 23, 2024 to June 30, 2024) The information in the report provided to Class Counsel will be:

- i. The date each complaint was received;
- ii. The name and contact information for each complainant;
- iii. The name of the non-public school at issue;
- iv. The date and outcome of CPS's resolution of the complaint, including whether reimbursement is necessary and amount of reimbursement if known, and any necessary steps the Board will take to prevent the lack of access going forward for the non-public school identified.
- v. Reporting under this section will be transmitted via electronic and U.S. Mail to: Julie Brennan, Legal Council for Health Justice, 17 N. State, Suite 900, Chicago, Illinois 60602, jbrennan@legalcouncil.org and Christina Brandt-Young, Disability Rights Advocates, 655 Third Avenue, 14th Floor, New York, NY 10017, cbrandt-young@dralegal.org.

H. The Board agrees to compensate Plaintiff Jackson \$5,397.72 in exchange for full release of claims outlined in Paragraph 31 and as a service award for her assistance with obtaining relief on behalf of the class. Ms. Jackson's check will be issued by the Settlement Administrator at the same time the Administrator issues checks to the Subclass 1 Members.

I. The Board shall contribute in cash into a separate, interest-bearing escrow account maintained by the Settlement Administrator the amount of Five Hundred Eighty Five Thousand Six Hundred Seventy Nine Dollars and Seventy Two Cents (\$585,679.72) to settle the claims of Subclass 1 Members as provided in this Agreement, to pay Plaintiff Jackson as outlined in paragraph 8(H), and to pay the Settlement Administrator (the “Settlement Fund” or the “Fund”). Ms. Jackson’s service award of \$2,500.00 will be reported on an IRS Form 1099-MISC directed at Ms. Jackson. Ms. Jackson shall provide a Form W-9 to the Settlement Administrator before receiving payment. In no event shall the Board be required to pay more than the total amount of the Settlement Fund. The Parties, their counsel, the Court, and the Settlement Administrator shall treat the Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1 (a “QSF”) for all periods on and after the date of the Court order preliminarily approving this Agreement and distributions and reporting from the Fund shall be made in accordance with applicable federal and state tax law. The Parties, their counsel, and the Settlement Administrator agree to take no action inconsistent with the treatment of the Fund in such manner.

J. It shall be the responsibility of the Settlement Administrator, as administrator for the Fund, to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties and thereafter to cause the appropriate filings to occur to ensure that the Fund is at all times treated as a qualified settlement fund. All provisions of this Agreement shall be interpreted in a manner that is consistent with the Fund being a QSF within the meaning of Treas. Reg. § 1.468B-1.

K. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Settlement Administrator. The Settlement Administrator shall satisfy the administrative requirements imposed by Treas. Reg. § 1.468B-2 and, consistent with the election under Treas. Reg. § 1.468B-1(k)(2)(ii) shall satisfy the reporting requirements under Treas. Reg. § 1.468B-1(k)(2)(ii), Treas. Reg. § 1.671-4(e)(2), § 3406 of the Code (backup withholding); § 6041(a) of the Code (reportable payments); Treas. Reg. § 1.6041-1(i); and Rev. Rul. 79-142. It is the Parties’ intention that Reimbursement Checks to Subclass 1 Members will not constitute income for federal or state tax purposes and the recipient Subclass 1 Members will not receive an IRS Form 1099 or other tax form unless required by the IRS. Nothing contained herein is intended to be tax advice to Plaintiff, Subclass 1 Members, Settlement Administrator, or Class Counsel, each of whom is individually responsible for any taxes required under federal or state law.

L. Neither the Settlement Administrator nor the Board shall require any Subclass 1 Member to provide a taxpayer identification number (i.e. Social Security number) in order to establish their right to receive a Reimbursement Check as a Subclass 1 Member.

M. The Settlement Fund shall be allocated as follows:

i. A total amount of \$555,282.00 to cover potential reimbursement to Subclass 1 Members who did not receive Free Nutritional Benefits during the 2017-18, 2018-19 and 2019-20 (up to March 17, 2020) school years at \$5.53, representing \$2.19 for breakfast and \$3.34 for lunch per attendance day (including Extended School Year (ESY) attendance days), for those who attended Acacia, Arlyn,

Bridgeview, Centerview, Challenger, Chicago Autism Academy, Classroom Connections Day School, Elim Christian, Esperanza, Giant Steps, Helping Hand, Hyde Park Day School-Chicago, Hyde Park Day School-North, Keshet, Learning House, New Hope Academy, New Hope Academy East, Orchard Academy, Rush, Soaring Eagle Academy; \$2.19 per attendance day (including ESY attendance days) for those who attended Laureate, Metro Prep, New Horizon, School of Expressive Arts and Learning (SEAL); and \$3.34 per attendance day (including ESY attendance days) for those who attended Hopewell Academy of Orland Park, Cove, and PACTT Learning Center. In addition, Subclass 1 Members who attended Arlyn, Cove, Hyde Park, Keshet, or Learning House and did not receive Free Nutritional Benefits during the 2017-18, 2018-19 and 2019-20 (up to March 17, 2020) school years may be eligible for an additional amount reimbursement per attendance day (including ESY attendance days) as described in Paragraph 18(C).

- i. \$25,000.00 to the Settlement Administrator.
- ii. \$5,397.72 to Plaintiff pursuant to Paragraph (8)H.

IV. DISPUTE RESOLUTION

9. Any disputes arising under this Agreement shall be resolved according to the following procedure:

A. Class Counsel shall notify the Board's Counsel in writing of any perceived non-compliance with the terms of this Agreement, or any other perceived dispute related to the terms, processes, or obligations set forth in this Agreement by any Party.

B. With respect to any dispute, the Board's Counsel agrees to respond in writing

to Class Counsel within fifteen (15) business days of receiving notice pursuant to the previous paragraph. If Class Counsel believes that the Board's Counsel's response is insufficient or that resolution requires further discussion, Class Counsel will so reply to the Board's Counsel in writing within five (5) business days of receiving the Board's Counsel's response and the parties will meet and confer in good faith in order to reach an agreement within fifteen (15) business days of Class Counsel's reply. After conferring, if an agreement is reached, the Parties shall create a document that sets forth the issue(s) in dispute as well as resolution. If the Parties are unable to reach an agreement within fifteen (15) business days of Class Counsel's reply, either party may contact the Court to seek the Court's assistance with resolving the dispute. The party seeking a conference with the Court shall submit a letter, not to exceed 3 pages (exclusive of letterhead and signature block(s)), setting forth the basis for seeking the conference. The other party shall submit a letter, also not to exceed 3 pages, setting forth its position within 3 business days from the service of the moving party's letter. If the Court determines that the parties are unable to resolve their dispute, the Court may grant Plaintiff leave to file a motion to enforce the Agreement. If Plaintiff prevails on a motion to enforce the Agreement, Plaintiff may petition the Court for reasonable attorneys' fees and costs and may be awarded reasonable attorneys' fees and costs for no more than two attorneys and one paralegal. In no event shall Plaintiff be entitled to reimbursement for any attorneys' fees or costs incurred (1) while participating in the dispute resolution process described herein, or (2) prior to obtaining leave from the Court to file a motion to enforce the Agreement. The Parties may agree in writing to modify the timelines in this paragraph to accommodate appropriate inquiry, review, and resolution of a

compliance matter before seeking court resolution.

V. COURT APPROVAL AND CLASS CERTIFICATION

10. The Parties will jointly seek the appointment of Legal Council for Health Justice and Disability Rights Advocates as Class Counsel and Plaintiff Jackson as the class representative.

11. The Parties will jointly seek class certification of Subclass 1 and Subclass 2 as defined in Section I, Paragraph 2(T) above.

12. The Parties shall jointly move for an order seeking Preliminary Approval of this Agreement, directing Notice to the Settlement Class, as described in Section VI below, appointing Class Counsel, appointing the Settlement Administrator and setting a hearing for Preliminary Approval Hearing. CBOE shall attach a Declaration to the Motion for Preliminary Approval certifying the accuracy and completeness of the non-public school data. The Parties will (a) file this Agreement, including the attached Exhibits, with the Court and (b) request entry by the Court, on the earliest date acceptable to the Court, of the Proposed Order granting the Motion for Preliminary Approval of Class Settlement; certifying the Class for settlement purposes; directing issuance of Notice; staying all proceedings in this Litigation and preliminarily enjoining, pending the outcome of Final Approval, all Class Members (other than those who have opted out pursuant to Paragraph 19 from commencing or maintaining any claim already asserted in, and encompassed by, this Litigation, or commencing, prosecuting or maintaining in any court or forum, other than the Court, any claim, action or other proceeding that challenges, or seeks review of or relief from, any order, judgment, act, decision or ruling of the Court in connection with this Agreement; and scheduling of Hearing on Final Approval. The proposed Order is attached as Exhibit [].

13. Class Action Fairness Act Notice. Within ten (10) days of the filing a motion for

preliminary approval of this Settlement, CBOE shall serve the notices required by 28 U.S.C. § 1715.

14. Final Settlement Approval Hearing and Entry of Final Judgment. With the Court's permission, a Final Approval Hearing shall be held to determine final approval of the Settlement. Class Counsel will prepare, for CBOE's Counsel's review, a motion for final approval of the Settlement and draft a proposed order of final approval. Class Counsel will timely file the joint motion for final approval of the Settlement, which will include a proposed order: (a) granting final approval of the Settlement, (b) adjudging the terms of the settlement to be fair, reasonable, and adequate, (c) directing the Settlement Administrator and the Parties to carry out the Settlement's terms and provisions, including the distribution of funds in Paragraph 8(K), including Reimbursement Checks to Subclass 1 Members, (d) dismissing this Litigation on the merits with prejudice, in accordance with the terms of the Agreement. The motion for final approval shall be filed no later than forty-five (45) days after the close of the Claims Deadline and the Parties will request that the Final Approval hearing be scheduled no later than sixty (60) days after the close of the Claims Deadline.

15. This Agreement shall take effect upon the Effective Date as defined above.

VI. NOTICE, OPT-OUT, ADMINISTRATION, CLAIMS, CHECK DISTRIBUTION, AND REVERSION

16. FERPA Notice. No later than five (5) business days after the Preliminary Approval Order, FERPA/ISSRA Order, and Protective Order have been entered by the Court, CBOE shall mail a FERPA Notice, Exhibit F to the parent/guardian of each Subclass 1 Member notifying the parent/guardian that certain student information will be released to the Settlement Administrator and Class Counsel.

17. Notice to Subclass 1 Members. No later than fifteen (15) business days after Preliminary Approval, the Settlement Administrator shall mail a copy of the Notice (attached as Exhibit A), an Address Form (attached as Exhibit B), and an Excess Claim Form (attached as Exhibit C), with a postage pre-paid, self-addressed envelope to each Subclass 1 Member. The return address for this mailing and the address on the pre-paid envelope shall be the address of the Settlement Administrator.

A. In addition to complying with Fed. R. Civ. P. 23, the Notice shall include: 1) the process for a Subclass 1 Member to exercise his/her right to submit a current address in order to receive reimbursement if they are an Inactive Student, 2) the process for a Subclass 1 Member to submit an Excess Claim Form pursuant to Paragraph 18(C), 3) the internet links to the websites for Class Counsel containing information about this case (including the contact information for Class Counsel and CBOE, court filings, the Notice, a downloadable Address Form, a downloadable Excess Claim Form, and information about court dates), and 4) a phone number for Class Counsel that Subclass 1 Members can call with questions. This mailing will be sent to all Subclass 1 Members by U.S. Mail in English and Spanish.

B. The Settlement Administrator shall notify counsel for the Parties within ten (10) business days of mailing that it has complied with the requirements of Paragraph 17(A).

18. Settlement Administration. The Parties will engage a third-party administrator to administer the settlement in accordance with the terms of this Agreement. The Settlement Administrator will: (a) prepare and mail the Notice, Claim Form, Excess Claim Form and Address Form; (b) track Notices returned as undeliverable; (c) conduct a second mailing of the Notice to

Subclass 1 Members whose Notice was returned as undeliverable, provided that the Settlement Administrator can locate a new or additional address information via one skip trace or by other standard means determined by the Settlement Administrator, including by phoning the most recent number on file with CBOE; (d) receive and process Address Forms; (e) receive and verify Excess Claim Forms (per Paragraph 18(C)), opt-out statements, and objections; (f) prepare and submit to counsel for the Parties a list of all Subclass 1 Members who submitted opt-out statements, objections or whose Notice was returned undeliverable; (g) create a Settlement Account to receive monies for the Settlement Fund; (h) mail all Reimbursement Checks; (i) distribute the proceeds of the Settlement Fund in accordance with this Agreement; (j) prepare and submit to counsel for the Parties a final reconciliation and report of all Reimbursement Checks that were cashed and not cashed; (k) subject to Paragraph 8(I) above, calculate applicable taxes and make legally required withholdings and transmitting them to the appropriate taxing bodies; and (l) perform any other duties necessary to carry out its responsibilities as set forth in this Agreement, ordered by the Court or agreed to by the Parties. The costs and expenses of the Settlement Administrator shall be paid from the Settlement Fund.

A. Class Member Data to be provided. No more than ten (10) business days after Preliminary Approval, entry of a Protective Order, and entry of an order pursuant to the Family Education Rights and Privacy Act (FERPA) and Illinois School Student Records Act (ISSRA) instructing CBOE to release certain student information to the Settlement Administrator and Class Counsel. CBOE will provide the Settlement Administrator and Class Counsel the following information about each Subclass 1 Member during the class period in

electronic form: i) the name of the Class Member, ii) name and contact information (address and telephone number) for the Subclass 1 Member's parent or guardian, iii) number of attendance days for the Subclass 1 Member for each applicable school year, iv) names of the non-public school(s) the Class Member attended pursuant to an IEP between August 26, 2017 and March 17, 2020, v) Active or Inactive Student status, and vi) the name of the individual to whom the Reimbursement Check should be payable (factoring in whether the Subclass 1 Member is eighteen (18) years or older and has delegated educational rights or not). CBOE shall provide a Declaration to the Settlement Administrator and Class Counsel certifying that the information contained in the Subclass 1 Member Data is accurate and complete within ten (10) business days of submission of this data to the Settlement Administrator and Class Counsel.

B. Second Mailing of Notices. The Settlement Administrator shall mail a Notice a second time when it the first mailing is returned undeliverable in accordance with the following provisions:

- i. Within five (5) business days of receiving an undelivered Notice that includes a forwarding address by the U.S. Postal Service, the Settlement Administrator shall send a second mailing to the new address.
- ii. Within five (5) business days of receiving an undelivered Notice that does not include a forwarding address by the U.S. Postal Service, the Settlement Administrator shall conduct a skip trace for that Subclass 1 Member. If a new or additional address is found, the Settlement Administrator will, within five (5) business days, mail the Notice, Address Form, Excess Claim Form, and pre-paid envelope addressed to the Subclass 1 Member a second time.

- iii. Within ten (10) business days of receiving an undelivered Notice that does not include a forwarding address by the U.S. Postal Service, and the address was not obtained through the Settlement Administrator's skip trace outlined above in paragraph 18(B)(ii), the Settlement Administrator shall make two (2) attempts to telephone the parent/guardian in order to obtain a valid mailing address. If a new or additional address is found, the Settlement Administrator will, within five (5) business days, mail the Notice, Address Form, Excess Claim Form, and pre-paid envelope addressed to the Subclass 1 Member a second time.
- iv. In no event shall the Settlement Administrator be required to conduct more than one skip trace of the same Subclass 1 Member or mail a Notice more than two times to the same Subclass 1 Member.
- v. At least fifteen (15) business days before the Final Approval, the Settlement Administrator will provide a declaration to the Parties attesting to the manner in which they disseminated the Notices, Address Forms, Claim Forms, and pre-paid envelopes consistent with this Agreement, including Notices that were mailed a second time and notices that were returned as undeliverable and an additional address could not be found or, after a second mailing, were returned undeliverable a second time.

C. Claims Process. The Settlement Administrator shall establish a process for documenting each Excess Claim Form submitted by a Subclass 1 Member. Upon receipt of an Excess Claim Form submitted by a Subclass 1 Member, the Settlement Administrator shall

maintain the Form, verify that the identified student attended a school that charged parents for a meal program in excess of \$5.53 per day for lunch and/or breakfast based on the Class Member Data, and calculate the excess amount due to the Subclass 1 Member by multiplying \$1.97 by the total number of attendance days between August 26, 2017 and March 17, 2020 provided by CBOE in the Class Member Data. Excess Claims must be postmarked by sixty 60 calendar days from the first mailing of the Notice.

D. Address Update Process. The Settlement Administrator shall establish a process for documenting each Address Form submitted by a Subclass 1 Member or updated address for a Subclass 1 Member submitted by Class Counsel. Any Inactive Student who fails to submit an Address Form directly to the Settlement Administrator or provide an updated address through Class Counsel to the Settlement Administrator by 60 calendar days from the initial mailing of the Notice will not receive reimbursement under this Agreement. Address Forms must be postmarked by 60 calendar days from the initial mailing of the Notice. Any Subclass 1 Member who completes the Excess Claim form does not also need to complete the Address Update Form.

E. Updated Class Member Data. The Settlement Administrator shall update the Class Member Data in the Excel database with information obtained from Subclass 1 Members via phone calls to Subclass 1 Members or through other means (provided it is within the 60-day period described above). The Settlement Administrator shall provide i) Updated Class Member Data, ii) scanned Address Forms, and iii) scanned Excess Claim Forms to CBOE and Class Counsel by seventy (70) calendar days after the initial mailing of the Notice.

F. The Parties agree that none of the documents and information received in connection with this Litigation, through informal or formal discovery or in connection with administration of the Settlement shall be used for any purpose other than prosecution of this Lawsuit and administration of this Settlement and shall be subject to the parties' Confidentiality Order.

G. CBOE shall transfer the full amount of the Settlement Fund to the Settlement Administrator within sixty (60) calendar days after Final Approval.

19. Procedure for "Opting Out" or Requesting Exclusion from Class Action Settlement.

The Notice shall explain to active Subclass 1 Members that by taking no further action, including by failing to send a valid and timely written statement to the Settlement Administrator requesting that he or she be excluded from the Class, they are agreeing to stay in the Class and participate in the Class Settlement. The Notice will also explain to Subclass 1 Members that each Subclass 1 Member who stays in the Settlement Class will release their claims against CBOE as set forth in Paragraph 31, and will lose their right to sue, continue to sue, or be part of any other lawsuit or legal proceeding against CBOE about any of the Released Claims in this Litigation. Such written request for exclusion must contain the same name, address, telephone number, must be returned by mail to the Settlement Administrator at a specified address, and must be post-marked no later than sixty (60) calendar days after the first mailing of the Notice (the "Exclusion Deadline"). Any Subclass 1 Member who opts out of the Class will not be entitled to any recovery under the Settlement and will not receive a Reimbursement Check; they will not be bound by the Settlement or have any right to object, appeal, or comment thereon, including at the Final Approval Hearing. No later than seven (7) calendar days after the Exclusion Deadline, the Settlement Administrator shall furnish to CBOE's Counsel and

Class Counsel a complete list of all Subclass 1 Members who have timely requested exclusion from the Class. The Settlement Administrator's determination as to whether a Subclass 1 Member has timely and validly requested exclusion from the Settlement is final.

20. Procedure for Objecting to the Settlement. Any Subclass 1 Member who wishes to object to this Agreement shall file a written objection with the Court and send a copy to the Settlement Administrator no later than the end of the Claims Deadline. The objection must set forth, in clear and concise terms, the legal and factual arguments supporting the objection. If the Settlement Administrator receives an objection, the Settlement Administrator shall promptly notify and send a copy of the objection and the name of the Subclass 1 Member to counsel for both Parties. This objection must be post-marked no later than sixty (60) calendar days after the first mailing of the Notice and must be received no later than seven (7) days before Final Approval. A Subclass 1 Member who does not follow the requirements to object shall not have his or her objection considered and shall not be heard at the Final Approval Hearing. The timeliness of the objection will be determined by the date it is postmarked and/or filed with the Court, whichever is sooner. Subclass 1 Members who fail to submit timely written objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

21. Inquires or Communications from a Subclass 1 Member. As provided for in the Notice, the Settlement Administrator and/or Class Counsel will respond to all inquiries or communications from Subclass 1 Members by reference to the Agreement. Any inquiries that cannot be resolved by reference to the Agreement shall be raised with counsel for both Parties for resolution. The Parties agree to cooperate to resolve any post-settlement inquiries or communications with Subclass 1

Members. If CBOE receives an inquiry about the Settlement from a Subclass 1 Member (including the parent or guardian), CBOE will inform the Subclass 1 Member to refer to the Notice and to contact the Settlement Administrator at the contact information provided in the Notice if he or she has further questions about the Settlement.

22. Check Distribution. The Settlement Administrator shall mail checks within one (1) business day of issuance to the Settlement Administrator, Class Counsel, Plaintiff, and Subclass 1 Members, except for those Subclass 1 Members who have timely and validly excluded themselves from the Settlement, via First Class U.S. Mail within fourteen (14) calendar days after it receives the funds from CBOE. Mailings will be made as follows:

A. Active Students. The Settlement Administrator will mail Reimbursement Checks to all Subclass 1 Members who are Active Students as defined above in paragraph 2(A) and who do not timely and validly exclude themselves from the Settlement Class at the address in Class Member Data.

B. Inactive Students. The Settlement Administrator will distribute Reimbursement Checks to all Subclass 1 Members who are Inactive Students only if the Inactive Student submitted an updated address to the Settlement Administrator, as documented in the Updated Class Member Data and have not validly excluded themselves from the Settlement.

23. Cashing of Checks. Subclass 1 Members will have ninety (90) calendar days from the date of issuance to cash their Reimbursement Checks (the “Check Cashing Deadline”). If a Reimbursement Check is returned to the Settlement Administrator as undeliverable, or if a check

remains uncashed within ninety (90) calendar days after issuance, then the check will be voided and become part of the Remainder Amount. A second check will not be sent.

24. Subclass 1 Members are responsible for all implications and considerations with regard to their Reimbursement Checks, including but not limited to determining and paying the appropriate individual taxes due, if any, on the monies that they receive under this Agreement and determining whether the Reimbursement Check impacts any other public benefits to the household (i.e., SSI eligibility).

25. Final Reporting. Fourteen (14) business days after the Check Cashing Deadline, the Settlement Administrator shall make a Final Report to the CBOE and Class Counsel. The Final Report shall include information about the total number of Notices that were undeliverable, the total number of address updates provided by Subclass 1 Members, the total number of Excess Claims submitted by Subclass 1 Members, the total number of uncashed checks, a final accounting of all claims paid and checks cashed, and the amount of the remainder reverting to CBOE.

26. Distribution of Remainder Amount. The Remainder Amount will include checks that have not been cashed by the Check Cashing Deadline, monies allocated to Subclass 1 Members who were not sent a Reimbursement Check because their Notices were returned as undeliverable, monies allocated to Subclass 1 Members for Excess Payment, and monies allocated to Subclass 1 Members who timely and validly excluded themselves from the Settlement. No later than fourteen (14) business days after the Check Cashing Deadline, the Settlement Administrator shall return all remaining money to CBOE.

VII. GENERAL PROVISIONS

27. No admission. The Parties acknowledge this settlement is not an admission of liability or of unconstitutional or illegal conduct by or on the part of the Board or any of the Board's future, current or past members, officers, agents, attorneys, representatives or employees. The parties also acknowledge that this Agreement shall not serve as evidence or notice of any wrongdoing or of unconstitutional or illegal conduct by or on the part of the Board, or any of the Board's future, current or past members, officers, attorneys, agents, representatives or employees. The parties further acknowledge that settlement is made to avoid the uncertainty of the outcome of any litigation, the expense in time and money of litigation and for the purpose of judicial economy.

28. The Parties agree to hold all proceedings in the Lawsuit, except such proceedings necessary to implement and complete the Agreement, in abeyance pending the Final Approval Hearing. In this regard, the Parties stipulate that until the Final Approval Order is entered, neither Party need serve or respond to discovery or file responsive pleadings or motions.

29. The Plaintiff agrees that she will not object to the Settlement. The Parties agree to waive all appeals and to stipulate to final certification of the Rule 23 claims, but only for purposes of implementing this Settlement. This provision is not applicable in the event the Court modifies any of the terms of this Agreement.

30. Plaintiff and her attorneys agree that they or any law firm with which said attorneys are affiliated or with which said attorneys may later become affiliated shall not use this Agreement as notice or evidence of misconduct by the Board, or any of the Board's future, current or past members, officers, agents, representatives or employees, or for any other litigation or proceedings (other than in a proceeding to enforce this Agreement), and that any such use violates the terms of this Agreement.

31. Release. In consideration of this Agreement, Plaintiff does hereby release and forever discharge on behalf of herself, D.M., and the other Subclass 1 Members who did not timely and validly exclude themselves from the Settlement, claims they had or have against the Board, and its future, current or former members, officers, agents and employees, under local, state, or federal law, up through the date of execution of this Agreement, arising either directly or indirectly out of the events, allegations, and claims which were the basis of *Jackson v. Board of Education of the City of Chicago*, Case No. 19-cv-05809, and claims that could have been brought in the Litigation related to the failure to provide Free Nutritional Benefits, and agrees that such release and discharge also is applicable to any and all unnamed parties. This Release includes Subclass 1 Members and their parents, guardians, beneficiaries, estates, executors, administrators, assigns, transferees, attorneys and representatives. All Subclass 2 Members hereby release and forever discharge claims against the Board, and its future, current or former members, officers, agents and employees, under local, state, or federal law for any injunctive relief and non-monetary relief arising either directly or indirectly out of the events, allegations, and claims which were the basis of *Jackson v. Board of Education of the City of Chicago*, Case No. 19-cv-05809, and injunctive and non-monetary claims that could have been brought in the Litigation related to the failure to provide Free Nutritional Benefits, and agrees that such release and discharge also is applicable to any and all unnamed parties. This Release includes Subclass 1 and 2 Members and their parents, guardians, beneficiaries, estates, executors, administrators, assigns, transferees, attorneys and representatives.

32. Upon approval of this Agreement, the Court will enter judgment dismissing the Litigation without prejudice. The Court will retain jurisdiction to enforce the terms of the Agreement and to provide a forum to address issues of compliance and performance of the terms of the

Agreement. This Agreement will terminate on July 30, 2024, and the case shall be dismissed with prejudice, unless the Court finds, after motion of the Class Counsel, that the Board is substantially out of compliance with the specific terms of this Settlement Agreement.

33. The Parties acknowledge that they have retained legal counsel to review this Agreement and have consulted said counsel concerning the terms and conditions of the Agreement. The Parties further acknowledge that they have read and fully understand each and every term of this Agreement and the consequences thereby, and knowingly and voluntarily enter into this Agreement. The signatories to this Agreement represent and warrant that they possess the legal and mental capacity to understand and enter into this Agreement, and that they have the authority to execute and bind legally their relevant Party.

34. This Agreement is entered into in the State of Illinois and shall be construed and interpreted in accordance with the laws of the State of Illinois. Terms contained herein shall not be construed against a party because that party is or was the principal drafter.

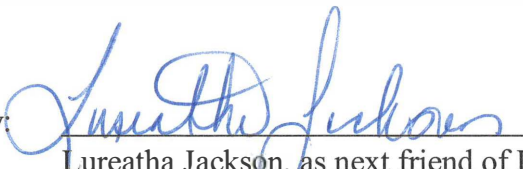
35. This Agreement contains the entire agreement between Plaintiff and the Board as to all matters which are or could be in controversy among them in connection with *Jackson v. Board of Education of the City of Chicago*, Case No. 19-cv-05809, as described herein and any obligations arising thereunder.

36. Non-waiver. The delay or failure to enforce or seek enforcement of any right under this Agreement shall not constitute or be construed as (i) a waiver of such rights or any other rights; (ii) a waiver of any remedy to enforce such rights or any other rights; or (iii) acquiescence in any default.

37. Execution of Agreement. This Agreement will be executed on one signature page that incorporates all of the necessary signatures to make the Agreement binding on all parties. Facsimile and electronic PDF signatures shall be deemed as originals.


38. Severability. In the event that any portion of this Settlement Agreement is determined to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect, and such invalid or unenforceable provision shall automatically be deemed rewritten to the minimal extent necessary to eliminate such invalidity or unenforceability.

39. The Parties desire to resolve Plaintiffs' demand for attorneys' fees and costs without further litigation. However, if they are unable to reach agreement, the Parties expressly reserve the issue of attorneys' fees and costs for determination by the Court consistent with applicable law. Any motion for attorneys' fees and costs shall be filed within sixty (60) days of the date the Final Approval Order is entered by the Court.

By: 
Lureatha Jackson, as next friend of D.M.
On behalf of the putative class
Caroline Goodwin Chapman
Julie Harcum Brennan
Sarah Hess
Legal Council for Health Justice
Counsel for Named Plaintiff and Class

Date: 5-17-2021

Jelena Kolic
Christina Brandt-Young
Disability Rights Advocates
Counsel for Named Plaintiff and Class

By: 
Joseph Moriarty
General Counsel for the
Board of Education of the City
of Chicago

Date: May 20, 2021

EXHIBIT A**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS*****Jackson v. Board of Education of the City of Chicago, et al., Case No 19-cv-5809***

**A federal court authorized this notice.
This is not a solicitation from a lawyer.**

If you are a parent or guardian of a student with disabilities placed by Chicago Public Schools (CPS) under an Individualized Education Program (IEP) at a private or therapeutic day school where your student did not receive free breakfast and/or free lunch between August 26, 2017 and March 17, 2020, then you may be entitled to money from a class action settlement.

What is this class action settlement about?

In August 2019, Lureatha Jackson ("Class Representative" or "Plaintiff") filed a class action lawsuit alleging that the Board of Education of the City of Chicago ("CPS") violated federal law by not providing access to free breakfast and/or lunch for students with disabilities placed in private or therapeutic day schools (often called "TDS") pursuant to the student's IEP. CPS denies that it violated the law. Therefore, in order to settle this lawsuit, the parties agreed to the following:

- CPS will ensure that private or therapeutic day schools provide or cover the cost of free breakfast and lunch beginning the 2020-2021 school year to all students with disabilities placed by CPS pursuant to an IEP in private or therapeutic day schools;
- CPS will reimburse the parent or guardian of students who did not have access to free school breakfast and/or school lunch while placed at Acacia, Arlyn, Bridgeview, Centerview, Challenger, Chicago Autism Academy, Classroom Connections Day School, Cove, Elim Christian, Esperanza, Giant Steps, Helping Hand, Hopewell Academy of Orland Park, Hyde Park Day School-Chicago, Hyde Park Day School-North, Keshet, Learning House, Laureate, Metro Prep, New Hope Academy, New Hope Academy East, New Horizon, Orchard Academy, Rush, PACTT Learning Center, School of Expressive Arts and Learning (SEAL), and Soaring Eagle Academy between August 26, 2017 and March 17, 2020 in these ways:
 - If your student was enrolled at CPS on March 17, 2020, they will be considered a "current student," and you will automatically receive a reimbursement check for each day that your child attended the private or therapeutic day school between August 26, 2017 and March 17, 2020. The reimbursement amount will cover the breakfast and/or lunch your student missed at a rate of \$2.19 for breakfast and \$3.34 for lunch;
 - If your student was not enrolled in CPS on March 17, 2020 (but was enrolled at any point between August 26, 2017 and March 17, 2020), you must provide your current mailing address on the enclosed Address Form and send it back to receive the reimbursement check. You will be reimbursed for each day that your child attended the private or therapeutic day school between August 26, 2017 and March 17, 2020;

If you are a parent or guardian of a CPS student who attended Arlyn, Cove, Hyde

EXHIBIT A

Park, Keshet, or Learning House between August 26, 2017 and March 17, 2020, and claim that you paid your student's school more than \$5.53 per attendance day to receive breakfast and/or lunch, you must submit the enclosed Excess Claim Form if you want to receive an additional reimbursement at \$1.97 per day of attendance between August 26, 2017 and March 17, 2020.

If you have any questions, you may call the lawyers in this case and/or the Settlement Administrator, at the phone numbers listed in Question 8 & 10.

Your legal rights will be affected whether you act or don't act.

Please read this notice carefully.

<p>IF YOU ARE A PARENT OR GUARDIAN OF A CURRENT (as of 3/17/2020) CPS STUDENT WITH DISABILITIES WHO CPS PLACED IN A PRIVATE OR THERAPEUTIC DAY SCHOOL AT ANY POINT BETWEEN AUGUST 26, 2017 AND March 17, 2020, YOU MAY:</p>	
DO NOTHING	You will automatically receive a check calculated to cover breakfast and/or lunch for each day the student attended school between August 26, 2017 and March 17, 2020 at a private or therapeutic day school and did not receive free breakfast and/or lunch. This check will be mailed to the address on file with CPS as of 3/17/20.
SUBMIT AN EXCESS CLAIM FORM	If you paid Arlyn, Cove, Hyde Park, Keshet, or Learning House more than \$5.53 per day for your student's breakfast and/or lunch between August 26, 2017 and March 17, 2020, you can receive an additional \$1.97 per attendance day if you fill out and return the enclosed Excess Claim Form.
SUBMIT WRITTEN OBJECTION AND/OR ATTEND A HEARING	Submit a written objection and/or attend the Final Approval Hearing. The Final Approval Hearing will take place on (INSERT DATE) at the Dirksen Federal Building located at 219 S. Dearborn Street, Chicago, in Judge Young B. Kim's Courtroom 1019. At the Final Approval Hearing, you will be able to speak about the fairness of the settlement. Written objections must be filed with the Court, and sent to the Settlement Administrator at the address listed below in Question 8, by (INSERT DEADLINE DATE).
EXCLUDE YOURSELF	File a written notice of your intent to opt out of the settlement which means you will not receive a payment or participate in the settlement. If you do not file a written notice of your intent to opt out, you will give up your right to sue CPS about the issues covered by the Settlement of this case.
UPDATE	If your mailing address has changed from the address that CPS had

EXHIBIT A

ADDRESS	on file as of 3/17/20, you may fill out and return the Address Form.
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EXHIBIT A

IF YOU ARE A PARENT OR GUARDIAN OF A <u>FORMER</u> (student was NOT enrolled with CPS on 3/17/20) CPS STUDENT WITH DISABILITIES PLACED IN A PRIVATE OR THERAPEUTIC DAY SCHOOL BY CPS AT ANY POINT BETWEEN AUGUST 26, 2017 AND March 17, 2020, YOU MAY:	
TO BE REIMBURSED, SUBMIT AN ADDRESS FORM	If you are the parent/guardian of a former CPS student who was not enrolled in CPS on March 17, 2020, but was enrolled at some point between August 26, 2017 and March 16, 2020, you must send in the enclosed Address Form to receive the reimbursement check.
SUBMIT AN EXCESS CLAIM FORM	If you paid Arlyn, Cove, Hyde Park, Keshet, or Learning House more than \$5.53 per day for your student's breakfast and/or lunch between August 26, 2017 and March 17, 2020, you can receive an additional \$1.97 per attendance day if you fill out and return the enclosed Excess Claim Form. If you only submit the Address Form, you will not get extra reimbursement.
DO NOTHING	If you do nothing, you will not receive any reimbursement and will give up your right to sue CPS about the issues covered by the Settlement of this case.
SUBMIT WRITTEN OBJECTION AND/OR ATTEND A HEARING	Submit a written objection and/or attend the Final Approval Hearing. The Final Approval Hearing will take place on (INSERT DATE) at the Dirksen Federal Building located at 219 S. Dearborn Street, Chicago, in Magistrate Judge Young B. Kim's Courtroom 1019. At the Final Approval Hearing, you will be able to speak about the fairness of the settlement. Written objections must be filed with the Court, and sent to the Settlement Administrator at the address listed below in Question 8 by [INSERT DEADLINE DATE] .
EXCLUDE YOURSELF	File a written notice of your intent to opt out of the settlement which means you will not receive a payment or participate in the settlement. If you do not file a written notice of your intent to opt out, you will give up your right to sue CPS about the issues covered by the Settlement of this case.

The following are your rights and your deadlines to exercise them.

Judge Young B. Kim first has to decide whether to approve the settlement. Settlement Funds will be distributed if the Judge approves the settlement. The approval process will take several months. Please

EXHIBIT A

be patient.

1. What is this lawsuit about?

This lawsuit alleges that CPS did not provide free breakfast and/or lunch to students with disabilities that CPS placed in a private or therapeutic day school between August 26, 2017 and March 17, 2020.

2. Why is this a class action?

Plaintiff sought a court order that CPS provide free breakfast/lunch to all students and to recover money damages from CPS for this alleged violation. CPS denies these claims.

In a class action, one or more plaintiffs – in this case Lureatha Jackson – sue on behalf of a group of people who have similar legal claims. Together, they are called a “Class.” Individuals in the Class are called “Class Members.” As part of the Settlement Agreement, the Parties agreed that this case could be settled as a class action so that one court will resolve the issues for all Class Members, except for those who exclude themselves from the Class. Judge Young B. Kim in Chicago is in charge of this class action.

3. Why is there a settlement?

The Court has not decided in favor of the Plaintiff or in favor of CPS. There has been no trial or other ruling on the Plaintiff’s claims, and this proposed settlement should not be seen as an admission of liability or wrongdoing on the part of CPS. Instead, both sides have agreed to a proposed settlement to avoid further litigation. The proposed settlement would provide affected Class Members relief and avoid the costs, delays, and uncertainties of further litigation and a trial. Plaintiff and her attorneys think the settlement is best for all Class Members.

4. How do I know if I am covered by the settlement?

You are receiving this notice because records show that you are the parent or guardian of a current or former student with disabilities who CPS placed at a private or therapeutic day school pursuant to their IEP and the student did not receive free breakfast and/or lunch between August 26, 2017 and March 17, 2020. If this is true, you are covered by this settlement.

5. What benefits does the settlement provide?

CPS will pay a lump sum of \$585,679.72 to settle this lawsuit. From that amount, direct payments will be made to all parents or guardians of current students and to all parents or guardians of former students who submit an Address Form and did not receive free breakfast and/or lunch. The amounts of these reimbursements will be calculated by CPS and Class Counsel based on the private or therapeutic day school your student attended and whether that school provided free breakfast and/or lunch. Students will be reimbursed for each day the CPS student attended a private or therapeutic day school and did not receive free breakfast and/or lunch between August 26, 2017 and March 17, 2020. The amount reimbursed will be \$2.19 for each breakfast and/or \$3.34 for each lunch the Class Member did not receive per attendance day at the private or therapeutic day school. Class Members who attended Arlyn, Cove, Hyde Park, Keshet, or Learning House can submit an Excess Claim form if they paid their school more than \$5.53 for breakfast and/or lunch during the relevant time period, and receive an additional \$1.97 per attendance day. **You must cash your settlement check within 90 days**

EXHIBIT A

of the date on the check, or else it will be voided, and the money will be returned to CPS. From the lump sum of \$585,679.72, CPS will also pay the cost of administering the settlement and a settlement sum of \$5,397.72 to the Class Representative.

6. How can I get a settlement payment?

If you are a parent or guardian of a CPS student who was enrolled as a student on March 17, 2020, you do not need to do anything to qualify for a settlement payment. If you do nothing, then you will receive a settlement check as long as the Court approves the settlement at the address to which this notice was mailed. **You must cash your settlement check within 90 days of the date on the check, or else it will be voided**, and the money will be returned to CPS. If your address has changed, you may submit the Address Form in order to update the Settlement Administrator of your new address.

If you think you should receive more than \$5.53 per day because your student attended Arlyn, Cove, Hyde Park, Keshet, or Learning House and you paid more than \$5.53 per day to the school for breakfast and/or lunch, you must submit an Excess Claim Form. You will then be eligible to receive an additional \$1.97 per attendance day.

If you are a parent or guardian of a CPS student who was not actively enrolled as a CPS student on March 17, 2020 (or you are unsure if your student was enrolled on that date), you must complete and submit the Address Form with your current contact information to qualify for a settlement payment. If your student was not enrolled as a student on March 17, 2020 and you do nothing, then you will not receive a settlement check. If you complete and submit the Address Form, you will receive a settlement check as long as the Court approves the settlement. **You must cash your settlement check within 90 days of the date on the check, or else it will be voided**, and the money will be returned to CPS.

7. When will I get a reimbursement check?

The Court will hold a hearing to decide the fairness of this settlement on **[Insert Final Approval Date, Time, and Place]**. If Judge Kim approves the settlement after the hearing, payments should be mailed within 75 days of the hearing.

8. If I want to get out of the settlement, what do I do?

If you want to keep the right to sue CPS on your own about the legal issues in this case, then you must take steps to get out. This is called “excluding” yourself or “opting out”. To exclude yourself from the settlement, you must mail a signed letter to the Settlement Administrator stating:

“I am requesting to be excluded from the class monetary settlement. I understand that I will receive no money from the settlement.”

The letter must contain your address, telephone number, printed name and signature. Your letter must be sent to the Settlement Administrator at the address below and be post-marked by [DATE] (no later than sixty (60) calendar days after the first mailing of the Notice).

EXHIBIT A**SETTLEMENT ADMINISTRATOR**

CPS Free Nutrition Settlement
 Rust Consulting
 625 Marquette Avenue, Suite 900
 Minneapolis, MN 55402
 PHONE #

If you mail a letter requesting to exclude yourself from the settlement before the deadline, then you **will** be excluded from the settlement, **you will not get any settlement award**, and you **cannot** object to the Settlement, but you will not be legally bound by anything that happens in this lawsuit.

Unless you exclude yourself, you are staying in the Class, and that means that you cannot sue, continue

10. Do I have a lawyer in this case?

to sue, or be part of any other lawsuit against CPS about the legal issues in this case. More specifically, by doing nothing you agree to release CPS from all claims arising out of the alleged failure to provide free school breakfast and lunch under the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act and implementing regulations. To exclude yourself, you must take the actions described in Question 8 by **[INSERT DEADLINE DATE]**.

The Court has appointed the law firms of Legal Council for Health Justice (Julie Brennan, 17 N. State St., Suite 900, Chicago, Illinois 60602, jbrennan@legalcouncil.org, (872) 228-1668) and Disability Rights Advocates to represent you and the other Class Members. These lawyers are called Class Counsel.

You will not be charged, personally, to be represented by Class Counsel.

11. How do I tell the Judge if I don't like the settlement?

You have the legal right to inform the Judge that you do not believe the proposed settlement is fair.

You can also object to the settlement in writing if you don't believe that any part of it is fair. Any objection must be in writing and must be signed by you. It must be specific about your reasons for objecting to the settlement. The Judge will consider your views. It also must include: (a) your full name and current address, and (b) a clear description of the basis for your objection.

To object, you must file a written objection with the Court and send a copy to the Settlement Administrator at the address listed above in Question 8. This objection must be post-marked by **[INSERT DEADLINE DATE]** (no later than sixty (60) calendar days after the first mailing of the Notice) and must be received no later than seven (7) days before Final Approval Hearing.

12. What's the difference between Objecting and Excluding?

Objecting is simply telling the Judge that you don't believe something about the settlement is fair. You can object only if you stay in the Class. Excluding yourself is telling the Judge that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

13. When and where will the Court decide whether to approve the settlement?

EXHIBIT A

The Judge will hold a hearing to decide whether to approve the settlement. You may attend, and you may ask to speak, but you don't have to. If you would like to attend, you are responsible for your own travel costs and expenses.

The Judge will hold a Final Approval Hearing on **[Insert Date of Final Approval]**, at the United States District Court for the Northern District of Illinois, 219 South Dearborn, Chicago, IL 60604, in Courtroom 1019. At this hearing, the Judge will consider whether the settlement is fair, reasonable, and adequate. If there are written objections, then the Judge will consider them at the Final Approval Hearing. After the hearing, the Judge will decide whether to approve the settlement. We do not know how long this decision will take.

14. Do I have to come to the hearing?

No. However, you are welcome to come at your own expense. If you send a written objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Judge will consider it. You may also get your own lawyer to attend the Final Approval Hearing, but it is not necessary. If you excluded yourself, you cannot speak at the hearing or appear through a lawyer.

15. What happens if the settlement is not approved?

If the settlement is not approved by the Judge, then it will be voided, no money will be paid, and the case will continue to be litigated. If that happens, there is no assurance that: (a) the case will proceed as a class action; (b) any decision at trial would be in favor of the Class Members; (c) any trial or other ruling favorable to the Class would be as favorable to the Class Members as this settlement; or (d) any trial or other ruling favorable to the Class would be upheld if there are appeals.

16. Are there more details about the settlement?

This notice summarizes the proposed settlement. More details are in a Settlement Agreement. You can review a copy of the Settlement Agreement and other papers filed in this case at the Office of the Clerk of the United States District Court for the Northern District of Illinois, located at 219 South Dearborn Street, Chicago, IL 60604 between 8:30 a.m. and 4:30 p.m., Monday through Friday excluding Court holidays.

You also may obtain copies of this Notice and/or the Settlement Agreement, or further information regarding the Settlement, by visiting <http://legalcouncil.org/resources-cpslunch>. You can also contact Class Counsel at **(872) 228-1668**.

17. What should I do if I move or change my contact information?

If you do not keep the Settlement Administrator informed of your current address and other contact information, then you may give up your right to a monetary award. If there is any change in your address or other contact information, please notify the Settlement Administrator at the address in Question 8.

18. How will this settlement check affect my public benefits?

If your household receives Supplemental Security Income (SSI) from the Social Security Administration, or receive Medicaid with an asset limit, your settlement check could directly affect your eligibility for benefits. Please call Class Counsel at **(872) 228-1668** to discuss your specific situation.

EXHIBIT B**CPS BREAKFAST/LUNCH: ADDRESS FORM**

INSTRUCTIONS: This form must be completed only by parents/guardians of CPS students who attended a private or therapeutic day school between August 26, 2017 and March 17, 2020 but who were not enrolled on March 17, 2020 for any reason. If your student was not enrolled on March 17, 2020, you must provide your address in order to receive a check. **If you wish to make a claim that you paid the private or therapeutic day school more than \$5.53 per day for breakfast and/or lunch, you must instead fill out the Excess Claim Form.**

First Name of Parent/Guardian		Last Name of Parent/Guardian	
Street Address			
City	State	Zip Code	
Chicago Public School Student Name			
Telephone Number		Email address	

YOU MUST PROVIDE ALL OF THE INFORMATION ABOVE AND THE FORM MUST BE POSTMARKED OR SUBMITTED BY _____, 2021.

EXHIBIT C**CPS BREAKFAST/LUNCH: EXCESS CLAIM FORM**

INSTRUCTIONS: This form should be completed only by parents/guardians of CPS students who attended Arlyn, Cove, Hyde Park, Keshet, or Learning House between August 26, 2017 and March 17, 2020, and who claim they paid the school more than \$5.53 per attendance day for their CPS student to receive breakfast and/or lunch.

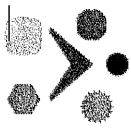
First Name of Parent/Guardian:		Last Name of Parent/Guardian:	
Street Address			
City	State	Zip Code	
Chicago Public School Student Name:			
Telephone Number		Email address	
Circle the school that you paid over \$5.53 per day for breakfast/lunch: <div style="display: flex; justify-content: space-around;"> <div> Arlyn Hyde Park Learning House </div> <div> Cove Keshet </div> </div>			
Circle the school years during which you paid the school more than \$5.53 per day for breakfast/lunch: <div style="display: flex; justify-content: space-around;"> <div>17-18 SY</div> <div>18-19 SY</div> <div>19-20 SY</div> </div>			

YOU MUST PROVIDE ALL OF THE INFORMATION ABOVE AND THE FORM MUST BE POSTMARKED OR SUBMITTED BY _____, 2021.

By submitting this Excess Claim Form, I declare under penalty of perjury under the laws of the United States of America and pursuant to 28 U.S.C. § 1746, that the information provided is true and correct.

Signature: _____ Date (MM-DD-YY): _____

EXHIBIT D

**ODLSS**Office of DIVERSE LEARNER
SUPPORTS + SERVICES**Dr. Stephanie Jones, Chief Officer****Rebecca A. Parker, Deputy Chief Officer**

Dear Parent/Guardian,

Chicago Public Schools ("CPS") is committed to providing free breakfast and lunch to all its students. Annually CPS serves approximately 27 million breakfasts and 43 million lunch meals. Accordingly, if your student is placed at a therapeutic day school by CPS pursuant to your student's IEP, your student will receive free breakfast and lunch at the facility where they are placed.

To ensure your student receives free breakfast and lunch, the facility will either: (1) provide breakfast or lunch to your student or (2) provide your student with a stipend to cover the cost of breakfast and lunch. CPS expects all facilities to address all students' dietary restrictions (e.g., food allergy, pureed food). It is expected that the facility will remain in compliance with all state and federal laws, ordinances, regulations and statutes relating to, but not limited to, nutrition requirements and food allergies. Additionally, nothing interferes with a student from bringing their own breakfast and/or lunch to school.

If your student is not receiving free breakfast or lunch (or both) from the facility as required, it is important to immediately notify CPS so the issue can be addressed. Notify CPS by contacting the Office of Diverse Learner Supports and Services Manager of Charter and Nonpublic District Representatives directly at 773-553-1800 or by e-mailing TDSnutritionsupport@cps.edu.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steph J'.

Stephanie Jones, PhD

Chief Officer of Diverse Learner Supports and Services

EXHIBIT E**RETURN THIS FORM TO:**

- ☐ School District of Residence
- ☐ Special Education Joint Agreement

ILLINOIS STATE BOARD OF EDUCATION

Special Education Services Division
100 North First Street, N-243
Springfield, Illinois 62777-0001

FACILITY CODE
NUMBER FOR
THIS
PLACEMENT →

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NONPUBLIC FACILITY PLACEMENT CONTRACT**Agreement for Student Placement and Services under Section 14-7.02 of the School Code**

Do **not** return this form to the Illinois State Board of Education. For additional copies, go to www.isbe.net.

This document shall be used by both the public school district of the student's residence and the nonpublic facility providing special education and related services, including room and board when necessary, for the placement of each student with a disability. Further conditions consistent with this agreement and the laws of the United States and the State of Illinois may be included under Section V at the discretion of the public school district or the nonpublic facility. Copies of this documentation shall be kept at **both** the nonpublic facility and the local school district of residence of the student.

SECTION I

The _____ located at _____
(Name of Nonpublic facility Program)

_____, _____ IL _____
(Street Address) (City) (Zip Code)

hereinafter referred to as facility, agrees to provide _____ of _____
(Name of Student) (Street Address)

_____, IL _____ hereinafter referred to as student, pursuant to the terms and conditions set forth herein, a
(City) (Zip Code)

a program of special education, related services, and/or room and board in accordance with the student's Individualized Education Program (IEP) during the

period beginning _____, _____ and ending _____, _____
(Date) (Year) (Date) (Year)

and the _____
(Name of Public School District an Number)

_____, _____ IL _____
(Street Address) (City) (Zip Code)

hereinafter referred to as district, agrees to pay an amount as determined and specified in Section III herein. Any person or entity having legal responsibility

of the student is hereinafter referred to as parent or guardian.

SECTION II**District agrees:**

- A. To pay facility in accord with the provisions of Section 14-7.02 of the School Code.
- B. To provide all pertinent case study information requested by facility if written consent for such release can be obtained from the parent or guardian, including a written copy of the multidisciplinary conference and a written summary of student's individual needs, to be attached to this contract.
- C. To develop and submit to the facility, prior to placement of the student, an IEP which shall be a written description of the student's current performance levels; annual goals (including short-term objectives); evaluation procedures; criteria and schedule to measure progress; projected initiation and duration of services; specific special education, related services, specialized equipment and adaptive services to be provided; least restrictive environment (LRE) determination and supporting rationales; transition goals and services needed; and transportation requirements to meet the needs of the student to the satisfaction of the district and parent/guardian.
- D. To conduct, in cooperation with the staff of the facility and with the parent/guardian, an annual review of student's educational needs, including justification for continued placement when necessary, with written documentation of such review available to the facility.
- E. To perform testing and evaluation of student at least every three years or more frequently if deemed necessary by the district staff in consultation with the parent/guardian.
- F. To provide transportation to and from the facility for the student as provided in Section 14-7.02 of the School Code and pertinent regulations, and as delineated in the student's IEP.
- G. If applicable, to provide a written definition of credit hour requirements in each subject area that will be acceptable to the district upon the return of student to the public schools of district.

Facility agrees:

- A. To comply with 23 Illinois Administrative Code 401.
- B. To comply with the Illinois School Student Records Act, Illinois Revised Statutes, Ch. 122, Article 50.
- C. To provide to the district the following:
 1. Monthly reports of student attendance. Written notice will be provided to the district immediately after five consecutive days of unexcused absence.
 2. Reports on all testing and evaluation of student which is done by facility in compliance with the IEP.
 3. Information and progress statements necessary for the annual review conducted by district for the determination of the future placement of student.

EXHIBIT E

- C. To provide to the district the following: *(Continued)*
4. Notification of all significant changes in staff, location, physical facilities and program of facility as such changes occur. (Program changes which affect the private facility code number listed in Section II require a new contract.)
 5. Other reports that district may reasonably require of facility from time to time.
 6. Notification of any change in residence or guardianship of the student.
- D. To assist the district and the parent or guardian of student in the annual or more frequent review of student's educational needs. Any recommended change in program or placement that deviates from the IEP requires a new IEP meeting prior to implementation.
- E. As appropriate, to provide documentation of curriculum and course material as required by district, sufficient to enable student to return to district with credit given for course work completed.
- F. To permit district, its representatives and the representatives of the State Board of Education to visit and inspect the facilities maintained by facility and to permit evaluation of the programs and services provided by facility.
- G. To notify the district of any change in approval status with respect to 23 Illinois Administrative Code 401.
- H. To secure and maintain during the term of this agreement such comprehensive public liability insurance necessary to insure against any loss or liability for personal injury to student which may arise from operations and activities conducted pursuant to this agreement whether such operations or activities are conducted by facility or by anyone directly or indirectly employed by facility.
- I. To conduct an annual audit in order to verify actual expenditures for the special education, related services or room and board for student.
- J. To assure that no person shall be denied participation in or benefits of any program or activity or otherwise be subjected to discrimination on the basis of race, color, national origin, or sex under any program or activity conducted by facility or in the employment practices of facility.
- K. To assure that no parents are charged for any special education, related services or room and board for any students placed by local school districts.
- L. To assure that no charges for special education, related services and room and board exceed the costs approved by the Illinois Purchased Care Review Board (IPCRB).
- M. To provide a school calendar upon request and, for residential placements, a calendar of operation.
- N. To comply with the Interstate Compact provisions as applicable.
- O. To secure all necessary releases of information from the parent of the student in question (or student if aged 18 or older and not under an order of guardianship) to facilitate any needed sharing of data or other student record information that may be in the possession of the school district and required by the nonpublic facility.
- P. To provide to the parent or guardian of the student, prior to placement of the student, the facility's procedures for behavior management, including procedures for incidents of time out and physical restraint, pursuant to Section 401.10(a)(10) and Section 1.285 of the Illinois School Code. :
1. Facility behavior management procedures, including procedures for incidents of time out and physical restraint, were provided to the parent or guardian of the student on _____ (Date).

SECTION III

Please state costs in per diem terms.

Number of Days

\$ _____ for tuition per diem for regular school term for _____

\$ _____ for tuition per diem for summer term for _____

\$ _____ for room and board per diem for regular school _____

\$ _____ term for room and board per diem for summer _____

\$ _____ term for Other (specify) _____

on a _____ basic, with final payment no later than _____

(Specify Frequency) (Date)

Should the IPCRB change the rate(s), the rates listed shall be changed to the approved rate. The total shall be appropriately adjusted, if there is more than one rate.

SECTION IV

Failure to comply with the terms and conditions set forth herein shall be grounds for termination of this agreement. Facility may terminate this agreement upon written notification, including a statement of reasons for termination, to be provided at least 20 business days prior to the date of termination, except when the health and safety of this student or other students are endangered. District may terminate this agreement by providing at least 20 business days notice prior to actual termination.

SECTION V

Further conditions consistent with this agreement and the laws of the United States and the State of Illinois are attached if applicable.

We, the undersigned, agree to the terms and conditions to this agreement and do affirm that all required information and attachments required of district and facility will be appended to this document and retained in the files of district and facility.

(Date)

(Original Signature of District Superintendent)

(Date)

(Original Signature of Director of Nonpublic Facility)

(Date)

(Original Signature of State-Approved Director of Special Education)

EXHIBIT F

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May 14, 2021

VIA FIRST CLASS MAIL

Parent/Guardian of [Student Name]
[ADDRESS]

To the Parent/Guardian of [Student Name]:

Please be advised that the Chicago Public Schools (“CPS”) has been ordered to disclose your child’s student records pursuant to the attached court order. The Illinois School Student Records Act and the Family Educational Rights and Privacy Act protects the confidentiality of student records in nearly all circumstances, but court-ordered disclosure is one of the few exceptions. This letter is intended to inform you of the opportunity to inspect and copy the school student records and to provide you notice of our intent to comply with the attached court order.

Sincerely,

GORDON REES SCULLY MANSUKHANI, LLP

Susan J. Best
Counsel for the Board of Education of the City of
Chicago

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
ILLINOIS EASTERN DIVISION

LUREATHA JACKSON as Next
Friend of D.M., for herself and others
similarly situated,

Plaintiff,

V.

BOARD OF EDUCATION OF THE
CITY OF CHICAGO,

Defendant.

Case No. 19-cv-05809

Magistrate Judge Young B. Kim

VERIFICATION OF ANTHONY ORRICO

1. My name is Anthony Orrico. I am over the age of 18 and a resident of Illinois.
2. From July 2018 to August 2020, I was the Manager of Charter and Nonpublic District Representatives in the Office of Diverse Learner Supports and Services (“ODLSS”) for the Chicago Public Schools (“CPS”).
3. Based on CPS records and information gathered from all non-public schools CPS placed students at pursuant to an Individualized Educational Program during the 17-18, 18-19, and 19-20 school years, the following schools reported they did not provide free breakfast or lunch or both to all CPS students regardless of their income during the 17-18, 18-19, and 19-20 school years: Acacia, Arlyn, Bridgeview, Centerview, Challenger, Chicago Autism Academy, Classroom Connections Day School, Cove, Elim Christian, Esperanza, Giant Steps, Helping Hand, Hopewell Academy of Orland Park, Hyde Park Day School-Chicago, Hyde Park Day School-North, Keshet, Learning House, Laureate, Metro Prep, New Hope Academy, New Hope Academy East, New Horizon, Orchard Academy, Rush, PACTT Learning Center, School of Expressive Arts and Learning (SEAL), and Soaring Eagle Academy. All other non-

public schools CPS placed students at pursuant to an Individualized Educational Program during the 17-18, 18-19, and 19-20 school years reported that they did provide free breakfast and lunch to all CPS students regardless of their income during the 17-18, 18-19, and 19-20 school years.

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: 5-21-2021

By: Anthony Orrico
Anthony Orrico
Chicago Public Schools

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
ILLINOIS EASTERN DIVISION

LUREATHA JACKSON as Next
Friend of D.M., for herself and others
similarly situated,

Plaintiff,

V.

BOARD OF EDUCATION OF THE
CITY OF CHICAGO,

Defendant.

Case No. 19-cv-05809

Magistrate Judge Young B. Kim

VERIFICATION OF LINDSAY NASS-WICHMANN

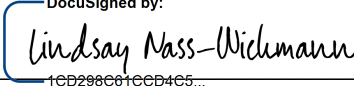
1. My name is Lindsay Nass-Wichman. I am over the age of 18 and a resident of Illinois.
2. I am a Senior Legal Assistant in the Law Department for the Chicago Public Schools (“CPS”).
3. Based on information gathered from all non-public schools CPS placed students at pursuant to an Individualized Educational Program (“IEP”) during the 17-18, 18-19, and 19-20 school years that did not provide free breakfast or lunch or both to all CPS students during the 17-18, 18-19, and 19-20 school years, the following was reported:
 - a. Acacia, Arlyn, Bridgeview, Centerview, Challenger, Chicago Autism Academy, Classroom Connections Day School, Elim Christian, Esperanza, Giant Steps, Helping Hand, Hyde Park Day School-Chicago, Hyde Park Day School-North, Keshet, New Hope Academy, New Hope Academy East, Orchard Academy, Rush, and Soaring Eagle Academy did not provide free breakfast or lunch to all CPS students regardless of their household income;

- b. Laureate, Metro Prep, New Horizon, School of Expressive Arts and Learning (SEAL) did not provide free breakfast to all CPS students regardless of their household income;
- c. Hopewell Academy of Orland Park, Cove, and PACTT Learning Center did not provide free lunch to all CPS students regardless of their household income;
- d. Arlyn, Cove, Hyde Park, and Keshet were the only schools that offered breakfast and/or lunch for purchase in excess of \$5.53 per day; and
- e. Learning House did not respond to inquiries.

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: _____

By:  _____
Lindsay Nass-Wichmann
Senior Legal Assistant
Chicago Public Schools