

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK**

M.F., a minor, by and through his parent and natural guardian YELENA FERRER; M.R., a minor, by and through her parent and natural guardian JOCELYNE ROJAS; I.F., a minor, by and through her parent and natural guardian JENNIFER FOX, on behalf of themselves and a class of those similarly situated; and THE AMERICAN DIABETES ASSOCIATION, a nonprofit organization,

Plaintiffs,

-against-

THE NEW YORK CITY DEPARTMENT OF EDUCATION; THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE; THE OFFICE OF SCHOOL HEALTH, THE CITY OF NEW YORK; ERIC ADAMS, in his official capacity as Mayor of New York City; DAVID C. BANKS, in his official capacity as Chancellor of the New York City Department of Education, ASHWIN VASAN, in his official capacity as Acting Commissioner of the New York City Department of Health and Mental Hygiene; and ROGER PLATT, in his official capacity as Chief Executive Officer of the Office of School Health,

Defendants.

No. 18-CV-6109 (NG) (SJB)

[PROPOSED]
SETTLEMENT
AGREEMENT AND
ORDER

Introduction

This Settlement Agreement and Order (“Agreement”) resolves a civil action brought by Plaintiffs M.F. (by and through his natural guardian Yelena Ferrer), M.R. (by and through her natural guardian Jocelyne Rojas), I.F. (by and through her natural guardian Jennifer Fox), and the American Diabetes Association (collectively, “Plaintiffs”) against the New York City Department of Education (“DOE”), the New York City Department of Health and Mental

Hygiene (“DOHMH”), the Office of School Health (“OSH”), the City of New York (the “City”), Chancellor Richard Carranza,¹ Acting Commissioner Oxiris Barbot,² and Chief Executive Officer Dr. Roger Platt³ (collectively, “Defendants”) concerning DOE’s policies, practices, and procedures related to the provision of diabetes-related care in school and during school-related activities.

Plaintiffs allege that Defendants’ systemic failures to provide students with diabetes a free and appropriate public education (“FAPE”) as well as equal access to school and all school-related programs and activities violate Section 504 of the Rehabilitation Act of 1973 (“Section 504”), the Americans with Disabilities Act (“ADA”), and the New York City Human Rights Law (“NYCHRL”). Plaintiffs allege that these exclusions and denials are due to significant, systemic deficiencies in Defendants’ policies and practices regarding the provision of diabetes care and training for staff to provide such diabetes care, and Section 504 planning to determine the needs of students with diabetes and how Defendants will meet those needs. Plaintiffs bring this case on behalf of themselves and a class, certified on June 18, 2019, defined as:

“All students with diabetes who are now or will be entitled to receive diabetes-related care and attend New York City Department of Education schools.”

Nothing in this Agreement shall be deemed to be an admission by any of the Defendants or any officer or employee thereof of liability or of the truth of any of the allegations set forth in the Complaint, or that Defendants or any officer or employee thereof have in any manner or way

¹ Chancellor Carranza resigned his commission on March 15, 2021. The current Chancellor of DOE is David C. Banks.

² Acting Commissioner Barbot resigned her commission on August 4, 2020. The current Commissioner of DOHMH is Ashwin Vasan.

³ Dr. Platt retired from City service in or about February 2021.

violated the rights of any named Plaintiffs or any Class Member, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, the DOE, the City, the Board of Education of the City of New York, or any other rules, regulations or bylaws of any department or subdivision thereof.

This Agreement shall not be admissible in, nor is it related to, any other litigation or settlement negotiation, except with regard to an action to enforce the terms of the Agreement. This Agreement, however, may be raised by Plaintiffs' counsel during any meeting with DOE, for the purpose of obtaining the benefit of any provision of the Agreement.

The undersigned Parties desire to avoid the necessity, risks, and expenses attendant to litigation and enter into this Agreement.

I. Jurisdiction and Venue

1. This Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4) as this is a civil action arising under the laws of the United States.

2. This Court has jurisdiction over the supplemental claims arising under New York City law pursuant to 28 U.S.C. § 1367(a).

II. Procedural History

3. On November 1, 2018, Plaintiffs filed their Complaint in the instant action. ECF No. 1.

4. On December 24, 2018, Defendants filed their Answer. ECF No. 22.

5. On January 23, 2019, the Parties entered a Structured Negotiation Agreement (“SNA”) and jointly sought a stay of proceedings to engage in structured negotiations. ECF Nos.

36, 36-1. Judge Sanket J. Bulsara granted the stay request orally at a conference on January 24, 2019.

6. On February 20, 2019, Plaintiffs moved for Class Certification. ECF No. 43. That motion was granted and the following class was certified on June 18, 2019: “All students with diabetes who are now or will be entitled to receive diabetes-related care and attend New York City Department of Education schools.” ECF No. 69 at 13.

7. Disability Rights Advocates was named class counsel. ECF No. 69 at 14.

8. The Parties jointly sought stays of discovery to engage in structured negotiations until November 23, 2020. ECF No. 86-1.

9. These negotiations included meetings in person, by phone, and by video; the informal exchange of documents; informal testimony from relevant program personnel; the exchange of proposals, term sheets, and draft Memoranda of Understanding (“MOUs”), the executed versions of which are incorporated into this Agreement by reference as set forth in paragraphs 15 and 66; and the finalization of several aspects of relief.

10. Plaintiffs moved for partial summary judgment on two discrete issues on July 2, 2021; on January 27, 2022, Judge Gershon issued an Opinion & Order granting Plaintiffs’ motion, and finding Plaintiffs are entitled to an Order. In compliance with the Court’s directive, Defendants conducted a needs assessment of the estimated shortfall of trip nurses and on June 10, 2022 reported their findings to the Court in a joint status letter. On June 27, 2022, Judge Gershon granted the Parties’ subsequent application to modify the Opinion and Order. On July 19, 2022, the Order was entered as amended and so-ordered, directing Defendants to: (1) hire a sufficient number of float pool nurses to ensure that all field trip requests by Class Members are fulfilled; and (2) prior to the first day of the 2022-2023 school year, train all bus drivers and bus

attendants the DOE identifies as transporting a DOE student with a Diabetes Medication Administration Form (“DMAF”) in the administration of glucagon in order to ensure that at least one adult on each bus can administer glucagon in the event of a diabetes emergency. Defendants agree:

- Defendants developed training materials for bus drivers and attendants on hypoglycemia recognition and treatment, including glucagon administration, which Plaintiffs reviewed during summer 2022;
- To inform bus drivers and bus attendants which specific Students on the bus have a Diabetes Medication Administration Form;
- To remind bus company management and their attendants that providing a source of fast-acting glucose to a Student to respond to mild to moderate hypoglycemia and/or administering glucagon to treat severe hypoglycemia is appropriate and consistent with their State-approved and DOE training;
- The training materials also cover how to recognize and respond to signs and symptoms of severe hypoglycemia, and mild to moderate hypo- and hyperglycemia;
- Defendants are using these materials to train the identified bus drivers and attendants to, for example:
 - Identify signs and symptoms of mild to moderate hypoglycemia and respond by providing the Student a source of fast-acting glucose;
 - Identify signs and symptoms of severe hypoglycemia and respond by administering glucagon to the Student and calling 911;

- Defendants are utilizing contract nurses to facilitate the training for the bus drivers and attendants DOE identifies as transporting during the 2022-2023 school year a DOE student with a DMAF;
- OSH prepared the contract nurse trainers summer 2022;
- To provide training before the first day of school of the 2022-2023 school year to the identified bus drivers and attendants, which includes hands-on glucagon demonstrations; back-up drivers and attendants are also trained;
- After the training, and as early in fall 2022 as feasible, the DOE will provide the driver and attendant with a quick action guide identifying the student's symptoms of mild and moderate hypoglycemia, the common symptoms of severe hypoglycemia and hyperglycemia, the student's form of prescribed glucagon, and where the glucagon, diabetes snacks, and water supplied by the parent are kept on the student's person (e.g., the front pocket of their backpack) while on the bus;
- Consistent with each individual student's DMAF, their parent must ensure the student carries diabetes-related snacks (source of fast-acting glucose), water, and their prescribed glucagon on their person while on the bus. Defendants do not provide those supplies or store them on the bus.
- Defendants shall comply with the January 27, 2022 Opinion & Order, as modified by the July 19, 2022 Order, to train all bus drivers and bus attendants the DOE identifies as transporting a DOE student with a DMAF in the administration of glucagon in order to ensure that at least one adult on each bus can recognize and treat hypoglycemia and administer glucagon in the event of a diabetes emergency.

III. Definitions

11. When used in this Agreement, the following terms shall have the following definitions and are interpreted consistent with the requirements of the applicable MOUs. All other terms are described in the incorporated MOUs, or to the extent not covered in the MOUs, shall be interpreted according to their plain and ordinary meaning.

504 Accommodations: Student & Family Guide – A Guide created by the DOE available on the DOE website and distributed to families, which summarizes DOE’s Section 504 process for families: <https://www.schools.nyc.gov/docs/default-source/default-document-library/504-accommodations-student-and-family-guide-sy-18-19-1-pdf>.

Additional Training – Training provided, in addition to annual Initial and Refresher training, for nurses⁴ or Paraprofessionals, aimed at correcting, improving, or adding to the recipient’s diabetes-related knowledge or skills.

Chancellor’s Regulation A-710 – The DOE Chancellor’s Regulation that sets forth the DOE’s Section 504 Policy and Procedures for Students: <https://www.schools.nyc.gov/docs/default-source/default-document-library/a-710-section-504-policy>.

Competency Checklist – A list of skills over which a nurse (in their annual Initial and Refresher training), Paraprofessional (in their Level 2 training), or school staff (who receive Level 1 + Glucagon training), providing diabetes care tasks must demonstrate competency, consistent with the applicable OSH competency checklist, after receiving diabetes training in order to perform diabetes care safely and appropriately in accordance with the Student’s DMAF.

Skills for nurses include but are not limited to administering glucagon, drawing or dialing up insulin in a syringe or pen, delivering a bolus via an insulin pump, adjusting temporary basal via an insulin pump, performing a fingerstick blood glucose test, responding to CGM alarms and data, and recognizing and treating hypo- and hyperglycemia.

Compliance Reports – Reports issued by the External Monitor as set forth in paragraphs 26 and 46(c).

Contract Nurse – A registered nurse, employed by an external, private agency which is under contract with the DOE or the City of New York, who provides health services to their assigned Student(s) consistent with the Student’s DMAF and has

⁴ In this Agreement, references to nurses generally, and except where otherwise noted, refer to both Staff Nurses and Contract Nurses.

completed training in accordance with the Training for Contract Agency Nurses MOU.

Covered Extracurricular Programs – DOE- and Parent Association (“PA”)/Parent Teacher Association (“PTA”)-sponsored extracurricular programs and activities, including but not limited to morning activities before the beginning of classes (e.g., a recognized breakfast program) and afterschool activities (e.g., clubs, enrichment programs, and sports).

Diabetes 504 Plan Template – is the model Section 504 Plan that DOE will utilize for Students with diabetes and is attached as **Exhibit A** (“Template 504 Plan”) and available at <https://www.schools.nyc.gov/docs/default-source/default-document-library/diabetes-504-accommodations-plan-template>. The Template 504 Plan is subject to change and is intended to be a “work in progress” that DOE may modify, with Plaintiffs’ input and review, as necessary and appropriate to respond to issues and questions that have come up in the course of using the Template 504 Plan. The Template 504 Plan is meant to guide Section 504 Teams and should be individualized to meet the needs of the Student with diabetes.

Diabetes Resource Unit/Diabetes Team – The OSH positions created in response to this litigation and intended to include five (5) nurses (Diabetes Resource Nurse), one (1) nurse supervisor, two (2) administrative professionals, and the Assistant Medical Director.

Diabetes Training Recipients – DOE school staff other than Paraprofessionals or nurses who have been identified by the school’s Section 504 Coordinator in conjunction with OSH and who receive Level 1, Level 1 + Glucagon, or Level 2 training on diabetes consistent with the Training for School Staff Identified as Diabetes Training Recipients MOU (**Exhibit G**). These staff members and the level of training they will receive should be identified in the Student’s Section 504 Plan.

DMAF – The Diabetes Medication Administration Form (“DMAF”) is the OSH medication order form and any addendums pertaining to the diabetes care regimen, including the medication needs of a Student with diabetes. The DMAF and any addendums are completed by the Student’s health care practitioner, signed by the Parent, and reviewed by OSH.

DOE Programs and Activities – Any program or activity sponsored by the DOE, and PA/PTA-sponsored after-school program or extracurricular activities in DOE school facilities.

DOE School – A school of the city school district of the City of New York, which does not include charter schools or non-public schools.

Agreement Effective Date – The date this Agreement is signed by all Parties and approved following a fairness hearing by the Court.

External Monitor – The expert, jointly selected by the Parties and approved by the District Court, who will monitor and enforce this Agreement for the External Monitoring Term.

External Monitoring Term – The period after the Agreement Effective Date, during which the External Monitor will monitor the implementation of this Agreement per the terms described below.

Finalized DMAF – DMAF submitted to OSH that is determined, either by a staff school nurse or OSH Central office, to be fully complete, clear, and unambiguous and thus ready to be implemented.

Hyperglycemia – Also known as high blood sugar or high blood glucose, this is a condition where the body has too little insulin or cannot use insulin properly, and must be treated to prevent serious health consequences such as ketoacidosis, coma, or death.

Treatment for hyperglycemia is Student-specific, and may include administration of insulin and sometimes other medications.

Hypoglycemia – Hypoglycemia is a serious condition that happens suddenly and requires immediate treatment. Mild and moderate hypoglycemia can be treated easily and effectively with the intake of a quick-acting glucose such as fruit juice, soda (not unsweetened), honey, candy, or glucose tabs. Severe hypoglycemia where there may be a loss of consciousness, seizure, or the inability to swallow, is treated with glucagon administered by injection or nasal spray.

Also known as low blood sugar, low blood glucose, insulin reaction, or insulin shock, this is a condition when blood glucose levels have fallen low enough that they must be treated immediately in an effort to prevent serious health consequences such as loss of consciousness, seizures, or death.

Independent Student – A Student with diabetes who, as designated on their DMAF, does not require the assistance of a nurse or other adult to manage their diabetes with the exception of a diabetes medical emergency such as severe hypoglycemia. This “functional category” is detailed in the New York State Education Department Guidelines for Medication Management in Schools, <http://www.p12.nysed.gov/ssd/documents/MedicationManagement-DEC2017.pdf> (NYSED Guidelines).

Least Restrictive Environment (or “LRE”) – The requirement that necessary accommodations consistent with the Student’s DMAF and Section 504 Plan are provided with the goals of minimizing missed instruction time and separation from peers who do not have disabilities. The determination of LRE must be individualized to the particular needs of the Student.

Level 1 Training – Training that includes a basic understanding of diabetes and how it may impact a Student’s ability to participate in school and school-related activities,

how to recognize and respond to the signs and symptoms of low blood glucose (hypoglycemia) and high blood glucose (hyperglycemia), and whom to contact immediately in case of an emergency.

Level 1 + Glucagon Training – Training for school staff that includes the contents of the Level 1 training plus training on how to administer glucagon.

Level 2 Training – Training for Paraprofessionals or Trained Non-Licensed Personnel that includes the contents of Level 1 training plus additional training to carry out additional responsibilities such as blood glucose monitoring, glucagon administration, ketone monitoring, supervising insulin administration, and what to do in case of a diabetes emergency.

New Students – Students enrolled in a DOE school who are newly diagnosed with diabetes, or Students with diabetes enrolling in or transferring to a DOE school for the first time (whether at the start of a new school year or after the school year has begun).

Non-Covered Extracurricular Programs – Non-DOE and non-PA/PTA extracurricular programs operated in a school building outside normal school hours and days when school is not in session (mornings prior to the start of classes or a recognized breakfast program, late afternoons, evenings, weekends, and holidays) as set forth in Chancellor’s Regulation D-180.

Nurse-Dependent Student – A Student with diabetes who, as designated on their DMAF, must have their insulin administered by a nurse, Parent, or Parent designee. This “functional category” is detailed in the NYSED Guidelines.

Paraprofessional – A staff member who is assigned to a Student with diabetes and is responsible for diabetes-related care tasks described in the Student’s Section 504 Plan, such as tracking and testing blood glucose levels, monitoring a continuous glucose monitor, testing ketones, counting carbohydrates, responding to hypo- and hyperglycemia, supervising insulin self-administration, and the administration of glucagon in the case of an emergency. Consistent with the Paraprofessional Training MOU, Paraprofessionals receive Level 2 training, Student-Specific Training for Paraprofessionals, and if necessary, Additional Training.

Parent – Parent of a Class Member, meaning the Student’s parent or guardian, or any person in a parental or custodial relationship to the Student, or the Student if they are an emancipated minor or 18 years of age or older. Emancipated minor means a child (16-17 years old) who is married or is living apart from their parent, not receiving financial support from their parent, and not in need or receipt of foster care.

Pediatric Diabetes Provider – The Student’s licensed healthcare professional with clinical expertise in caring for children with diabetes. Pediatric Diabetes Providers may include pediatric endocrinologists, pediatricians, certified diabetes educators, physician’s assistants, and nurse practitioners.

Pre-/Post-Training Competency Assessments – The assessments developed by Defendants and approved by the American Diabetes Association consistent with the Staff Nurse Training MOU and Contract Nurse Training MOU to evaluate the Staff Nurses’ or Contract Nurses’ knowledge pertaining to diabetes care tasks.

Progress Report – A written update to be produced by Defendants biannually during the Monitoring Period as further defined below.

Reauthorization Letter – A letter the DOE distributes annually to all Returning Students receiving Section 504 services directing them to submit a new DMAF and request for Section 504 accommodations (or “services”) for the following school year.

Reporting Period – Each reporting period is set forth below. Provided that the Order of Final Approval is entered on or before August 31, 2023, reports are due biannually, on January 31 and August 1 of each reporting year:

Year 1 (2023-2024 School Year):

Report 1: September 1-January 1

Report 2: January 2-June 30

Year 2 (2024-2025 School Year):

Report 3: September 1-January 1

Report 4: January 2-June 30

Year 3 (2025-2026 School Year)

Report 5: September 1-January 1

Report 6: January 2-June 30

Returning Students – Currently enrolled DOE Students who will be in the same DOE School the following school year, who have one or more of the following: a) a DMAF; b) Section 504 accommodations; c) a signed Section 504 Plan; or d) requested Section 504 accommodations.

School Year – The school year generally begins on or around the first Wednesday following Labor Day and ends on or around the last week in June, and is announced annually on the DOE website.

Section 504 Accommodations – Reasonable accommodations (which may also be referred to as “services”) DOE provides to a Student with diabetes pursuant to a Section 504 Plan and in accordance with Chancellor’s Regulation A-710, including but not limited to, as individualized based on the needs of the Student: the assignment of a Paraprofessional; nursing services; blood glucose monitoring services; provision of diabetes care on field trips and during DOE extracurricular activities; and extra time for snacks, bathroom breaks, or transitions.

Section 504 Coordinator– DOE school-based staff member appointed by the school principal in accordance with Chancellor’s Regulation A-710 to oversee the 504 process and the implementation of A-710 at their school. Section 504 Coordinator responsibilities are set forth in Chancellor’s Regulation A-710 and include, for example, convening the school-based Section 504 Team, disseminating Section 504 letters, notices, and request forms to Parents, and overseeing the development and finalization of the Section 504 Plan. Section 504 Coordinators may coordinate with other individuals involved in planning a Student’s Individualized Education Program (“IEP”).

Section 504 Plan – A plan developed pursuant to Chancellor’s Regulation A-710, Section V, outlining the individualized accommodations the school-based Section 504 Team determines are necessary for a Student with diabetes to participate in DOE programs and activities on an equal basis with their peers who do not have disabilities, which may include the provision of services by a school nurse, Paraprofessional, or other trained school staff member. The final Section 504 Plan is signed by the Parent, school administrator or Section 504 Coordinator, and where applicable an OSH nurse. A Section 504 Plan must be reviewed before the end of each school year or more often, and amended at the time of the review, if necessary.

Students with an IEP and a DMAF who require diabetes-related accommodations must have a separate Section 504 Plan developed (using the Template 504 Plan) consistent with the Chancellor’s Regulation A-710 timeline(s) to document those accommodations.

Section 504 Team – The Section 504 Team is a school-based group of individuals knowledgeable about the Student’s academic and diabetes-related needs designated to evaluate and determine a Student’s Section 504 eligibility and determine the Student’s individualized accommodations outlined in the Student’s Section 504 Plan. As set forth in Chancellor’s Regulation A-710 Section IV, the Section 504 Coordinator shall determine the composition of the Section 504 Team, which shall consist of the Section 504 Coordinator and the Student’s Parent, and at minimum: at least one (1) person familiar with the Student’s abilities; at least one (1) person able to interpret any reports or evaluations that have been provided either by the Parent or the school in connection with the request for accommodations; and at least one (1) person knowledgeable about the accommodations available to meet the Student’s needs. Where health services are requested, the school nurse, or OSH member (e.g., Borough Nursing Director, Nursing Supervisor, Diabetes Team Member, health care provider) must be a member of the Section 504 Team. The DOE Health Director may be consulted by the Section 504 Team in appropriate cases, and must be consulted where additional resources requiring funding are being considered for a new accommodation or to renew an existing accommodation.

Staff Nurse – Nurses employed by the New York City Department of Education or New York City Department of Health and Mental Hygiene, whose training is governed by the Staff Nurse Training MOU.

Student with diabetes or Student – Any student diagnosed with diabetes enrolled in a DOE School who requires Section 504 Accommodations through a DMAF and Section 504 Plan.

Student-Specific Training for Nurses – Training provided by a Diabetes Resource Nurse, a Diabetes Team Nurse Supervisor, a Nursing Supervisor, a representative from a diabetes technology company (if the training needed relates to diabetes technology), or other appropriately trained personnel to a Staff Nurse or Contract Nurse (consistent with the Staff Nurse Training MOU or Contract Nurse Training MOU). This training is in addition to the general annual Initial or Refresher training, and focuses on the unique individualized diabetes care needs of the particular Student with diabetes for whom the nurse is assigned to care.

Student-Specific Training for Paraprofessionals – Training the staff school nurse, Diabetes Resource Nurse, or a Nursing Supervisor provides to the Paraprofessional (consistent with the Paraprofessional Training MOU), in addition to the general annual Initial or Refresher training, that focuses on the unique individualized diabetes care needs of the particular Student with diabetes for whom the Paraprofessional is assigned to care.

Supervised Student – A Student with diabetes who, as designated on their DMAF, requires supervision and/or assistance from Trained Non-Licensed Personnel in performing their diabetes management tasks, such as tracking and testing blood glucose levels, monitoring a continuous glucose monitor, administering insulin, testing ketones, counting carbohydrates, and treating mild hypo- and hyperglycemia. This “functional category” is detailed in the NYSED Guidelines.

Trained Non-Licensed Personnel (“TNP”) – Non-medical school personnel who are trained in basic diabetes knowledge and have received Level 2 Training coordinated by the school nurse in diabetes care, including the recognition and treatment of hypoglycemia, recognition of hyperglycemia, the performance of blood glucose monitoring, glucagon administration and the performance of ketone checks, and will perform these diabetes care tasks in accordance with applicable laws, rules, and regulations. Trainings include appropriate subsequent referrals to the school nurse as indicated on the DMAF. All TNP will be provided a copy of the Student’s Section 504 Plan with details regarding signs and symptoms of hypo- and hyperglycemia highlighted, and their roles, and will receive training on the Student’s DMAF.

IV. Injunctive Relief

12. Defendants agree to comply with the Americans with Disabilities Act, Section 504, and the NYCHRL.

13. *Scope of Agreement:* The relief outlined in this Agreement, including **Exhibits B-J**, applies to DOE Programs and Activities, including Covered Extracurricular Programs. Relief

as to Non-Covered Extracurricular Programs is set forth in the Extracurricular Programs and Activities MOU (**Exhibit I**).

14. *Memoranda of Understanding*: As part of this Agreement, Defendants agree to implement the Template 504 Plan, attached hereto as **Exhibit A** and to be updated as needed, and the following executed MOUs, attached hereto as **Exhibits B-J**, and hereby incorporated into this Agreement, beginning on each MOU's effective date.

Exhibit A: Template 504 Plan, effective June 7, 2019, as amended in August and September 2022.

Exhibit B: Revision of Timelines for Section 504 Planning for Returning Students with Diabetes ("Returning Students MOU"), effective September 13, 2021.

Exhibit C: Provision of Care and Revision of Timelines for Section 504 Planning for New Students with Diabetes ("New Students MOU"), effective September 13, 2021.

Exhibit D: Training for Paraprofessionals Providing Diabetes Care Pursuant to a Section 504 Plan ("Paraprofessional Training MOU"), effective September 13, 2021.

Exhibit E: Training for Department of Education and Department of Health and Mental Hygiene School Nurses ("Staff Nurse Training MOU"), effective September 13, 2021.

Exhibit F: Training for Contract Agency Nurses ("Contract Nurse Training MOU"), effective September 13, 2021.

Exhibit G: Training for School Staff Identified as Diabetes Training Recipients (“Diabetes Training Recipients MOU”), effective September 13, 2021.

Exhibit H: Training for Section 504 Coordinators (“Section 504 Coordinator Training MOU”), effective April 30, 2021.

Exhibit I: Provision of Services and Accommodations for Students with Diabetes During Extracurricular Programs and Activities (“Extracurricular Programs MOU”), effective May 7, 2021.

Exhibit J: Provision of Services and Accommodations for Students with Diabetes in the Least Restrictive Environment (“LRE MOU”), effective April 30, 2021.

15. *Anti-Retaliation Obligation:* Defendants agree that they will not retaliate against any person who files a complaint, provides information or assistance to the External Monitor or Joint Expert (American Diabetes Association) and/or Plaintiffs’ Counsel, testifies in any proceedings related to this action, and/or participates in any manner in any investigation or proceeding related to this Agreement.

16. Defendants have adopted and agree to maintain policies and procedures that implement the terms of the MOUs, the terms of this Agreement, and Chancellor’s Regulation A-710.

17. *Field Trips:* Defendants’ policy is to provide diabetes-related care on field trips. In the event the diabetes care needs of a Student, consistent with their DMAF, are not met for a scheduled field trip, and the Parent or their designee does not attend the trip, then the school principal must reschedule the trip whenever possible until care can be arranged.

18. *Missed Instruction:* In the event that a student is unable to attend school or school-related activities due to a lack of diabetes-related accommodations, schools will make all

reasonable efforts to ensure that Students are provided meaningful support from their teacher(s) to make up any missed instruction.

V. Training Materials

19. All training materials developed or revised in conjunction with this case shall be reviewed and updated as needed by Defendants on an annual basis. This includes, but is not limited to, annual Initial and Refresher training for Staff Nurses and Contract Nurses (which may include asynchronous videos resources for Contract Nurses); Level 1 Training (including materials on glucagon administration); Level 2 Training; and Section 504 Coordinator training.

20. Defendants shall distribute all training materials described in paragraph 19, annually by July 1 of each reporting year in advance of finalizing any updates, to the American Diabetes Association, which shall have an opportunity to review and provide feedback no later than August 1 of each reporting year. The Parties will endeavor to exchange this information earlier in the summer where possible.

VI. Data Collection & Reporting

21. Any data or information described below and reported to Plaintiffs, the Joint Expert, and the External Monitor, on a confidential basis, will be redacted consistent with the provisions of this Agreement and applicable law, including the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, New York State Education Law § 2-d, Health Insurance Portability and Accountability Act, 42 U.S.C § 1320 *et seq.*, the New York State Public Health Law, and the New York City Health Code, to remove personally identifiable information (“PII”), including if a value is between one (1) and five (5). The Parties reserve the right to discuss the redacted information that would have been provided in that category. Any PII shared with Plaintiffs, the Joint Expert, and/or the External Monitor pursuant to paragraph 36 after this

Agreement is so-ordered will be preceded by advance written notice to the parent, or to the student if they are an emancipated minor or 18 years of age or older, with an opt-out provision that includes a sufficient timeframe to opt out of the disclosure, not to be less than one (1) month prior to the disclosure. The Parties and External Monitor are subject to the Confidentiality Agreement attached as **Exhibit K**.

22. Defendants will collect and provide to Plaintiffs, the Joint Expert, and the External Monitor the following data, based upon centrally reportable data (which may not be complete on the date of the biannual report) and available DOE or OSH records, and where possible disaggregated by grade level, Student's age, district borough number ("DBN"), and whether OSH has received a DMAF for the Student for each Reporting Period for the duration of the Agreement. All data reporting under this Agreement excludes Students with an IEP except where specified.

- a. Total number of Students with a DMAF, and for each of those Students:
 - i. Date OSH received the DMAF;
 - ii. Date the DMAF was reviewed by the school nurse or OSH Central;
 - iii. If DMAF was held, the reason for and duration of the hold, where such information is available;
 - iv. Date of the Finalized DMAF; and
 - v. Whether the Student has a final Section 504 Plan.
- b. Total number of Students with a Section 504 Plan, and for each of those Students:
 - i. Date the Parent submitted a Section 504 request under Chancellor's Regulation A-710;

- ii. Date the Section 504 meeting required by Chancellor's Regulation A-710 was held;
 - iii. Attendees of the Section 504 meeting by job title or position;
 - iv. Date the Section 504 Plan was finalized, if different from the date of the Section 504 meeting;
 - v. Date the final Section 504 Plan was shared with Parent(s);
 - vi. Date the Section 504 Coordinator indicated school staff listed in the final Section 504 Plan were trained (i.e., Level 1, Level 1 + Glucagon, Level 2, refresher training, Student-Specific Training);
 - vii. Accommodations and services requested on the Section 504 request form and Medical Accommodation Request Form, by category;
 - viii. Accommodations and services to be provided as part of the final Section 504 Plan; and
 - ix. Accommodations and services requested by Parent and/or physician that were denied, and the reason(s) for denial.
 - x. Total number of Students assigned 1:1 Paraprofessionals or 1:1 nurses;
 - xi. Total number of requests reviewed by OSH for 1:1 Paraprofessionals or 1:1 Nurses for diabetes care where a 1:1 Paraprofessional or Nurse was not assigned.
- c. Total number of Students who did not attend their first enrolled day of school, including mid-year enrollments, and for each of those Students:
- i. The reason entered for their absence, if related to diabetes accommodation;
 - ii. The status of that Student's DMAF approval; and

- iii. How many days the Student was absent before they attended school.
- d. The following data pertaining to field trips:
 - i. The total number of field trip nursing coverage requests for Students with a DMAF, and:
 - 1. The total number of fulfilled requests;
 - 2. The total number of unfulfilled requests.
 - ii. For each individual request:
 - 1. The date the request was made for nursing coverage;
 - 2. The date the request was fulfilled or unfulfilled;
 - 3. The contract nursing agency that fulfilled the request (covered) or, if applicable, reneged after agreeing to fulfill the request (reneged); or
 - 4. If applicable, if no coverage was identified (no coverage).
 - iii. For unfulfilled field trip nursing coverage requests for Students with a DMAF, the trip outcome, to the extent this information is available:
 - 1. The trip was cancelled;
 - 2. The trip was postponed until diabetes care could be arranged;
 - 3. The trip proceeded without the Student;
 - 4. The Parent/their designee attended the trip; or
 - 5. Another outcome.
- e. Total number of requests or complaints to the Section 504 Program Manager from Parents and/or Students enrolled in Non-Covered Extracurricular Programs

pursuant to the Extracurricular Programs MOU, Section II(A)(3), and for each of those requests or complaints:

- i. The name and nature of the afterschool or extracurricular program;
 - ii. The date the request or complaint was made;
 - iii. The nature of the request or complaint;
 - iv. Any action taken as a result of the request or complaint.
- f. Total number of complaints made to the Section 504 Program Manager or DOE Health Director via the Emergency Relief process set forth below in Section VII, and for each of those complaints:
- i. The nature of the complaint;
 - ii. The date the complaint was made;
 - iii. What action was taken in response to the complaint;
 - iv. The date the complaint was resolved; and
 - v. Whether the accommodation that is the subject of the complaint is now or will be provided, and if not, the reason.

23. Additionally, Defendants will collect and provide to Plaintiffs, the Joint Expert, and the External Monitor the following data in the form of a training report with PII redacted, and where possible disaggregated by borough and school district:

- a. Number of Staff Nurses who received annual Initial and Refresher training;
- b. Number of Staff Nurses who received Additional Training;
- c. Number of Staff Nurses who received Student-Specific Training for Nurses;
- d. Number of Section 504 Coordinators who received annual Section 504 Coordinator training;

- e. Number of Section 504 Coordinators who received Level 1 Training (or the training set forth in paragraph 23(f), 23(g), or 23(h));
- f. School-based staff who completed Level 1 Training, including date such training was completed;
- g. School-based staff who received Level 1 + Glucagon Training, including date such training was completed;
- h. School-based staff who received Level 2 Training, including date such training was completed; and
- i. Bus drivers and attendants who completed Level 1 + Glucagon Training, including date such training was completed.

24. Annually, Defendants will also compile a random sample of ten (10) Section 504 Plans, anonymize them, and by January 31 of each reporting year share them with the External Monitor.

25. In addition to the Reporting Periods outlined below, both Plaintiffs' and Defendants' counsel will, upon request, be given access to any data collected pursuant to Section VI or collected by the External Monitor.

26. The External Monitor shall, for each Reporting Period, publish Compliance Reports which include anonymized data on a publicly accessible website.

VII. Emergency Relief

27. In addition to the process set forth in Chancellor's Regulation A-710 Section VII(B), the following process is available to Parents of Students with a DMAF or Section 504 Plan (or who have requested Section 504 Plans or submitted a DMAF) to raise concerns that the

DOE is not providing diabetes-related accommodations, resulting in the Student being excluded from a DOE program or activity:

- a. The Parent is encouraged to first contact their school's Section 504 Coordinator.
- b. The Parent may also utilize the contact information listed, among other places, on the Diabetes page of the DOE website (located at <https://www.schools.nyc.gov/school-life/health-and-wellness/staying-healthy/diabetes>) to address the inquiry to the DOE Health Director for the school.

28. The DOE Health Director shall document the inquiry and respond to the Parent(s) within five (5) school days.

29. If the DOE Health Director cannot resolve the inquiry within five (5) school days, the inquiry will be forwarded to the Section 504 Program Manager listed on the Diabetes page of the DOE website.

30. The Section 504 Program Manager shall respond within five (5) school days, and document the inquiry and their response.

VIII. Monitoring and Compliance

31. Defendants shall pay all reasonable costs of the External Monitor and Joint Expert.

32. The American Diabetes Association is designated the Parties' Joint Expert. The American Diabetes Association reserves the right to select a designee or designees for purposes of this Agreement or any aspect of monitoring or compliance set forth in this Agreement.

33. Peter D. Blanck, Ph.D., J.D. is designated the External Monitor.

34. As Joint Expert, the American Diabetes Association will be responsible for advising on medical questions, concerns, or disputes regarding the provision of diabetes-related care as part of this Agreement.

35. As External Monitor, Dr. Blanck will have authority over all other monitoring and enforcement provisions of this Agreement, except for those questions reserved for the American Diabetes Association in paragraph 34.

36. Upon at least two (2) weeks advance notice to Defendants' counsel, the External Monitor will be permitted reasonable access to DOE records, schools, staff, Parents, and Students to make accurate findings regarding, and to ensure Defendants' compliance with this Agreement.

37. Complaints and concerns received through the **Emergency Relief** section of this Agreement (Section VII), as well as documentation of action(s) taken in response thereto, shall be reported to Plaintiffs, the Joint Expert, and the External Monitor in each Progress Report for each Reporting Period.

38. If a Student is not attending school due to lack of provision of diabetes-related care or a Parent or their designee is being required to come to school to provide diabetes-related care and contacts Class Counsel or the Section 504 Program Manager, the External Monitor shall, within forty-eight (48) hours of notice, meet and confer with the Parties pursuant to the dispute resolution mechanism outlined in Section X. If the External Monitor is unable to resolve the issue through the dispute resolution mechanism, either Party or the External Monitor may apply to the Court for emergency relief.

39. Compliance with this Agreement as to **Section 504 Planning** as laid out in **Exhibits B and C** will be evidenced by Defendants meeting the following benchmarks:

- a. Beginning in Fall 2023, the External Monitor will be required to attend ten (10) Section 504 meetings per year, upon consent of the Parent(s) and Student (if they are an emancipated minor or 18 years of age or older) and two (2) weeks advance notice to Defendants, and permitted to attend a reasonable number of additional Section 504 meetings if necessary to evaluate compliance with this Agreement.
 - i. The External Monitor(s) and Parties will select the Section 504 meetings together in advance as follows, with each meeting occurring at a different school:
 1. Two (2) meetings each in the Bronx, Brooklyn, Queens, and Manhattan;
 2. One (1) meeting in a District 75 school in any Borough; and
 3. One (1) meeting in Staten Island.
 4. Of these ten (10) meetings, one (1) will involve an Independent Student and two (2) will involve Supervised Students. The remaining seven (7) meetings shall be for Nurse-Dependent Students.
- b. For the first year of the Agreement, eighty percent (80%) of Returning Students have a Section 504 meeting scheduled for the upcoming school year prior to the end of the school year (at the end of June) of each school year. For the second year of the Agreement, compliance with this measure will be eighty-five percent (85%) of Returning Students, and for the third year of the Agreement, compliance will be ninety-five percent (95%) of Returning Students. Parent delay does not count against Defendants.

- c. For the first year of the Agreement, a Section 504 meeting has been held, and a Section 504 Plan drafted and approved for eighty percent (80%) of Returning Students prior to the last day of the school year. For the second year of the Agreement, compliance with this measure will be eighty-five percent (85%) of Returning Students, and for the third year of the Agreement, compliance will be ninety-five percent (95%) of Returning Students. Parent delay does not count against the DOE.
- d. For New Students who submitted a DMAF or Section 504 request prior to the start of the school year, eighty percent (80%) of Section 504 meetings were scheduled to take place prior to the first day of school whenever possible, and when health services were requested (meaning nurse and/or paraprofessional services reflected on their DMAF and/or Section 504 request form), ninety-five percent (95%) of Section 504 meetings were scheduled to take place no later than fifteen (15) school days after the first day of school, unless additional time was necessary to accommodate a Parent's schedule.
- e. For New Students who submitted a DMAF or request for Section 504 services during the school year, ninety-five percent (95%) of Section 504 meetings were held no later than fifteen (15) school days from the receipt of the DMAF or request for health services, unless additional time was necessary to accommodate a Parent's schedule.
- f. For New Students who submitted a DMAF but had not yet had a Section 504 meeting at that time, the DOE convened a meeting ninety-five percent (95%) of the time within five (5) school days of DOE's receipt of the DMAF with the

parties listed in Section II(C) of the New Students MOU (**Exhibit C**), to discuss the Student's needs between when the Finalized DMAF is available and when a final Section 504 Plan can be adopted and implemented, unless additional time was necessary to accommodate a Parent's schedule.

g. For newly enrolled Students enrolled at the beginning of the school year:

A Section 504 meeting has been scheduled for ninety-five percent (95%) of newly enrolled Students within five (5) school days of the first day of enrollment, unless additional time was necessary to accommodate a Parent's schedule.

i. A Section 504 meeting has been held for ninety-five percent (95%) of newly enrolled Students within ten (10) school days of the first day of enrollment, unless additional time was necessary to accommodate a Parent's schedule.

ii. A Section 504 meeting has been held for one-hundred percent (100%) of newly enrolled Students within fifteen (15) school days of the first day of enrollment, unless additional time was necessary to accommodate a Parent's schedule.

iii. A Section 504 Plan has been drafted and approved for ninety-five percent (95%) of newly enrolled Students within twenty-one (21) school days of the first day of enrollment, unless additional time was necessary to accommodate a Parent's schedule.

iv. A Section 504 Plan has been drafted and approved for ninety-six percent (96%) of newly enrolled Students within thirty (30) school days of the first day of enrollment, unless additional time was necessary to accommodate a Parent's schedule.

40. Compliance with this Agreement as to **Training** as laid out in **Exhibits D-H** will be evidenced by Defendants meeting the following benchmarks:

- a. The External Monitor and Joint Expert will be permitted to attend any or all trainings laid out in **Exhibits D-H**.
- b. Employees absent or on leave who receive training as soon as possible upon their return will not count against Defendants in the benchmarks set forth below.
- c. For the purpose of the training benchmarks set forth in paragraph 40, training recipients (Staff Nurses, Contract Nurses, Paraprofessionals, and Diabetes Training Recipients) will also include those caring for a Student in Covered Extracurricular Programs.
- d. Section 504 Coordinators:
 - i. Eighty percent (80%) of new Section 504 Coordinators received Section 504 Coordinator training within ten (10) school days of the first day of school and all (one-hundred percent (100%)) of new Section 504 Coordinators received Section 504 Coordinator training by October 15. All (one-hundred percent (100%)) of returning Section 504 Coordinators receive training on Section 504 Training by April 15 of each school year.
 - ii. All (one-hundred percent (100%)) Section 504 Coordinators who have a student with a DMAF at their school received at least one Level 1 Training (or Level 1 + Glucagon Training or Level 2 Training) during the same school year when staff members at their school are trained.
- e. Staff Nurses:

- i. Ninety-five percent (95%) of Staff Nurses received annual Initial training during their nursing orientation, which shall take place within six (6) weeks of the new nurse's first day of employment.
 - ii. Ninety-five percent (95%) of Staff Nurses received annual Refresher training on diabetes prior to the start of the school year or as soon as possible thereafter.
 - iii. All (one-hundred percent (100%)) Staff Nurses will have received Student-Specific Training for Nurses within five (5) school days after the date such training was requested.
- f. Contract Nurses:
 - i. Consistent with the Contract Agency Nurses MOU, OSH will deliver to contract agencies the same training materials on diabetes as OSH provides to its staff nurses, and will direct the contract agencies to utilize these training materials with their contract nurses.
- g. Paraprofessionals:
 - i. Ninety-five percent (95%) of Paraprofessionals who worked during the prior school year or summer received Level 2 Training before the start of the school year.
 - ii. Ninety-five percent (95%) of Paraprofessionals who started working after the start of the school year received Level 2 Training within ten (10) school days of assignment.
 - iii. All (one-hundred percent (100%)) Paraprofessionals received Student-Specific Training for Paraprofessionals within five (5) school days after the date such training was requested.

- h. Diabetes Training Recipients:
 - i. Ninety-five percent (95%) of school staff identified as Diabetes Training Recipients received Level 1 Training within ten (10) school days of being identified.
 - ii. Ninety-five percent (95%) of school staff identified as Diabetes Training Recipients who have volunteered to receive Level 2 Training received such training within fifteen (15) school days of being identified.
- i. Bus Drivers and Attendants:
 - i. Ninety-five percent (95%) of bus drivers and bus attendants the DOE identifies as transporting a Student with a DMAF received Level 1 + Glucagon Training prior to the first day of school, or if after the first day of school within five (5) school days of their assignment to a route transporting a student with a DMAF.

41. Compliance with this Agreement as to **Field Trips** will be evidenced by Defendants meeting the following benchmarks:

- a. Defendants provide nursing services for ninety-five percent (95%) of field trip nursing coverage requests for Nurse-Dependent Students.
- b. Defendants provide at least one (1) school staff member who has received Level 1 + Glucagon Training for one-hundred percent (100%) of field trips that an Independent Student with diabetes is eligible to attend.
- c. Defendants provide the services required for a Supervised Student (whether via a nurse, or trained staff) for at least ninety-five percent (95%) of field trips that a Supervised Student is eligible to attend.

- d. Where Defendants were unable to meet the nursing coverage need for field trips, the field trip was rescheduled whenever possible.

IX. Implementation and Enforcement

42. Provided that the Order of Final Approval is entered on or before August 31, 2023, this Agreement shall have effect from September 1, 2023 to August 15, 2026. If the Order of Final Approval is entered after August 31, 2023, the Parties will meet and confer to determine the period the Agreement shall have effect, which will be no less than three (3) years.

43. This Agreement shall be under the authority of the Court. The Court shall retain jurisdiction over this Agreement, including its power to enter orders concerning the Agreement and to adjudicate any dispute or controversy between the Parties concerning the interpretation of the terms of the Agreement or the enforcement of it, which shall end on the Termination Date, except as provided in paragraph 47.

44. Twice per year, or on an alternative schedule upon mutual agreement of the Parties, the Parties, and External Monitor and/or Joint Expert where either Party requests their attendance, will meet to discuss the implementation of injunctive relief under this Agreement. The Parties may mutually agree to waive such meetings.

45. Each Reporting Period, the External Monitor will evaluate Defendants' compliance with this Agreement pursuant to Section VIII above. The External Monitor will issue a Compliance Report within thirty (30) days of the close of each Reporting Period that outlines each benchmark and identifies whether Defendants are in compliance with the benchmarks set forth in Section VIII:

- a. *Supplemental Data Samples*: Defendants may provide supplemental data to the Plaintiffs, the Joint Expert, and the External Monitor within a reasonable

timeframe after each report is due January 31 or August 1, as needed, related to any compliance benchmark set forth in this Agreement. If Defendants conclude based on their review of available data in a Reporting Period that they are unable to obtain complete or reliable data sets to determine whether Defendants have met the compliance benchmarks set forth in paragraphs 39(b)-(g), 40, and 41, Defendants may provide representative data samples to supplement the available data, as follows:

- i. Data to support paragraph 39(b)-(e) (Section 504 meeting data), 39(f) (diabetes pre-meeting data), 39(g)(i)-(ii) (Section 504 meeting data), 39(g)(iii)-(iv) (Section 504 Plan data): if data is obtained for fifty percent (50%) or fewer of Students with a DMAF for the first year of the Agreement, sixty percent (60%) or fewer of Students with a DMAF for the second year of the Agreement, or seventy-five percent (75%) or fewer of Students with a DMAF for the third year of the Agreement, Defendants will survey a random sample of ten percent (10%) of the estimated or known universe of the incomplete or missing Student data. If the External Monitor or a Party determines that there is a meaningful discrepancy between the larger data set and the random sample (for example, where the random sample may not be statistically representative of the larger data set), the Parties and External Monitor will convene on a mutually agreed upon date to discuss next steps.
- ii. Data to support 40(d) (504 Coordinator training), 40(e)-(i) (diabetes training), and 41(a) (field trips): if data is obtained for fifty percent (50%) or less of the estimated or known universe of training recipients or field trip requests, or the

universe of data is unclear, the Parties and External Monitor will convene on a mutually agreed upon date to discuss next steps.

iii. Data to support 41(b)-(d) (field trips for Supervised and Independent Students) will be collected via a random sample of one-hundred (100) Trip Plans (a document schools prepare pursuant to Chancellor's Regulation A-670), which will be anonymized and collected as follows:

1. Twenty (20) Trip Plans each from the Bronx, Brooklyn, Queens, and Manhattan;
2. Ten (10) Trip Plans from a District 75 school in any Borough; and
3. Ten (10) Trip Plans from Staten Island.
4. Of these one-hundred (100) Trip Plans, twenty (20) will involve an Independent Student and eighty (80) will involve Supervised Students.

46. If Defendants have not met any benchmark, the following procedure will apply:
- a. The External Monitor will, accounting for individual availability, within the target of fourteen (14) business days of identifying the issue, meet and confer with Defendants and potentially stakeholders, which may include: the Joint Expert; OSH staff, for example, the Diabetes Resource Unit Nurses, the Assistant Medical Director, or the Section 504 Program Manager; or any other relevant personnel with respect to the benchmark.
 - b. Upon review of any relevant documentation, policies, procedures, and data, and in consultation with Defendants, relevant stakeholders, or any other experts or

resources, the External Monitor will develop remedial measures and issue a Corrective Action Plan.

- c. The External Monitor will issue a Compliance Report every thirty (30) days after the issuance of a Corrective Action Plan on implementation of the remedial measures therein and any observed change in meeting the benchmark.
- d. If the benchmark has not been met ninety (90) days following the original finding, the External Monitor will inform the Parties and commence Dispute Resolution as outlined in Section X below.

47. Except as otherwise provided herein, in the event that the Agreement is terminated, reversed, or fails to become effective for any reason (including in the event that the Agreement is not approved by the Court or the Court's approval of the Agreement is appealed and reversed), the Parties to this Agreement shall be deemed to have reverted to their respective positions in the action immediately prior to the execution of this Settlement and shall proceed in all respects as if this Agreement and any related orders had not been entered.

48. The federal standard for "substantial compliance" will be used to determine whether Defendants are deemed compliant with the terms of this Agreement. Failure to meet any benchmark does not subject Defendants to enforcement action and liability as long as Defendants have met the benchmark following the process described in paragraph 46 or have resolved the dispute regarding meeting a benchmark through the Dispute Resolution procedure described in Section X.

49. If Defendants are unable to meet a deadline or other requirement set forth in this Agreement due to causes that were unforeseeable or beyond their reasonable control (a "Force Majeure Event"), Defendants will not be liable for failure to comply with the deadline(s) or other

requirement(s) of this Agreement that they are unable to meet due to the Force Majeure Event. Should Defendants invoke this paragraph, Defendants' counsel shall notify Plaintiffs' counsel and the External Monitor and Joint Expert in writing as soon as practicable (but not later than twenty (20) days after Defendants knew such Force Majeure Event would cause them to fail to satisfy a term of this Agreement), providing a description of the event and notice of the length of the delay. Defendants will adopt reasonable measures to avoid or minimize any such delay and will communicate those measures to Plaintiffs' counsel and the External Monitor and Joint Expert. Defendants will make all reasonable efforts to meet the deadline(s) or other requirement(s) set forth in this Agreement during a Force Majeure Event and all terms of the Agreement unaffected by the Force Majeure Event shall continue in full force.

X. Dispute Resolution Procedure

50. Any disputes arising under this Agreement, including disputes around any continued failure to meet a benchmark, shall be resolved according to the following procedure:

- a. *Notification in Writing by External Monitor*: The External Monitor will notify all Parties in writing.
- b. *Notification in Writing by Party*: Any Party shall notify the other Party 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.
- c. *Meet and Confer*: Unless otherwise agreed to by the Parties, with respect to any particular dispute, the Parties agree to meet and confer in good faith, within fifteen (15) business days after receipt of a written notification of a dispute.

- d. *Application for Further Relief*: If the meet-and-confer does not lead to a resolution of the dispute, then, no sooner than fifteen (15) business days after providing the other parties with written notice of an intent to terminate the meet and confer process, the Parties will write to the Court in its ongoing jurisdiction over the matter to resolve the dispute.

XI. Modifications to Agreement

51. If, at any time, Plaintiffs or Defendants desire to modify the Agreement for any reason, the Party that seeks such modification shall notify the other Party, in writing, of the proposed modification and the reasons therefor. For example, the Parties may jointly agree to adjust the deadlines and benchmarks described in this Agreement.

52. If the Parties reach agreement on the requested modification, it shall be reduced to writing, signed, and filed with the Court for approval. To the extent the parties cannot agree on the modification, replacement, or removal of a remedial item, the dispute resolution procedures in Section X will apply.

53. Notwithstanding the dispute resolution described above, in the event of an emergency threatening to cause immediate or irreparable harm to any of the Parties, class or any portion thereof, all Parties may seek immediate judicial relief.

54. Should exigent circumstances exist that require a party to take action that makes them non-compliant with this Agreement, that party shall notify the other parties of the exigent circumstances, the action taken, the expected duration of such circumstances, and the steps taken to limit the duration of such circumstances. Receipt by a party of such notification does not preclude them from seeking judicial relief. Either party may notify the External Monitor of exigent circumstances, if they arise.

55. Except for a counsel fee motion, any motion to enforce or extend obligations under this Agreement must be filed by the Termination Date. In the event of a motion, the Court's jurisdiction shall continue for the purpose of deciding such motion and any relief ordered thereunder. If Plaintiffs move to extend the Agreement and such a motion is granted, the Court's jurisdiction will continue through the end of the extension period.

XII. Preliminary Approval by the District Court and Notice to Class Members

56. Counsel for the Parties agree that they will take all reasonable steps to ensure that this Agreement is approved by the District Court and becomes effective.

57. Specifically, within thirty (30) days of execution of this agreement:

- a. Plaintiffs will file with the Court an unopposed motion for preliminary approval of this Agreement, and will include a copy of the Agreement and the attached Exhibits;
- b. Plaintiffs will request entry by the Court on the earliest date acceptable to the Court, of a Proposed Order Granting Motion for Preliminary Approval of Class Settlement; directing issuance of Settlement Notice; and scheduling of a Fairness Hearing on final approval.

58. The Parties will jointly request that the Court approve the Notice of Proposed Settlement of Class Action Lawsuit, Long Form and Short Form versions ("Notices") which are attached as **Exhibit L** (Long Form) and **Exhibit M** (Short Form).

59. The attached Notices include, in plain language: (1) A summary of the substantive relief included in this Agreement; (2) the date of the hearing on the Final Approval of the Agreement with a clear statement that the date may change without further notice to the Class; (3) the deadline for submitting objections to the Agreement; (4) contact information for

Plaintiffs' Counsel to answer questions; (5) the address for Plaintiffs' Counsel's websites with links to relevant documents in the case; and (6) instructions on how to access the case docket via PACER or in person at the Court's locations. The Notices will be published in English, Arabic, Bengali, Chinese, French, Haitian Creole, Korean, Russian, Spanish, and Urdu, within forty-five (45) days after Preliminary Approval, and will be distributed or posted as follows until the deadline for submitting objections has passed:

- a. Defendants will bear all costs of distributing the Notices.
- b. Defendants will provide the Long Form Notice to every Parent of each Student with diabetes by U.S. postal mail, and, if known, email.
- c. Defendants will post the Long Form Notice in every school medical room.
- d. Plaintiffs' Counsel and Defendants will each post prominently on their respective websites a copy of the Notices and the proposed Agreement.

60. At least twenty-one (21) days before the Fairness Hearing, Defendants' Counsel and Plaintiffs' Counsel will each provide a declaration to the District Court attesting to the manner in which they disseminated the Notices consistent with the Agreement.

61. In addition to the initial Class Notice, the Parties will draft, and finalize no later than April 1, 2023, a plain-language guidance document for Parents, to be distributed annually with the Reauthorization Letter while this Agreement is in effect.

62. Upon the Court's Final Approval of this Agreement and for the duration of the Term of the Agreement:

- a. Defendants will post a copy of the Long Form Notice and the plain-language guidance document referred to in paragraph 61 of this Agreement, in English and

Spanish, at every DOE School in the medical room and in a place routinely used by each individual school for the posting of notices.

- b. Defendants will post a copy of the Notices and the plain-language guidance document referred to in paragraph 61 of this Agreement, in English, Arabic, Bengali, Chinese, French, Haitian Creole, Korean, Russian, Spanish, and Urdu, on DOE's Diabetes website: <https://www.schools.nyc.gov/school-life/health-and-wellness/staying-healthy/diabetes>.

63. Defendants will include a hyperlink to the plain-language guidance document referred to in paragraph 61 in the 504 Accommodations: Student & Family Guide, and post it on the DOE website.

64. The Parties will jointly request that the District Court schedule and conduct a Fairness Hearing to address the fairness of this Agreement settling Plaintiffs' claims against Defendants and to decide whether there will be Final Approval of the settlement embodied in this Agreement. At the Fairness Hearing, the Parties will jointly move for and recommend Final Approval of this Agreement. The Fairness Hearing will take place at dates allowing for such period of Notice to the Class as the District Court may direct, and in accordance with 28 U.S.C. § 1715.

XIII. Release of Claims

65. Effective upon the entry of judgment by the Court, in consideration of the relief set forth herein, the sufficiency of which is expressly acknowledged, Plaintiffs and the Class, including the organizational Plaintiff American Diabetes Association, release any claims for systemic injunctive and declaratory relief regarding the provision of diabetes-related care in DOE schools which arose on or before the Agreement Effective Date.

66. Nothing in this Agreement shall be construed to release any individual, non-systemic claims related to appropriate services and accommodations for a particular Student, nor any claims whatsoever for compensatory education, individual due process claims arising under the Individuals with Disabilities in Education Act (“IDEA”) or Section 504, or reasonable accommodations or modifications related to physical access, communication access, behavioral policies, and/or accommodations otherwise relating to hearing, vision, and/or mobility, mental health, and/or developmental disabilities arising under the ADA or Section 504, or any monetary claims that may exist under any relevant laws by any of the named Plaintiffs, Class Members, or any other person.

67. Nothing in this Agreement shall be construed to release any claims to enforce the terms of this Agreement.

68. The organizational Plaintiff American Diabetes Association does not release any claims of their individual members or constituents.

XIV. Enforceability

69. In the event that any portion of this 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.

70. The delay or failure to enforce or seek enforcement of any right under this Agreement shall not constitute or be construed as: (a) a waiver of such rights or any other rights; (b) a waiver of any remedy to enforce such rights or any other rights; or (c) acquiescence in any default.

71. This Agreement shall be deemed to have been drafted by all of the Parties, and the principle of construing a document against the Party that drafted it shall have no application to this Agreement.

72. 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 do so on behalf of their relevant Party.

73. This Agreement may be executed in counterparts, and together they shall be valid to prove the Agreement. Facsimile, DocuSign, and electronic .pdf file signatures shall be deemed as originals.

74. This Agreement, including the Memoranda of Understanding attached as **Exhibits B-J** and incorporated herein, constitutes the entire agreement and understanding between the Parties, and supersedes all prior agreements and understanding between the Parties, and may not be modified except in writing signed by both Parties.

XV. Relief for Named Plaintiffs

75. Within ninety (90) days of Final Approval of the Agreement, Defendants shall remit five thousand dollars (\$5,000) each to Yelena Ferrer, Jocelyne Rojas, and Jennifer Fox, by and through their attorneys Disability Rights Advocates, as class representative incentive awards. Plaintiffs shall execute and provide to Defendants' counsel all documents necessary to effect this

payment, including, without limitation, General Release, an Affidavit Concerning Liens, and a Substitute W-9 Form.

XVI. Monitoring Fees

76. No later than October 15 of each year of the Agreement, Defendants shall remit ten thousand dollars (\$10,000) per year to the American Diabetes Association in remuneration for their role as a Joint Expert for the three-year duration of the Monitoring Period. If the term of the Monitoring Period is extended for any reason, the Parties will meet and confer about additional remuneration.

77. The External Monitor's Scope of Work is attached as **Exhibit N**, and Order Re: External Monitor Compensation is attached as **Exhibit O**.

XVII. Attorneys' Fees

78. Defendants agree that Plaintiffs are entitled to counsel fees and costs as though they are prevailing parties and agree not to contest Plaintiffs' entitlement to seek fees under 42 U.S.C. § 1415. The Parties agree to negotiate the amount of fees incurred. If they are not able to amicably resolve Plaintiffs' counsel fee demand within sixty (60) days of Class Counsel's service of its counsel fee demand, the Parties may agree to seek assistance from a private mediator or Class Counsel may submit an application for counsel fees to the United States District Court for the Eastern District of New York.

79. Defendants agree to pay all reasonable attorneys' fees for monitoring and enforcement of the Agreement during the term of this Agreement, as defined in Sections VIII and IX above. This includes, but is not limited to, monitoring and enforcement activities listed in Sections VIII and IX; work done as part of dispute resolution listed in Section X; informal advocacy by Plaintiffs' Counsel or the External Monitor on behalf of the class and/or individual

Class Members as it relates to the issues relevant to this civil action and Agreement; formal applications to the Court, including motions, letter motions, or requests for intervention; interactions, correspondence, and cooperation with the Independent Monitor; and any good faith attempts to enforce the terms of this Agreement. All reasonable fees incurred up to the termination of the Agreement will be paid, regardless of whether the request is made after the termination. The request must be made within ninety (90) calendar days from the termination of the Agreement unless otherwise mutually agreed upon by the parties.

Dated: September 28, 2022

Dated: September 28, 2022

M.F., by and through his Natural Guardian

DocuSigned by:
Yelena Ferrer
F787FD2CA69E45E...
Yelena Ferrer

Dated: September 28, 2022

M.R., by and through her Natural Guardian

DocuSigned by:
Jocelyne Rojas
BEE9FAF497B94A0...
Jocelyne Rojas

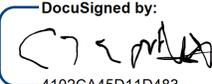
Dated: September 29, 2022

I.F., by and through her Natural Guardian

DocuSigned by:
Jennifer B. Fox
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Jennifer Fox

Dated: September 28, 2022

American Diabetes Association

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Christopher K. Ralston, Chair of the Board

Dated: September 28, 2022

American Diabetes Association
M.F., by and through his Natural Guardian
M.R., by and through her Natural Guardian
I.F., by and through her Natural Guardian

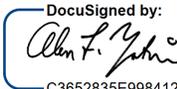
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Torie Atkinson
Disability Rights Advocates

Dated: September 28, 2022

American Diabetes Association

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Alan L. Yatvin
Weir Greenblatt Pierce LLP

Dated: September 29, 2022

City Of New York
New York City Department of Education
New York City Department of Health and Mental
Hygiene
Office Of School Health
Eric Adams, Mayor
David C. Banks, Chancellor
Ashwin Vasan, Acting Commissioner
Roger Platt

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Chlarens Orsland
Corporation Counsel of the City of New York

Exhibit A



Diabetes Section 504 Accommodation Plan

School Year: _____ Date of 504 Team Meeting: _____

School DBN and Name: _____

Student & Family Information

Student Name: _____ Disability/Diagnosis: _____

Type _____ Diabetes

OSIS #: _____ DOB: _____

Classroom Teacher: _____ Grade: _____

Paraprofessional Name (if applicable): _____

Parent/Guardian Preferred Spoken and Written Language(s): _____

504 Team Members

List name of 504 Coordinator, all 504 Team members, and their titles.

Name	Role
1.	504 Coordinator
2.	Parent/Guardian
3.	Office of School Health Nurse (if applicable)
4.	
5.	
6.	

Objectives/Goals of this Plan

Diabetes can cause blood glucose (sugar) levels to be too high or too low, both of which may affect the student’s ability to learn as well as seriously endanger the student’s health both immediately and in the long term. The goal of this Plan is to provide the related aids and services and accommodations needed to maintain blood glucose within a safe range, and as close as possible to the student’s target range set by the student’s licensed health care provider, and to respond appropriately to levels outside of this range in accordance with the instructions provided by the student’s provider.

The 504 Coordinator will coordinate with the other 504 Team members to arrange the student’s diabetes care in New York City Department of Education (DOE) programs and activities.

This Plan shall be reviewed before the end of each school year or more often if necessary, and amended at the time of the review, if necessary.

Definitions Used In This Plan

DOE Program or Activity: Any program or activity sponsored by the DOE, including PA/PTA sponsored after-school programs or extracurricular activities in a DOE building.

Diabetes Medication Administration Form and Addendum (DMAF): The Office of School Health medication order form and any addendums pertaining to the diabetes care regimen, including the medication needs of a student with diabetes. The DMAF and any addendums are completed by the student’s health care provider, signed by the parent/guardian, and reviewed by the Office of School Health. Once the student’s DMAF for the school year (including any revisions) is ready to be implemented, the 504 Team will review this Plan and make any necessary revisions to comply with the new/revised DMAF.

Trained Non-Licensed Personnel (TNP): Non-medical school personnel who are trained in basic diabetes knowledge and have received training coordinated by the school nurse in diabetes care, including the recognition and treatment of hypoglycemia, recognition of hyperglycemia, the performance of blood glucose monitoring, glucagon administration and the performance of ketone checks, will perform these diabetes care tasks in accordance with applicable laws, rules, and regulations. Trainings include appropriate subsequent referrals to the school nurse as indicated on the DMAF. All TNP will be provided a copy of this Plan with details regarding signs and symptoms of hypo- and hyperglycemia highlighted, and their roles, and will receive training on the specifics of the student’s DMAF.

1. Provision of Diabetes Care

- 1.1. At least _____ staff members will receive Level 2 training to be a TNP and are listed in Section 2.1. At least _____ staff members will receive Level 1 + Glucagon training and are listed in Section 2.4. A school nurse, substitute school nurse or Contract Nurse, or one of these trained staff members will be available at the site where the student is **at all times** during school hours, during DOE extracurricular activities, and on DOE field trips to provide diabetes care in accordance with this Plan and as directed in the DMAF.
- 1.2. The nurse shall perform the following diabetes care tasks in accordance with student’s DMAF, and shall receive training on performing any of the following, if needed
 - o determine dose and administer insulin
 - o administer glucagon if needed
 - o check ketones if needed, in accordance with DMAF
 - o keep appropriate records of insulin administration and other blood glucose treatment
 - o communicate with parent/guardian regarding diabetes treatment
 - o communicate with the student’s healthcare provider regarding diabetes treatment
 - o communicate with Office of School Health physician if needed
 - o coordinate with Principal to initiate training for school staff
 - o _____
 - o _____
- 1.3. If the student has been assigned a paraprofessional, the paraprofessional is to be trained as a TNP and will perform the following diabetes care tasks in the classroom, or wherever the child is [**Check those appropriate**], to the maximum extent possible:

- Adhere to Standard Precautions for Infection Control principles regarding hand hygiene, Personal Protective Equipment (PPE), safe device handling, safe needle/sharps disposal planning
- Check blood glucose levels with finger-stick device
- Monitor readings on Continuous Blood Glucose Monitor (CGM)
- Check ketones if needed, in accordance with DMAF, and refer to school nurse **if**:
 - Ketones are moderate or large
 - Student feels unwell
 - Other: _____
- Administer glucagon and call 911 in the event of an emergency and keep appropriate record of such; notify nurse and school administration
- Give fast-acting glucose or snack in the event of hypoglycemia [**Insert from DMAF**: blood glucose _____ mg/dL]; notify nurse

- Give water and monitor in the event of hyperglycemia [**Insert from DMAF:** blood glucose _____ mg/dL]; notify nurse
- Communicate with parent/guardian regarding the above
- _____
- _____
- _____
- _____

If student’s blood/sensor glucose via the blood glucose monitoring or CGM is _____ mg/dL or higher, paraprofessional will give water and monitor student, check for ketones, as outlined in the student’s DMAF, and inform the school nurse. Student generally should not be kept in the medical room for high blood glucose readings unless student does not feel well or is receiving insulin treatment.

As per the DMAF addendum, if the CGM is ____ or below, or the symptoms do not match the number and/or arrows, the paraprofessional may perform a finger-stick blood glucose test.

When the student’s assigned paraprofessional is not available, a paraprofessional with the appropriate training will provide this diabetes care.

2. Trained Non-Licensed Personnel

2.1 The following school staff members (see Section 1.1 above) will receive Level 2 training to carry out their responsibilities as a TNP (list full names, titles, and dates of training):

2.2 The Office of Pupil Transportation ensures that any bus driver or bus attendant who transports the student has undergone safety training and glucagon training in accordance with applicable New York State Education Department and DOE requirements.

2.3 **Any staff member who is not a TNP and who is responsible for the student at any time during school hours, DOE extracurricular activities, or during DOE field trips will be provided Level 1 training** that will include a general overview of diabetes and typical health care needs of a student with diabetes, recognition of high and low blood glucose levels, and how and when to immediately contact either a school nurse or a TNP.

The staff members who have received this training are (list full names, titles, and dates of training):

[Include Physical Education teachers and coaches in this list. See Section 5.]

2.4 The following individuals who have volunteered to be trained will receive training on how to administer glucagon, in addition to the training outlined in 2.3:

3. Student’s Level of Self-Care and Location of Supplies and Equipment

3.1 (a) As stated in the DMAF:

The student skill level to test their blood glucose is:

- Nurse/adult must check blood glucose
- Student to check blood glucose with adult supervision
- Student may check blood glucose without supervision

The student’s skill level to self-administer insulin is:

- Nurse-Dependent Student: nurse must administer medication
- Supervised student: student self-administers, under adult supervision
- Independent Student: Self-carry/Self-administer licensed provider attested

Skill level designated for school hours as set forth above should be maintained at any time and in any location at the school, at field trips, at sites of DOE extracurricular activities, and on school buses.

(b) The student needs a TNP to perform or needs supervision with the following other diabetes care tasks (e.g., provide verbal cues while the student monitors their blood glucose and self-administers insulin, verify correctness of math for carb counting). Specify level of independence with the task:

3.2 The student and/or TNP (including assigned paraprofessional) will be permitted to carry the following diabetes supplies and equipment at all times and in all locations (please include phone and/or smart watch here, if applicable): **[Consult the DMAF and school nurse to complete this section]**

3.3 Diabetes supplies and equipment that are not kept on the student and additional supplies and will be kept at: **[Typically, the classroom and nurse’s section/medical room, or with TNP (excluding CGM monitoring device and Personal Diabetes Manager equipment)]**

3.4 Parent/guardian is responsible for providing diabetes supplies and food to meet the needs of the student as ordered in the DMAF.

4. Snacks and Meals

4.1 (a) Meals and snacks will occur consistent with the DMAF.

(b) DMAF includes breakfast orders: Yes No

- 4.2 Carbohydrate content information for snacks and meals provided by the DOE Office of Food and Nutrition Services (OFNS) is available on the OFNS website, or upon request to the school's on-site School Food Service Manager.
- 4.3 A snack or fast-acting source of glucose must always be immediately available to the student.
- 4.4 The teacher will notify parent/guardian of any changes in the snack or meal schedule at least 48 hours in advance, or as soon as possible if 48-hour notice cannot be provided.
- 4.5 The student will be permitted to eat a snack no matter where the student is at the times indicated on the Nurse-Dependent or Supervised student's snack plan, when the Independent student determines appropriate, or for any student as needed for treatment. [Insert additional language, as applicable to the individual student consistent with the parent's/guardian's instructions, such as: *The student should always be permitted to eat any foods that they prefer, including special celebratory snacks such as cupcakes. At snack time, they should be permitted to choose from the school-provided snack or home-provided snack.*]
- 4.6 The parent/guardian will supply snacks needed in addition to or instead of any snacks supplied to all students.
- 4.7 The parent/guardian will provide carbohydrate content information for snacks and meals brought from home. If the parent/guardian does not provide this information, the school nurse or TNP will utilize a publicly available carbohydrate calculation website.
- 4.8 Adjustments to snack and meal times will be permitted in response to changes in schedule upon request of parent/guardian consistent with the DMAF.

5. Exercise and Physical Activity

- 5.1 The student shall be permitted to participate fully in physical education classes and team sports consistent with the student's DMAF.
- 5.2 Physical education instructors and sports coaches will receive training in accordance with Section 2.3 and will receive a copy of this Plan.
- 5.3 Responsible school staff members will make sure that the student's blood glucose meter, a fast-acting source of glucose, and water are always available at the site of physical education class and DOE team sports practices and games.

6. Water, Bathroom, and Elevator Access

- 6.1 The student shall be permitted to have immediate access to water by keeping a water bottle in the student's possession and at the student's desk, and/or by permitting the student to use the drinking fountain without restriction.
- 6.2 The student shall be permitted to use the bathroom without restriction.
- 6.3 Elevator pass: As applicable, school staff should ensure the student has access to an elevator if needed and should accompany the student on the elevator wherever possible (students are not issued elevator keys/key cards).

7. Checking Blood Glucose Levels, Insulin and Medication Administration, and Treating High or Low Blood Glucose Levels

- 7.1 The student’s level of self-care is set out in section 3 above including which tasks the student can do by themselves and which must be done with the assistance of, or wholly by, either a school nurse or a TNP.
- 7.2 Blood glucose monitoring will be done at the times designated in the student’s DMAF, whenever the student feels their blood glucose level may be high or low, or when symptoms of high or low blood glucose levels are observed. Nurse(s) or TNP should always minimize the amount of time the student may miss classroom instruction when deciding how to perform or assist a student with their blood glucose testing, with the most appropriate care of the student being priority.
- 7.3 Insulin and/or other diabetes medication will be administered at the times and by the route (e.g., syringe, pen, or pump) prescribed on the student’s DMAF and/or addendum for both scheduled doses and doses needed to correct for high blood glucose levels. Nurses should always minimize the amount of time the student may miss classroom instruction when deciding how to administer insulin, or, for nurses and TNP, to assist a student with administration of insulin, with the most appropriate care of the student being priority.
- 7.4 The 504 Team must discuss and determine the least restrictive environment for diabetes care based on the individual needs of the student and not available resources. Diabetes care may be provided in the classroom or wherever the student is, medical room, or other location, with a goal of minimizing missed instruction time and maximizing time with peers.

Specify the **location** for each diabetes care task:

Lunchtime insulin will be administered _____.

Correction insulin will be administered _____.

Snack time insulin will be administered _____.

Blood glucose will be monitored _____.

Ketones will be monitored _____.

- 7.5 The student shall be provided with privacy for blood glucose monitoring and insulin administration if the student desires.
- 7.6 The student’s usual symptoms of high blood glucose are:

The student’s usual symptoms of low blood glucose are:

Instructions for how to respond to these levels are set out in the DMAF.

- 7.7 When the student asks for assistance or any staff member believes the student is showing signs of high or low blood glucose levels, the staff member will immediately seek assistance from the school nurse or TNP while making sure an adult stays with the student at all times. Never send a student with actual – or suspected – high or low blood glucose levels anywhere alone; ensure the TNP or other adult accompanies the student.

- 7.8 If student becomes unconscious:
1. Glucagon will be administered immediately by paraprofessional or other TNP without checking the blood glucose and 911 must be called.
 2. Contact the school nurse or TNP (if nurse is not available).
 3. Paraprofessional, nurse, or other school personnel should call 911 and remain with the student.
 4. A finger-stick blood glucose shall be done when the student regains consciousness, if 911 has not arrived.
 5. Contact the main office.
 6. Contact student's parent/guardian and physician at the emergency numbers provided below.
- 7.9 If consistent with DMAF orders and does not interfere with treatment, the student may request that school staff, including physical education instructors and coaches, store the student's insulin pump if the student chooses not to wear it during physical activity or any other activity.

8. Transportation, Field Trips, and Extracurricular Activities

- 8.1 [504 Coordinator: check one of the following as applicable after confirming with school's Transportation Coordinator] The DOE shall provide the following for the student's bus ride to and from school each day:
- not applicable (bus transportation ("busing") not provided);
 - transportation nurse;
 - transportation paraprofessional;
 - 504 Team agrees student may ride bus **without** paraprofessional present IF: para's **only** duties are diabetes-related; **AND** bus driver/attendant present are trained in glucagon administration.
 - curb-to-school busing with attendant only;
 - stop-to-school busing with no attendant.
- AND, required for students with busing:**
- completed Bus Driver & Attendant: Quick Action Guide.
- 8.2 The student will be permitted to participate in all DOE field trips and DOE extracurricular activities (such as all DOE after-school activities, sports, clubs, and enrichment programs) without restriction and with all of the accommodations and modifications, including necessary diabetes care by identified school personnel, set out in this Plan. The student's parent/guardian will not be required to, but may choose to, accompany the student on field trips or any other school activity.
- 8.3 The DOE will provide a nurse to administer insulin as needed, or other trained staff to administer all other diabetes care required by a student with diabetes (including, but not limited to, blood glucose monitoring, recognizing and treating hypoglycemia, providing snacks and access to water and the bathroom), as required by their DMAF, for all DOE field trips and DOE extracurricular activities, and will make sure that the student's diabetes supplies travel with the student when accompanying the student on such trips or at such activities. If this staff is not the school nurse, the school nurse shall instruct the assigned staff on the student's 504 Plan and DMAF. In the event the assigned nurse or staff member informs DOE that they are unavailable, DOE will immediately use best efforts to obtain a replacement nurse or staff member. If a nurse or trained staff are not available, the principal must postpone the trip whenever possible, or as a last resort cancel the trip, until care can be arranged.

- 8.4 To the maximum extent possible, the student’s teacher shall notify parent/guardian, principal, and school nurse of any upcoming field trips with at least 2 weeks’ advance notice so that a trip nurse request can be submitted, and at least 30 days in advance for all extended day or overnight trips so that any additional medical orders can be obtained and reviewed, and a trip nurse can be requested.
- 8.5 List all DOE activities and programs the student plans to participate in and specify who will provide diabetes care during the activity/program, what type of diabetes care that individual will provide, and the date they will be/have been trained (e.g., school breakfast, chess club, choir):

Program: _____ Care Needed: _____

Individual to Provide Care: _____ Date of Training: _____

Program: _____ Care Needed: _____

Individual to Provide Care: _____ Date of Training: _____

Program: _____ Care Needed: _____

Individual to Provide Care: _____ Date of Training: _____

Program: _____ Care Needed: _____

Individual to Provide Care: _____ Date of Training: _____

- 8.6 If the student is participating in a non-DOE after-school program, the parent may contact the 504 Coordinator with any concerns about the program’s ability to accommodate the student’s diabetes under their independent non-discrimination obligations.

9. Classroom and Test Accommodations

- 9.1 If the student is affected by high or low blood glucose levels at the time of regular or standardized testing, the student will be permitted to take the test at another time without penalty.
- 9.2 For students who use a CGM, the following accommodations will be used during testing [**Check those appropriate, if any**]:

Student will be permitted to access phone/smart watch, as needed, for diabetes care consistent with most recent DMAF and addendum. Classroom teacher or proctor will monitor student’s phone/smart watch use to preserve test integrity.

- Alternate testing room (for academic exams)
- Placing phone in a secure location and using only a receiver/smart watch to monitor blood glucose
- Disconnecting phone/smart watch from internet (such as using Airplane mode but enabling Bluetooth) to allow student to continue using phone/smart watch to monitor glucose
- _____
- _____
- _____
- _____

- 9.3 If the student needs to take breaks to use the water fountain or bathroom, check blood glucose, or to treat hypoglycemia or hyperglycemia during a test or other activity, the student will be given extra time as needed to finish the test or other activity without penalty.
- 9.4 The student shall be given instruction to help them make up any classroom instruction missed due to diabetes care without penalty.
- 9.5 Absences required for medical appointments and/or for illness shall be excused. The parent/guardian will provide documentation from the treating healthcare professional if otherwise required by school policy.

10. Communication

- 10.1 The school nurse, TNP, and other staff will keep information related to the student's diabetes confidential in accordance with applicable laws, rules, and regulations.
- 10.2 Encouragement is essential. The student should be treated in a way that encourages the student to eat on time, and to progress toward self-care with their diabetes management skills, in collaboration with the student's endocrinologist and family.
- 10.3 The teacher or TNP will provide reasonable notice to parent/guardian and nurse when there will be a change in planned activities such as exercise, playground time, field trips, parties, or lunch schedule, so that the lunch, snack plan, and insulin dosage can be adjusted accordingly.
- 10.4 Each substitute school nurse or Contract Nurse working with the student will be provided with written instructions regarding the student's diabetes care and a copy of the student's DMAF and this Plan. Each substitute teacher working with the student will be provided with information regarding the student's diabetes care and how and when to immediately contact either a school nurse or a TNP.
- 10.5 When a new DMAF is submitted, the parent/guardian will notify the school nurse of new diabetes management treatment, equipment, and/or supplies.
- 10.6 The TNP will notify the nurse of all glucose monitoring and treatments during the school day and will provide the nurse with documentation of all diabetes management responses by the end of the school day for inclusion in the student's medical record.

11. Emergency Evacuation and Shelter-In-Place

- 11.1 In the event of emergency evacuation or shelter-in-place situation, the student's 504 Plan and DMAF will remain in full force and effect.
- 11.2 The school nurse or TNP will provide diabetes care to the student as outlined by this Plan and the student's DMAF, will be responsible for transporting the student's diabetes supplies and equipment, will attempt to establish contact with the student's parent/guardian and provide updates, and will receive information from parent/guardian regarding the student's diabetes care. The school nurse will also receive and convey information to the student's medical provider as indicated.

12. Parent/Guardian Notification

12.1 Notify Parent/Guardian of the Following Situations:

- Symptoms of severe low blood glucose levels [**Insert specific symptoms of severe hypoglycemia for this student**]:

- The student's blood glucose test results are below _____ or are below _____ 15 minutes after consuming juice or glucose tablets.
- Signs and symptoms of severe high blood glucose levels [**Insert specific symptoms of severe hyperglycemia for this student**]: _____]
- Parent/guardian wishes to be contacted for (bg/sensor glucose) above _____ and ketone test results. (DMAF must be followed for treatment).
- The student refuses to eat or take insulin injection or bolus.
- Any injury.
- Insulin pump malfunction whether or not remedied
- Use of the backup insulin route following the pump malfunction
- Other:

13. Emergency Contact Instructions

Call parent/guardian at numbers listed below. If unable to reach parent/guardian, call the other emergency contacts or student's health care providers listed below.

Emergency Contacts

Parent(s)/Guardian(s)

Contact 1

Name: _____ Cell Phone: _____

Home Phone: _____ Work Phone: _____

Contact 2

Name: _____ Cell Phone: _____

Home Phone: _____ Work Phone: _____

Other Emergency Contacts

Contact 1

Name: _____ Cell Phone: _____

Home Phone: _____ Work Phone: _____

Contact 2

Name: _____ Cell Phone: _____

Home Phone: _____ Work Phone: _____

Student's Healthcare Provider(s)

Name: _____ Cell Phone: _____

Home Phone: _____ Work Phone: _____

Signatures

I have received the [DOE Notice of Non-Discrimination under Section 504](#) and Notice of Eligibility. By signing, I consent to the provision of accommodations to my child as written above.

Approved and Received

Parent/Guardian Signature: _____ Date: _____

Approved and Received

School Administrator Signature: _____

Title: _____ Date: _____

Office of School Health Nurse Signature (if applicable): _____

Date: _____

Exhibit B

MEMORANDUM OF UNDERSTANDING

Revision of Timelines for Section 504 Plans for Returning Students with Diabetes

M.F., et al., v. N.Y.C. Dep't of Educ., et al.

18-CV-6109 (NG)(SJB)

This Memorandum of Understanding (“MOU”) memorializes the agreement of the parties regarding the implementation of revised timelines in which the New York City Department of Education (“DOE”), Office of School Health (“OSH”), and Department of Health and Mental Hygiene (“DOHMH”), collectively “Defendants,” develop and implement Section 504 Plans to ensure that returning students with diabetes receive appropriate services and reasonable accommodations in accordance with Section 504 of the Rehabilitation Act of 1973 (“Section 504”), the Americans with Disabilities Act (“ADA”), and New York City Human Rights Law (“NYCHRL”). The parties intend to incorporate this MOU into a negotiated Stipulation of Settlement to be agreed to among the parties and so-ordered by the Court, and over which the Court will retain jurisdiction as specified in the Stipulation of Settlement. The previous version of this MOU executed on August 2, 2019 for the 2019-2020 school year, is superseded by this MOU. All dates that run from “execution of this agreement” shall run from the first day of the 2021-2022 school year.

I. DEFINITIONS

This MOU incorporates by reference all definitions contained within the Stipulation of Settlement.

II. PROCESS FOR DEVELOPING AND IMPLEMENTING SECTION 504 PLANS FOR RETURNING STUDENTS

It is the parties’ mutual understanding and intent that the below process will be followed to develop and adopt the following timelines for the acceptance of returning student DMAFs and draft Section 504 Plans, and finalizing Section 504 Plans:

- A. By the target date of April 1, but by no later than May 1 of each school year, the DOE will post on its website the DMAFs for the next school year. Before the DMAF is posted,

the DOE will deliver to schools a reauthorization letter to be distributed to all returning students who are currently receiving Section 504 services directing them to submit a new DMAF and request for Section 504 services for the following school year.

- 1) The reauthorization letter will recommend that parents and/or students submit the completed DMAFs by an identified date certain, typically June 1, and include instructions on how to submit the forms. Information on the reauthorization process, including the relevant forms, must also be posted on the DOE website.
 - 2) The DOE website will list a phone number for parents to use to follow up on the status of their DMAFs (the “DMAF Hotline”).
- B. As soon as the new DMAFs are posted on the DOE website, DOE and OSH will begin accepting updated DMAFs, and begin their internal process of review, if applicable.
 - C. As soon as the reauthorization letter has been disseminated, DOE will also begin accepting requests for Section 504 services and scheduling Section 504 Meetings throughout the remainder of the school year.
 - D. The Section 504 Coordinator at each school, or other DOE designee, will follow up with all parents of returning students who are known to have diabetes but have not submitted a request for Section 504 services and/or revised DMAF to remind them to submit as soon as practicable, and before the end of the current school year for the upcoming school year, and to discuss scheduling a 504 Meeting to take place prior to the end of the current school year.
 - E. All returning students with diabetes should be contacted and made aware of Section 504 services every year, regardless of past history of services. The submission of a DMAF is not required for the parent or DOE to request a Section 504 Meeting.
 - F. Section 504 Coordinators will schedule a Section 504 Meeting on behalf of a returning student to take place within fifteen school days of receipt of the request, or prior to the end of the school year, whichever is sooner, regardless of whether OSH has completed any review of the student’s DMAF for the upcoming school year. If the returning student’s parent is unable to participate in a 504 Meeting under the above described timeframe, DOE may schedule the meeting at a later date that accommodates the parent’s schedule.
 - G. The Section 504 Teams are required and will be reminded to use the Template Section 504 Plan, attached to the Stipulation of Settlement as Exhibit ___, as the basis for all Section 504 Plans for students with diabetes. However, the Template Section 504 Plan is intended to be flexible and individualized, and Section 504 Teams should incorporate any additional information, dates, timelines, or services they deem appropriate, and omit or strike any provisions deemed inapplicable.
 - H. Prior to the Section 504 Meeting, a school-based member of the Section 504 Team should consult with any other individual(s) with the authority to provide the requested accommodations, such as paraprofessional services and nursing services, if such individual(s) will not be present at the Section 504 Meeting. The Section 504 Program Manager and Health Directors are resources for the Section 504 Team. The school nurse, or Borough Nursing Director, or Nursing Supervisor, or Diabetes Team Educator, must be a part of the Section 504 Team. The decision about whether a student will be assigned a paraprofessional, or any other services or accommodations, is strictly within the purview of the student’s Section 504 Team. Consistent with DOE’s obligation to provide FAPE, accommodations shall not be denied on the basis of cost or available funding.

- I. A Section 504 Plan for the returning student shall be approved at the conclusion of the Section 504 Meeting when possible, or as soon thereafter as possible. If a Plan cannot be finalized at the Meeting, DOE will finalize plans to the extent possible no later than the end of the school year.
- J. DOE will ensure that approved plans are provided to the returning student's family, and begin its process of identifying and training staff to meet the needs laid out in the approved Section 504 Plans.

Date: April 30, 2021

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Exhibit C

MEMORANDUM OF UNDERSTANDING

Provision of Care and Revision of Timelines for Section 504 Plans for New Students with Diabetes

M.F., et al., v. N.Y.C. Dep't of Educ., et al.

18-CV-6109 (NG)(SJB)

This Memorandum of Understanding (“MOU”) memorializes the agreement of the parties regarding the implementation of revised timelines in which the New York City Department of Education (“DOE”), Office of School Health (“OSH”), and Department of Health and Mental Hygiene (“DOHMH”), collectively “Defendants,” develop and implement Section 504 Plans to ensure that students with diabetes who had not previously received diabetes-related care or services in a DOE school or transferred from another DOE school receive appropriate services and reasonable accommodations in accordance with Section 504 of the Rehabilitation Act of 1973 (“Section 504”), the Americans with Disabilities Act (“ADA”), and New York City Human Rights Law (“NYCHRL”). The parties intend to incorporate this MOU into a negotiated Stipulation of Settlement to be agreed to among the parties and so-ordered by the Court, and over which the Court will retain jurisdiction as specified in the Stipulation of Settlement. The parties executed this MOU on April 30, 2021 and all dates that run from “execution of this agreement” shall run from the first day of the 2021-2022 school year.

I. DEFINITIONS

This MOU incorporates by reference all definitions contained within the Stipulation of Settlement.

II. PROCESS FOR PROVIDING DIABETES-RELATED CARE FOR NEW STUDENTS

It is the parties' mutual understanding and intent that the below process will be followed to provide diabetes-related care for New Students who are unable to self-manage their care during the pendency of the school's Section 504 planning process:

- A. All students are entitled to receive diabetes-related care during all school days in which a Finalized DMAF (as described in Section II(2) below) is available to the school nurse.
- B. The parent(s) will provide the school nurse with the child's DMAF and/or submit it via fax to the OSH Central office.
 - 1) The OSH staff nurse will exercise professional judgment and will implement a fully complete and unambiguous DMAF ("Finalized DMAF"). This includes revisions to the DMAF made during the school year.
 - i. If the DMAF is incomplete or unclear, the OSH nurse will promptly contact the OSH Central office. The OSH Central office will then contact the student's physician or parent to clarify the DMAF with the aim of implementing the clarified/completed DMAF as soon as practicable.
 - ii. If, in the exercise of professional judgment, the OSH staff nurse believes they must first consult with the OSH Central office on a matter relating to implementation of the DMAF, other than incomplete or unclear information, the nurse will promptly do so with the aim of resolving the issue as soon as possible so that the DMAF can be implemented.
 - 2) DMAFs received by a contract nurse must be reviewed by the OSH Central office before implementation. The contract nurse shall immediately submit to OSH Central for priority processing by the OSH physician any DMAFs they receive directly while assigned to a DOE school:
 - i. The OSH physician will immediately review the DMAF and, if complete and unambiguous, will finalize the DMAF and transmit it back to the contract nurse as soon as possible but no later than the end of the following school day.
 - ii. If the DMAF cannot be processed immediately because discussion with the ordering physician is required, OSH staff will notify the nurse as soon as possible but no later than the end of the following school day of the reason for the delay, and OSH staff will contact the parent.
 - iii. The OSH Central office shall contact the contract nurse as soon as the DMAF physician review is complete thus finalizing the DMAF, and fax them the DMAF to immediately implement.
- C. As soon as possible following DOE's receipt of a DMAF, and in any event no later than five school days following such receipt, unless additional time is necessary to accommodate a parent's schedule, the DOE will convene a meeting with the parent, school nurse, Diabetes Team if possible, and a school administrator with authority over school-based teachers, paraprofessionals, and staff, such as a principal or assistant principal, and the school-based 504 Coordinator, to discuss the student's needs between when the Finalized DMAF is available and when a final Section 504 Plan can be

adopted and implemented. This meeting may happen by teleconference or other electronic means.

- 1) The parent, nurse, and other school personnel will: discuss plans for Level 1 and/or Level 2 training; and discuss and document an interim arrangement for providing the student care and services between when the Finalized DMAF is available and when a final Section 504 Plan can be implemented, such as blood glucose monitoring, insulin administration, and accommodations such as access to food and water during the school day.
 - 2) Following the meeting, any Level 1 or Level 2 training will be provided, pursuant to the timelines set forth in the Adults with Responsibility Training MOU, to ensure the student can safely attend school, regardless of whether a formal Section 504 Meeting has taken place or a Section 504 Plan approved. This may include training a teacher or other adult to recognize the signs and symptoms of hypo- and hyperglycemia and assist with blood glucose monitoring.
 - 3) The provisions laid out at this initial meeting to ensure the student may safely attend school between when the Finalized DMAF is available and a final Section 504 Plan has been approved are no substitute for a formal, appropriate Section 504 Meeting and Plan, which will be adopted as soon as possible pursuant to the dates set forth in Section III below.
- D. A student's parent or family member shall not be expected or required to provide any diabetes-related care for the student during their participation in DOE-sponsored programs or activities. The student's parent must provide medication, supplies, and/or food as outlined in the DMAF (including any addenda) and/or Section 504 Plan.

III. PROCESS FOR DEVELOPING AND IMPLEMENTING SECTION 504 PLANS FOR NEW STUDENTS

- A. All students will be permitted to submit to OSH a DMAF and request for 504 services on a rolling basis throughout the summer and the school year.
- B. For New Students who have submitted a DMAF or request for 504 services prior to the start of the school year, DOE will schedule a Section 504 Meeting on behalf of that student, in consultation with the parent and other Section 504 Team members, to take place prior to the first day of school whenever possible, and when health services are requested, no later than fifteen school days after the first day of school, unless additional time is necessary to accommodate a parent's schedule. This section shall also apply to students transferring from one DOE school to another.
- C. For New Students who have submitted a DMAF or request for 504 services during the school year, the school-based 504 Coordinator will hold a Section 504 Meeting on behalf of that student, in consultation with the parent and other Section 504 Team members, as soon as possible, and when health services are requested, no later than fifteen school days from the receipt of the DMAF or request for health services, unless additional time is necessary to accommodate a parent's schedule. This section shall also apply to students transferring from one DOE school to another.
- D. Students will begin receiving diabetes-related care as needed as soon as a Finalized DMAF is received regardless of whether a Section 504 Meeting has been scheduled

- or has taken place. Similarly, Section 504 Meetings can be held, and Section 504 Plans reviewed, regardless of whether OSH has completed its review of the DMAF.
- E. Prior to the Section 504 Meeting, a school-based member of the Section 504 Team should consult with any other individual(s) with the authority to provide the requested accommodations, such as paraprofessional services and nursing services, if such individual(s) will not be present at the Section 504 Meeting. The Section 504 Program Manager and Health Directors are resources for the Section 504 Team. The school nurse, Borough Nursing Director, Nursing Supervisor, or Diabetes Team Member, must be a part of the Section 504 Team.
 - F. The decision about whether a student will be assigned a paraprofessional, or any other services or accommodations, is strictly within the purview of the student's Section 504 Team. Consistent with DOE's obligation to provide FAPE, accommodations shall not be denied on the basis of cost or available funding. The Section 504 Team will use the Template Section 504 Plan, attached as Exhibit A (and as may be updated by the DOE from time to time), as the basis for all Section 504 Plans for students with diabetes. However, the Template Section 504 Plan is intended to be flexible, and 504 Teams should incorporate any additional information, dates, timelines, or services they deem appropriate, and omit or strike any provisions deemed inapplicable.
 - G. A Section 504 Plan for the student shall be approved at the conclusion of the Section 504 Meeting when possible, or as soon as possible after the meeting if review outside of the Section 504 Team is still occurring as of the time of the meeting. DOE will ensure that the approved Section 504 Plan is provided to the student's parent and the Section 504 Team and will promptly identify and train staff to meet the needs laid out in the approved Section 504 Plan, if it has not done so already.

Date: April 30, 2021

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Exhibit D

MEMORANDUM OF UNDERSTANDING

Training for Paraprofessionals Providing Diabetes Care Pursuant to a Section 504 Plan

M.F., et al., v. N.Y.C. Dep't of Educ., et al.

18-CV-6109 (NG)(SJB)

This Memorandum of Understanding (“MOU”) memorializes the agreement of the parties regarding the implementation of changes to the practices in which the New York City Department of Education (“DOE”), Office of School Health (“OSH”), and Department of Health and Mental Hygiene (“DOHMH”), collectively “Defendants,” train Paraprofessionals delivering any aspect of diabetes care to a student to ensure students with diabetes receive appropriate services and reasonable accommodations in accordance with Section 504 of the Rehabilitation Act of 1973 (“Section 504”), the Americans with Disabilities Act (“ADA”), and New York City Human Rights Law (“NYCHRL”). The parties intend to incorporate this MOU into a negotiated Stipulation of Settlement to be agreed to among the parties and so-ordered by the Court, and over which the Court will retain jurisdiction as specified in the Stipulation of Settlement. The parties executed this MOU on March 5, 2021 and all dates that run from “execution of this agreement” shall run from the first day of the 2021-2022 school year.

I. DEFINITIONS

This MOU incorporates by reference all definitions contained within the Stipulation of Settlement.

II. TRAINING

A. Initial training prior to Paraprofessional caring for student with diabetes

- i. As soon as a Section 504 Team has determined that the assignment of a Paraprofessional is appropriate, the school Principal or their designee will promptly, and within five school days of the determination, identify a Paraprofessional to perform all the diabetes-related care tasks required to be performed by the Paraprofessional as set forth in the student’s DMAF

and Section 504 Plan. If a Paraprofessional cannot be identified within five school days of the determination, the school Principal or their designee must promptly notify the Section 504 Program Manager for assistance, and in such instances, a Paraprofessional must be identified within ten school days of the determination.

- ii. All Paraprofessionals assigned to a student with diabetes with a Finalized DMAF will receive Level 2 Training, regardless of whether a Section 504 Plan has been approved.
- iii. Level 2 Training will be conducted either in person (delivered by a Diabetes Team Nurse, a Nursing Supervisor, or staff school nurse) or in webinar format. Student-specific and skills-based training as described in Section II(C) shall be delivered in person.
- iv. Paraprofessionals will receive Level 2 training on the following timelines:
 - 1. Paraprofessionals assigned to a returning student will receive Level 2 training before the start of the school year.
 - 2. Paraprofessionals assigned to new students who submit their DMAF after the start of the school year, students diagnosed mid-school year, or transferred students, will receive Level 2 training as soon as possible, but no later than ten school days of assignment.
- v. The specific diabetes care tasks a Paraprofessional must perform will differ for each child, and will be set forth in the student's Section 504 Plan. Paraprofessionals will be provided student-specific training tailored to the individual students' needs consistent with Section II(C) below. The 504 Coordinator will promptly inform the parent of a student when the Paraprofessional training is complete.

B. Refresher Training

- i. A refresher training will be provided annually to all Paraprofessionals who received the initial Level 2 training in a previous school year and who continue to be assigned to students with diabetes in subsequent school years.

C. Student-Specific and Skills-Based Training:

- i. Following the Level 2 training described in Section II(A)(ii)-(iv), the staff school nurse, or, where there is no staff school nurse, the Diabetes Team Nurse or a Nursing Supervisor, will provide the Paraprofessional with student-specific training, including skills-based training relevant to the individual student's needs.
- ii. Student-specific training shall be provided as soon as possible, and no later than ten school days after the start of the school year for returning students, or ten school days after the Paraprofessional's assignment to a new, newly diagnosed or transferred student, except that for students learning only remotely at the time of assignment, student-specific training shall be provided within ten school days of the student's return to in-person instruction.

- iii. Skills-based training includes a Paraprofessional demonstrating each skill to the trainer.
- iv. Additional student-specific training will be provided as needed when clinically appropriate.

D. Additional Training

- i. Additional training may be provided to correct or improve a Paraprofessional's specified skills or knowledge. It will be provided in addition to the initial or refresher training to Paraprofessionals at any point during the school year under the following circumstances:
 - 1. A parent, school nurse, school staff member, or the student receiving diabetes care requests additional training be provided and the school nurse, Diabetes Team Nurse, or Nursing Supervisor supports the need for additional training.
 - 2. The school nurse, Diabetes Nurse, or Nursing Supervisor observes that additional training is clinically appropriate.
 - 3. Additional training may be needed because there is a new aspect of a student's diabetes treatment regimen or because additional training is clinically appropriate. When a parent requests that the Paraprofessional receive additional training, the parent should submit the request to the Section 504 Coordinator who shall forward the request to the school nurse, who shall in conjunction with the Diabetes Team assess whether additional training is needed.
- ii. If one of the scenarios in Section II(D)(i) occurs, Defendants will provide the training as soon as possible to avoid any interruption in care for the student with diabetes, but no later than ten school days after the need has been identified.
- iii. Additional training may be provided by, in order of preference, a school nurse, a Nursing Supervisor, a Diabetes Team Nurse, a representative from a diabetes technology company (if the training needed relates to diabetes technology), or other appropriately trained personnel.
- iv. Additional training may also consist of repeating the Level 2 webinar.

III. RECORDKEEPING AND REPORTING

- A. Completion of Level 2 training will be tracked.

Date: March 5, 2021

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Exhibit E

MEMORANDUM OF UNDERSTANDING

Training for Department of Education and Department of Health and Mental Hygiene School Nurses

M.F., et al., v. N.Y.C. Dep't of Educ., et al.

18-CV-6109 (NG)(SJB)

This Memorandum of Understanding (“MOU”) memorializes the agreement of the parties regarding the implementation of changes to the practices in which the New York City Department of Education (“DOE”), Office of School Health (“OSH”), and Department of Health and Mental Hygiene (“DOHMH”), collectively “Defendants,” train DOE and DOHMH nurses delivering any aspect of diabetes care to a student to ensure students with diabetes receive appropriate services and reasonable accommodations in accordance with Section 504 of the Rehabilitation Act of 1973 (“Section 504”), the Americans with Disabilities Act (“ADA”), and New York City Human Rights Law (“NYCHRL”). The parties intend to incorporate this MOU into a negotiated Stipulation of Settlement to be agreed to among the parties and so-ordered by the Court, and over which the Court will retain jurisdiction as specified in the Stipulation of Settlement. The parties executed this MOU on April 30, 2021 and all dates that run from “execution of this agreement” shall run from the first day of the 2021-2022 school year.

I. DEFINITIONS

This MOU incorporates by reference all definitions contained within the Stipulation of Settlement.

II. ANNUAL INITIAL OR REFRESHER TRAINING

- A. Defendants agree to work with the American Diabetes Association to update and improve the annual diabetes training materials described below; and that a representative from the American Diabetes Association will be permitted to observe the annual initial and refresher diabetes training each year. The American

Diabetes Association agrees to refrain from participating in the training sessions and will provide any feedback in writing to Defendants' counsel to share with OSH.

B. Initial training on diabetes is required for all new DOE and DOHMH nurses during their nursing orientation, which shall take place within six weeks of the new nurse's first day of employment. New nurses are not placed at a school until orientation is complete. In subsequent years, refresher training on diabetes is required for all DOE and DOHMH nurses prior to the start of the school year or as soon as possible thereafter.

C. Trainers

- 1) Annual training will be performed by, in order of preference, a member(s) of the OSH Diabetes Team, a qualified Nursing Supervisor, a Borough Nursing Director, or central office nurse.
- 2) Training modules, information, materials, and resources will be reviewed and updated annually as needed by the Diabetes Team in conjunction with OSH leadership.

D. Content of Training

- 1) Nurses will receive training on Section 504 and the rights of students with diabetes in schools, and the procedures they might participate in, including:
 - i. Referring a student for Section 504 services;
 - ii. Participating in a Section 504 Meeting and the role of the school nurse on the Section 504 Team;
 - iii. What is required for a Section 504 Plan, including who is responsible for providing the services listed in the Section 504 Plan, as well as understanding common accommodations for students with diabetes.
- 2) Content will include hypo- and hyperglycemia; blood glucose monitoring; insulin administration via pen, syringe, and pump; glucagon administration; ketone monitoring; diabetes devices and technology; parental dosing adjustments; psychosocial aspects of diabetes; and the DMAF.
- 3) Nurses will receive training on the functions of the Diabetes Team and how they will collaborate with school nurses, which will include:
 - i. How the Diabetes Team may support the school nurse with any questions regarding the implementation of a Finalized DMAF immediately upon receipt. How the Diabetes Team can support a school nurse in working with school staff and parents to develop an interim plan of care upon receipt of the finalized DMAF.
 - ii. How the Diabetes Team or other appropriately trained OSH staff may assist the school nurse in participating in the 504 Meeting or attending the 504 Meeting on the school nurse's behalf.
 - iii. Referring a student for Section 504 services.
 - iv. Receiving and providing additional student-specific training as needed, particularly as it relates to student-specific technology such as Continuous Glucose Monitors and insulin pumps.
 - v. Assisting the school nurse as needed when questions arise regarding which school staff and paraprofessionals require training on diabetes and delivering such training.

- vi. Providing regular quality assurance checks on school nurses and trained school staff as time permits.
 - vii. Providing advanced technical assistance to school nurses with questions concerning particular aspects of diabetes care.
- 4) An update on technology and recent developments in diabetes care, which will be reviewed annually to determine whether any changes are necessary.

E. Evaluating Competence

- 1) OSH will use Pre- and Post-Training Competency Assessments to evaluate nurse competency on diabetes generally. These assessments will be reviewed annually by OSH and updated as needed.
- 2) Pre- and Post-Training Competency Assessments will be completed by all nurses during the annual initial or refresher training on diabetes. Post-Training Competency Assessments will be immediately scored and returned to the nurses at the training, with a score of 80% required to pass. The trainers administering the Post-Training Competency Assessments will then review all answers to the Competency Assessments with all nurses in a group setting to ensure that everyone fully understands each concept tested, and any question they have gotten wrong. If a nurse fails the Competency Assessment, they must meet with a Diabetes Team Nurse one-on-one no more than 1 week after the training to discuss the concepts addressed in the questions that the nurse answered incorrectly.
- 3) OSH will maintain Competency Checklists for nurses. These checklists will be reviewed annually by OSH and updated as needed. OSH will consider and incorporate feedback from the American Diabetes Association as needed. Each nurse, during annual initial or refresher training, must prove competence in general diabetes care tasks by successfully demonstrating all skills on the Competency Checklist to a nurse trainer.

III. ADDITIONAL TRAINING

A. Additional training may be provided to correct or improve a nurse's specified skills or knowledge. It will be provided in addition to the annual initial or refresher training to nurses at any point during the school year under the following circumstances:

- 1) A parent, school nurse, school staff member, or the student receiving diabetes care requests additional training be provided and the Diabetes Team nurse or Nursing Supervisor supports the need for additional training.
- 2) The Diabetes Nurse or Nursing Supervisor observes that additional training is clinically appropriate.
- 3) Additional training may be needed because a student with diabetes is diagnosed or enters school after the start of the school year, there is a new aspect of a student's diabetes treatment regimen, or because additional training is clinically appropriate. When a parent requests that the school nurse receive additional training, the parent should submit the request to the Section 504 Coordinator who shall forward the request to the Nursing

Supervisor, who shall in conjunction with the Diabetes Team assess whether additional training is needed.

- B. If one of the scenarios in Section III(A) occurs, Defendants will provide the training as soon as possible to avoid any interruption in care for the student with diabetes, but no later than five school days after the need has been identified.
- C. Additional training may be provided by, in order of preference, a Diabetes Team Nurse, a Diabetes Team Nurse Supervisor, a Nursing Supervisor, a representative from a diabetes technology company (if the training needed relates to diabetes technology), a pediatric diabetes provider, or other appropriately trained personnel.
- D. Competence will be evaluated in the same way as for annual training described in Section II(E) above, except that:
 - 1) If the need for additional training pertains solely to a particular skill, such as operation of a particular piece of diabetes technology, demonstrating competency on the identified skill will suffice.

IV. STUDENT-SPECIFIC TRAINING

- A. Student-specific training is training pertaining to a particular student with diabetes. Student-specific training may include topics such as how to operate that student's diabetes technology and that student's common symptoms of hyper- and hypoglycemia.
- B. Student-specific training will be provided under the following circumstances:
 - 1) Following approval of the student's first DMAF or as needed when changes to the DMAF have been made;
 - 2) When a student with diabetes enters a new school;
 - 3) When a new nurse is assigned to a school with a student with diabetes; and
 - 4) When a nurse has specific questions relating to any aspect of a student's diabetes management.
- C. When student-specific training is needed, OSH will provide the training as soon as possible, but no later than five school days after a need for student specific training is identified.
- D. Student-specific training may be provided by, in order of preference, a Diabetes Team Nurse, a Diabetes Team Nurse Supervisor, a Nursing Supervisor, a representative from a diabetes technology company (if the training needed relates to diabetes technology), or other appropriately trained personnel. Student-specific training should occur in consultation with the student's parent or guardian.
- E. Competence will be evaluated in the same way as for annual training described in Section II(E) above, except that:
 - 1) If the need for student-specific training pertains solely to a particular skill or skills, such as operation of a particular piece of diabetes technology, demonstrating competency on the identified skill will suffice.

V. RECORDKEEPING

- A. OSH shall track results of all Pre- and Post-Tests and Competency Checklists taken by nurses for annual, refresher, additional, and student-specific training.

Date: April 30, 2021

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Exhibit F

MEMORANDUM OF UNDERSTANDING

Training for Contract Agency Nurses

M.F., et al., v. N.Y.C. Dep't of Educ., et al.

18-CV-6109 (NG)(SJB)

This Memorandum of Understanding (“MOU”) memorializes the agreement of the parties regarding the implementation of changes to the practices in which the New York City Department of Education (“DOE”), Office of School Health (“OSH”), and Department of Health and Mental Hygiene (“DOHMH”), collectively “Defendants,” ensure that contract nurses delivering diabetes care to a student with diabetes receive training so that students with diabetes receive appropriate services and reasonable accommodations in accordance with Section 504 of the Rehabilitation Act of 1973 (“Section 504”), the Americans with Disabilities Act (“ADA”), and New York City Human Rights Law (“NYCHRL”). The parties intend to incorporate this MOU into a negotiated Stipulation of Settlement to be agreed to among the parties and so ordered by the Court, and over which the Court will retain jurisdiction as specified in the Stipulation of Settlement. The parties executed this MOU on April 29, 2021 and all dates that run from “execution of this agreement” shall run from the first day of the 2021-2022 school year.

I. DEFINITIONS

This MOU incorporates by reference all definitions contained within the Stipulation of Settlement.

II. ANNUAL INITIAL OR REFRESHER TRAINING

- A. Initial training on diabetes is required for all new contract nurses during their orientation. New nurses are not placed at a school until orientation is complete.
- B. In subsequent years, refresher training on diabetes is required for all contract nurses prior to the start of the school year or as soon as possible thereafter.
- C. Content of Training

- i. OSH will continue to deliver to contract agencies the same training materials on diabetes as OSH delivers to its staff nurses.
- ii. These training materials will include the following content:
 1. Section 504 and the rights of students with diabetes in schools, and the procedures they might participate in, including:
 - a. Referring a student for 504 services;
 - b. Participating in a Section 504 Meeting and the role the nurse plays on the Section 504 Team;
 - c. What is required for a section 504 Plan, including who is responsible for providing the services listed in the Section 504 Plan, as well as understanding common accommodations for students with diabetes.
 2. Diabetes care, including hypo- and hyperglycemia; blood glucose monitoring; insulin administration via pen, syringe, and pump; glucagon administration; ketone monitoring; diabetes devices and technology; parental dosing adjustments; psychosocial aspects of diabetes; and the DMAF.
 3. The functions of the Diabetes Team and how they will collaborate with contract nurses providing diabetes care to students, to include:
 - a. How the Diabetes Team may support the contract nurse with any questions regarding the implementation of a Finalized DMAF immediately upon receipt.
 - b. How the Diabetes Team can support a contract nurse in working with school staff and parents to develop an interim plan of care upon receipt of the finalized DMAF.
 - c. How the Diabetes Team or other appropriately trained OSH staff may assist the contract nurse in participating in the 504 Meeting or attending the 504 Meeting on the school nurse's behalf.
 - d. Referring a student for Section 504 services.
 - e. Receiving and providing additional student-specific training as needed, particularly as it relates to student-specific technology such as Continuous Glucose Monitors and insulin pumps.
 - f. Assisting the contract nurse as needed when questions arise regarding which school staff and paraprofessionals require training on diabetes and delivering such training.
 - g. Providing regular quality assurance checks on contract nurses and trained school staff as time permits.
 - h. Providing technical assistance to contract nurses with questions concerning particular aspects of diabetes care.
 4. An update on technology and recent developments in diabetes care, which OSH will review annually to determine whether any changes are necessary.

D. Evaluating Competence

- i. The annual diabetes training materials OSH provides to the contract agencies includes Pre- and Post-Tests. Post-Training Competency Assessments will be immediately scored and returned to the contract nurses at the training, with a score of 80% required to pass. The trainers administering the Post-Training Competency assessments will then review all answers to the Competency Assessments with all nurses in a group setting to ensure that everyone fully understands each concept tested, and any question they have gotten wrong. If a contract nurses fails the Competency Assessment, they must receive additional one-on-one training, with a target date of 1 week but no more than 2 weeks after the training to discuss the concepts addressed in the questions that the nurse answered incorrectly.
- ii. The annual training also requires each contract nurse to prove competence in general diabetes care tasks by successfully demonstrating all skills on the OSH competency checklist to a contract nurse trainer.

III. ADDITIONAL TRAINING

- A. Additional training may be provided to contract nurses to correct or improve specified skills or knowledge. It will be provided in addition to the initial or refresher annual training to contract nurses under the following circumstances:
 - i. A parent, school nurse (when there is a staff school nurse in addition to the contract nurse assigned to the school), school staff member, or the student receiving diabetes care requests that the contract nurse receive additional training and the Diabetes Resource Unit nurse or Nurse Supervisor supports the need for additional training.
 - ii. A Diabetes Nurse or Nursing Supervisor observes that additional training is clinically appropriate.
 - iii. The contract nurse requests additional training.
 - iv. Additional training may be needed because a student with diabetes is diagnosed or enters school after the start of the school year, there is a new aspect of a student's diabetes treatment regimen, or because additional training is clinically appropriate. When a parent requests that the contract nurse receive additional training, the parent should submit the request to the Section 504 Coordinator who shall forward the request to contract Nursing Supervisor, who shall in conjunction with the Diabetes Team assess whether additional training is needed.
- B. If one of the scenarios in Section III(A) occurs, the contract Nurse Supervisor overseeing the contract nurse is responsible for ensuring the contract nurse receives the training as soon as possible to avoid any interruption in care for the student with diabetes, with a target date of five school days but no later than 10 school days after the need has been identified.

- C. Additional training will be provided in person when possible, or if the contract nurse is unable to perform basic diabetes-related tasks. When impossible to convene in person, additional training will be provided live by video conference.
- D. Additional training may be provided by, in order of preference, a contract Nurse Supervisor, Diabetes Resource Nurse, a Diabetes Resource Nurse Supervisor, a Nursing Supervisor, a Borough Nursing Director, a central office nurse, a representative from a diabetes technology company (if the training needed relates to diabetes technology), a pediatric diabetes provider, or other appropriately trained personnel. Competence will be evaluated in the same way as for the annual training described in Section II(D) above, except that:
If the need for additional training pertains solely to a particular skill, such as operation of a particular piece of diabetes technology, demonstrating competency on the identified skill will suffice.

IV. STUDENT-SPECIFIC TRAINING

- A. Student-specific training is training pertaining to a particular student with diabetes. Student-specific training may include topics such as how to operate that student's diabetes technology and that student's common symptoms of hyper- and hypoglycemia.
- B. Student-specific training will be provided when a contract nurse is assigned to a school with a student with diabetes.
- C. Defendants agree to develop, maintain, and (as appropriate) update, a training library of diabetes care video resources for all core diabetes care tasks.
- D. All contract nurses assigned to treat a student with diabetes must complete a form attesting to the contract nurse's agency and OSH that they are either already trained and ready to perform all core diabetes care tasks or have viewed the diabetes care video resource provided to the contract nurse agency by OSH relevant to the student's needs.
- E. If necessary, a school nurse may receive additional student-specific training from, in order of preference, a contract Nurse Supervisor, a Diabetes Resource Nurse, Diabetes Resource Nurse Supervisor, a Nursing Supervisor, a Borough Nursing Director, a central office nurse, a representative from a diabetes technology company (if the training needed relates to diabetes technology), or other appropriately trained personnel.
- F. When student-specific video- training is required as described in Section IV(C), such training must be received no later than the next school day after a need for such training is identified and before beginning to treat the student.

V. RECORDKEEPING AND PROCESS FOR IMPLEMENTATION

- A. Contract agencies shall be required to record all scores on attempted and completed Pre- and Post-Tests and completion of Competency Checklists and report them to Defendants.
- B. Defendants agree that they will submit the proposed attestation form referred to in Section IV(D) to Plaintiffs for advance review.

C. Plaintiffs will have fifteen business days to respond and/or approve the proposed revisions. If Plaintiffs fail to respond within ten business days, the form will be deemed approved by Plaintiffs. If Plaintiffs express concerns with the proposed form or have revisions, the parties will meet and confer and Defendants have fifteen business days to respond and/or accept the proposed revisions. If there are further revisions from Defendants, Plaintiffs once again have fifteen business days to respond and/or approve the proposed revisions, continuing the process described above until agreement is reached.

Date: April 29, 2021

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Exhibit G

MEMORANDUM OF UNDERSTANDING

Training for School Staff Identified as Diabetes Training Recipients

M.F., et al., v. N.Y.C. Dep't of Educ., et al.

18-CV-6109 (NG)(SJB)

This Memorandum of Understanding (“MOU”) memorializes the agreement of the parties regarding the implementation of changes to the practices in which the New York City Department of Education (“DOE”), Office of School Health (“OSH”), and Department of Health and Mental Hygiene (“DOHMH”), collectively “Defendants,” train school staff other than paraprofessionals who are identified as diabetes training recipients in order to ensure students with diabetes receive appropriate services and reasonable accommodations in accordance with Section 504 of the Rehabilitation Act of 1973 (“Section 504”), the Americans with Disabilities Act (“ADA”), and New York City Human Rights Law (“NYCHRL”). The parties intend to incorporate this MOU into a negotiated Stipulation of Settlement to be agreed to among the parties and so-ordered by the Court, and over which the Court will retain jurisdiction as specified in the Stipulation of Settlement. The parties executed this MOU on April 30, 2021 and all dates that run from “execution of this agreement” shall run from the first day of the 2021-2022 school year.

I. DEFINITIONS

This MOU incorporates by reference all definitions contained within the Stipulation of Settlement.

II. TRAINING

A. Staff to be Trained

- 1) It is the responsibility of the school-based Section 504 Coordinator to identify during the development of the individual student’s Diabetes Section 504 Plan, in conjunction with OSH (*e.g.*, school nurse, Diabetes Team Nurse, a Nursing Supervisor, a Borough Nursing Director, or central

office nurse) the DOE school staff to receive Level 1 and/or Level 2 Training.

- 2) Defendants will provide Level 1 Training to any staff member who is responsible for a student with diabetes at any time during school hours, DOE extracurricular activities, or DOE field trips. This may include but is not limited to a student's: classroom teacher(s), special subject teachers (e.g., physical education, art, music), DOE coaches or teachers supervising before or after school activities, administrators, and/or counselors.
- 3) The number of Level 2 training recipients must be sufficient to ensure that at least one trained school staff member is available to assist with diabetes care during the school day and on field trips or other school-related activities as needed.

B. School Staff Training

- 1) During the 2020-2021 school year, staff who have been identified for the first time as a training recipient in the Section 504 Plan of a student with diabetes shall complete the Level 1 or Level 2 training or their equivalent. In subsequent school years, such staff shall complete the Level 1 training within ten school days of having been identified, or Level 2 training within fifteen school days of having been identified.
- 2) If a staff member has previously undergone Level 1 or Level 2 training, and is identified in a student's 504 Plan in subsequent years, they will be required to complete the training again, within ten (Level 1) or fifteen (Level 2) school days of having been identified.
- 3) In order of preference, a school nurse, Diabetes Team Nurse, Nursing Supervisor, or other appropriately trained OSH staff will deliver Level 2 training.
- 4) A member of OSH will be available to school staff, both before and after they are trained, to answer questions related to diabetes care tasks.
- 5) Staff completing Level 2 training must successfully demonstrate the particular skills they will be responsible for performing to the nurse or OSH staff delivering the Level 2 training.

III. TRAINING MATERIALS

- A. The American Diabetes Association will review any Level 1 and Level 2 training materials developed by Defendants.
- B. Defendants shall assemble written reference and/or training materials pertaining to diabetes and the knowledge and tasks included in Level 1 and Level 2 training and make them available to training recipients who wish to refresh their understanding of diabetes and diabetes care throughout the year. These materials supplement any training for those who perform any aspect of diabetes care, such as blood glucose monitoring or glucagon administration.

IV. RECORDKEEPING

A. Completion of the Level 1 and/or Level 2 training will be tracked.

Date: April 30, 2021

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Exhibit H

MEMORANDUM OF UNDERSTANDING

Training for Section 504 Coordinators

M.F., et al., v. N.Y.C. Dep't of Educ., et al.

18-CV-6109 (NG)(SJB)

This Memorandum of Understanding (“MOU”) memorializes the agreement of the parties regarding the implementation of changes to the practices in which the New York City Department of Education (“DOE”), Office of School Health (“OSH”), and Department of Health and Mental Hygiene (“DOHMH”), collectively “Defendants,” train Section 504 Coordinators arranging any aspect of diabetes care for a student to ensure students with diabetes receive appropriate services and reasonable accommodations in accordance with Section 504 of the Rehabilitation Act of 1973 (“Section 504”), the Americans with Disabilities Act (“ADA”), and New York City Human Rights Law (“NYCHRL”). The parties intend to incorporate this MOU into a negotiated Stipulation of Settlement to be agreed to among the parties and so-ordered by the Court, and over which the Court will retain jurisdiction as specified in the Stipulation of Settlement. The parties executed this MOU on April 30, 2021 and all dates that run from “execution of this agreement” shall run from this April 30, 2021 date.

I. DEFINITIONS

This MOU incorporates by reference all definitions contained within the Stipulation of Settlement.

II. SECTION 504 AND DIABETES TRAINING

- A. DOE agrees that at least one staff member at each school will receive training on CR A-710 during the 2020-2021 school year. Beginning in the 2021-2022 school year, all school staff serving as school-based Section 504 Coordinators shall receive annual 504 Coordinator training to occur: for returning 504 Coordinators (refresher training), by April 15 of each school year; and, for new 504 Coordinators (initial training), 80% will receive training by ten school days after the first day of school of each school year, and 100% by October 15 of each school year.

- B. This annual training shall be reviewed in advance by the American Diabetes Association and shall include training on the procedures and timelines for Section 504 planning for students with diabetes, including:
 - 1) Procedures for Section 504 Meetings, including requirements under CR A-710, when meetings should take place, who should be on the Section 504 Team and present for the meeting, and what the purpose and goals of the Section 504 Meeting are for the student with diabetes;
 - 2) Development of Section 504 Plans, including how and when to draft and complete one, who is responsible for approving and providing the services listed in the Section 504 Plan, as well as understanding common accommodations for students with diabetes;
 - 3) Information about the Diabetes Medication Administration Form (“DMAF”), including its function, purpose, and the administrative process for its approval;
 - 4) Recordkeeping obligations which include: the date 504 forms are provided to parents, the date a student submits a request for accommodations and to whom, the date a 504 Coordinator makes a first attempt to schedule a 504 Meeting, the date a 504 Meeting is held, the date a Section 504 Plan is signed (if different from the date the meeting is held, noting why), and which accommodations were approved or denied;
 - 5) An overview of common accommodations for students with diabetes, including who provides the accommodations, nursing services, paraprofessional services, testing accommodations, and any other service listed in the Template Section 504 Plan;
 - 6) Any relevant portions of a Stipulation of Settlement in this lawsuit.
 - 7) Documenting that the diabetes training agreed upon in the Section 504 Plan is provided; and
 - 8) Information on the OSH Diabetes Team.
- C. Beginning during the 2020-2021 school year, a member of OSH (generally, the Diabetes Team) will be available to 504 Coordinators to answer questions related to diabetes care.
- D. Beginning during the 2021-2022 school year, each 504 Coordinator shall attend at least one Level 1 training session when held for staff members at their school.

III. RECORDKEEPING AND REPORTING

- A. Defendants shall monitor, record, and ensure that each Section 504 Coordinator receives training as set forth in this MOU annually.
- B. Defendants shall report to Plaintiffs annually the date each Section 504 Coordinator received training.

Date: April 30, 2021

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Exhibit I

MEMORANDUM OF UNDERSTANDING

Provision of Services and Accommodations for Students with Diabetes During Extracurricular Programs and Activities

M.F., et al., v. N.Y.C. Dep't of Educ., et al.

18-CV-6109 (NG)(SJB)

This Memorandum of Understanding (“MOU”) memorializes the agreement of the parties regarding the: (1) appropriate services and reasonable accommodations the New York City Department of Education (“DOE”), Office of School Health (“OSH”), and Department of Health and Mental Hygiene (“DOHMH”), collectively “Defendants,” provide to students with diabetes in DOE- and Parent Association (“PA”)/Parent Teacher Association (“PTA”)-sponsored extracurricular programs and activities (“Covered Extracurricular Programs”), in accordance with Section 504 of the Rehabilitation Act of 1973 (“Section 504”), the Americans with Disabilities Act (“ADA”), and New York City Human Rights Law (“NYCHRL”); and (2) the information the DOE will provide to non-DOE and non-PA/PTA extracurricular programs (“Non-Covered Extracurricular Programs”) that use DOE facilities, to support those programs’ compliance with their independent legal obligations to accommodate students with diabetes under the ADA, the NYCHRL, and potentially Section 504. The parties intend to incorporate this MOU into a negotiated Stipulation of Settlement to be agreed to among the parties and so-ordered by the Court, and over which the Court will retain jurisdiction as specified in the Stipulation of Settlement. The parties executed this MOU on May 7, 2021, and operative dates for the parties’ responsibilities are set forth below.

I. DEFINITIONS

This MOU incorporates by reference all definitions contained within the Stipulation of Settlement.

II. DIABETES-RELATED CARE AND ACCOMMODATIONS OF STUDENTS WITH DIABETES IN EXTRACURRICULAR PROGRAMS

The parties agree that Defendants will provide students with diabetes the diabetes services and accommodations they require in order to access Covered Extracurricular Programs on an equal basis as their peers who do not have disabilities, consistent with the services provided to such students through an Individualized Education Program (“IEP”) and/or Diabetes Section 504 Plan. The student’s parent or family member will not be expected or required to provide any diabetes-related care or services for the student during their participation in those Covered Extracurricular Programs.

Consistent with Chancellor’s Regulation D-180 (Extended Use of School Buildings), the DOE will revoke the permit of any Non-Covered Extracurricular Program known to have failed to accommodate a student with diabetes.

A. Section 504 Planning Process

- 1) As part of the Section 504 planning process, all Section 504 Teams will discuss diabetes services or accommodations during Covered Extracurricular Programs and Non-Covered Extracurricular Programs if the student with diabetes is or will be participating in such programs. Parents may request diabetes services or accommodations in Covered Extracurricular Programs, or inform school 504 Coordinators of the student’s enrollment in a Non-Covered Extracurricular Program where they are concerned about equal access, at any time during the school year.
- 2) For Covered Extracurricular Programs, consistent with the parties’ executed Section 504 Procedures for New Students, Section 504 Procedures for Returning Students, and Paraprofessional Training MOUs:
 - a. A nurse shall be available to administer insulin to a student with diabetes as required by their DMAF within ten school days of the Section 504 Team (including the school nurse) identifying on the 504 Plan a Covered Extracurricular Program wherein the student requires such care during the activity. In the event the nurse informs DOE that they are unavailable during such activities, OSH will immediately take steps to obtain a replacement nurse.
 - b. When a Section 504 Team has determined that diabetes care is required to be provided by a paraprofessional or other trained staff during the student’s participation in such activities, the school Principal or their designee will promptly, and within five school days of the determination, identify such paraprofessional or trained staff to perform all the diabetes-related care tasks required to be performed by such paraprofessional or trained staff as set forth in the student’s DMAF and Section 504 Plan, if the nurse is not providing such care. If such paraprofessional or trained staff cannot be identified within five school days of the determination, the school Principal or their designee must promptly notify the Section 504 Program Manager for assistance, and in such instances, a nurse, paraprofessional, or trained staff member must be identified within ten school days of the determination. Trained staff should include a back-up in the event the primary trained staff member is unavailable. Such paraprofessional or trained staff shall ensure that the student’s diabetes supplies are with the student

at such activities. Such paraprofessional or trained staff shall receive training as set forth in the parties' executed Training for School Staff Identified as Diabetes Training Recipients MOU and Paraprofessional Training MOU.

- 3) Non-Covered Extracurricular Programs: As described below in Section II.B, Defendants will revise the Diabetes 504 Plan Template to include: "If the student is participating in a non-DOE afterschool program, the parent may contact the 504 Coordinator with concerns about the program's ability to accommodate the student's diabetes under their independent non-discrimination obligations." When parents raise concerns, the school 504 Coordinator and/or Section 504 Program Manager will discuss the escalation with the Non-Covered Extracurricular Program and remind the Program of their independent obligations to accommodate students with diabetes and that their permit may be revoked consistent with Chancellor's Regulation D-180 if the Program fails to comply. If the Program continues to refuse to accommodate a student with diabetes: the Section 504 Program Manager will inform the appropriate DOE operations team that the Program is excluding a student with diabetes from the program by failing to accommodate the student's disability and that the permit should accordingly be revoked.
- 4) The school 504 Coordinator, school principal, and/or school nurse, Health Directors, and OSH utilize the "Evaluating DOE Student After-School & Extracurricular Activity Section 504 Accommodations Requests: Paraprofessional or Nursing Services" internal guidance to request that the paraprofessional or nursing services reflected on the student's IEP or Section 504 Plan also be provided to the student during a Covered Extracurricular Program, as appropriate.

B. DOE Materials and Notices

- 1) Beginning during the 2021-2022 school year, all parents will be informed annually of: their right to request services and accommodations related to their child's participation in Covered Extracurricular Programs; that they may inform school 504 Coordinators of the student's enrollment in a Non-Covered Extracurricular Program where they are concerned about equal access; and that they may contact their school 504 Coordinator for more information.
- 2) The Diabetes 504 Plan Template that is completed by Section 504 Teams includes the following information in relevant part, which DOE may update from time to time:
 - a. The student will be permitted to participate in all DOE extracurricular activities (such as all DOE afterschool activities, sports, clubs, and enrichment programs) without restriction and with all of the accommodations and modifications, including necessary diabetes care by identified school personnel, set out in this Plan. The student's parent/guardian will not be required to, but may choose to, accompany the student on the school activity.
- 3) As set forth below, Defendants will submit to Plaintiffs for advance review the following materials and notices prior to finalizing the content.
- 4) Before the first day of the 2021-2022 school year:

- a. the DOE will revise the Diabetes 504 Plan Template to include: “If the student is participating in a non-DOE afterschool program, the parent may contact the 504 Coordinator with concerns about the program’s ability to accommodate the student’s diabetes under their independent non-discrimination obligations.”
 - b. the DOE will revise the 504 Coordinator Training, 504 Accommodations webpage, and 504 Accommodations: Student & Family Guide, consistent with the relevant provisions of this MOU.
 - c. Defendants will share with school 504 Coordinators and principals, Health Directors, and OSH the revised Evaluating DOE Student After-School & Extracurricular Activity Section 504 Accommodations Requests: Paraprofessional or Nursing Services internal guidance.
- 5) Defendants submit to Plaintiffs their proposed revisions to Chancellor’s Regulation D-180 and the accompanying Extended Use Application, reflected in the attached Exhibits A and B. Plaintiffs have 15 calendar days from the date this MOU is executed to respond to Defendants in writing with any feedback; and, upon request of either party, within 10 calendar days of Defendants receiving Plaintiffs’ feedback, the parties will meet and confer to discuss the feedback. The parties will finalize their mutually agreed upon proposed revisions by May 20, 2021.
- 6) Before the first day of the 2021-2022 school year, Defendants will propose revisions to D-180 and the Extended Use Application for approval at a meeting of the Panel for Educational Policy (the “PEP”) in accordance with Section 2590-g of the New York Education Law (“N.Y. Educ. Law”). Notice of the proposed revisions to be submitted to the PEP shall be made available pursuant to N.Y. Ed. Law § 2590-g(8), which includes, among other things, notice via the PEP’s website and information on how to submit comments regarding the proposed revisions.
- 7) Within 10 calendar days of the vote by the PEP on the proposed revisions, Defendants shall notify Plaintiffs that a vote was held and provide Plaintiffs with the text of the revised documents, if they are approved. DOE shall make the revised versions of Chancellor’s Regulation D-180 and the Extended Use Application available to the public by posting on the DOE website.
- 8) If the PEP does not approve the proposed revisions, then Plaintiffs shall have 7 calendar days from the notification of the PEP’s action to request a meeting with Defendants to discuss an appropriate course of action. The parties shall meet and confer within 15 calendar days of Plaintiffs’ request. Such course of action may include the submission of another set of proposed revisions to the PEP.
- 9) Nothing herein precludes Defendants from complying with any applicable federal, state, or local laws, regulations, or policies or from making any revisions to Chancellor’s Regulation D-180 and Extended Use Application, or successor regulations or documents, necessary to comply with applicable laws, regulations, or policies.

Date: May 7, 2021

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Exhibit J

MEMORANDUM OF UNDERSTANDING

Provision of Services and Accommodations for Students with Diabetes in the Least Restrictive Environment

M.F., et al., v. N.Y.C. Dep't of Educ., et al.

18-CV-6109 (NG)(SJB)

This Memorandum of Understanding (“MOU”) memorializes the agreement of the parties regarding the requirement that students with diabetes be provided services and accommodations in the least restrictive environment (“LRE”) by the New York City Department of Education (“DOE”), Office of School Health (“OSH”), and Department of Health and Mental Hygiene (“DOHMH”), collectively “Defendants,” in accordance with Section 504 of the Rehabilitation Act of 1973 (“Section 504”), the Americans with Disabilities Act (“ADA”), and New York City Human Rights Law (“NYCHRL”). The parties intend to incorporate this MOU into a negotiated Stipulation of Settlement to be agreed to among the parties and so-ordered by the Court, and over which the Court will retain jurisdiction as specified in the Stipulation of Settlement. The parties executed this MOU on April 30, 2021 and all dates that run from “execution of this agreement” shall run from this April 30, 2021 date.

I. DEFINITIONS

This MOU incorporates by reference all definitions contained within the Stipulation of Settlement.

II. GUIDELINES FOR PROVIDING DIABETES-RELATED CARE IN THE LEAST RESTRICTIVE ENVIRONMENT TO THE MAXIMUM EXTENT POSSIBLE

It is the parties’ mutual understanding that Defendants, in consultation with Plaintiffs, will memorialize a process and guidance to meet their federal obligations to provide students with diabetes a Free Appropriate Public Education in the Least Restrictive Environment. The DOE model Diabetes Section 504 Plan template already contains the information on LRE described in Section II.A. The DOE will add the content described in Section II.B to the 504 Accommodations: Student and Family Guide (“Guide”). The DOE will also disseminate the Guide to relevant DOE and DOHMH staff. The terms of this MOU represent an agreement

between the parties that all DOE students with diabetes are provided necessary services and accommodations in the least restrictive environment, i.e., such that they interact with nondisabled peers to the maximum extent possible.

Diabetes care may be provided in the classroom or wherever the student is, the nurse's office, or other location, with a goal of minimizing missed instruction time and exclusion from nondisabled peers. **Resources, such as the availability of the school nurse, are not a proper consideration for determining the LRE.**

The determination of LRE must be individualized to the particular needs of the student. Defendants agree not to establish or maintain any policy that applies a blanket prescription or proscription of the appropriate LRE related to students with diabetes, such as a policy that no insulin would ever be administered in the classroom, or that all students must have their glucose monitored in the nurse's office.

Plaintiffs and Defendants agree that the following non-exhaustive list of tasks should **always** prompt a discussion by the Section 504 Team at a Section 504 Meeting of how and where care will take place in accordance with the LRE requirement, which may occur through the completion of the Template Section 504 Plan:

- 1) Insulin administration
- 2) Blood glucose monitoring
- 3) Mild low blood glucose treatment
- 4) Ketone checks
- 5) Transportation (i.e. special education transportation or general education transportation)

A. Template Section 504 Plan

The following content most relevant to LRE is reflected in the Template Section 504 Plan, as may be updated by DOE from time to time, that is completed by Section 504 Teams:

The student shall be provided with privacy for blood glucose monitoring and insulin administration if the student desires.

If the student has been assigned a paraprofessional, the paraprofessional (who is trained as a Trained Non-Licensed Personnel (TNP)) will perform the outlined diabetes care tasks in the classroom, or wherever the student is, to the maximum extent possible.

Nurse(s) or TNP should always minimize the amount of time the student may miss classroom instruction when deciding how to perform or assist a student with their blood glucose testing, with the most appropriate care of the student being priority.

Nurses should always minimize the amount of time the student may miss classroom instruction when deciding how to administer insulin, or, for nurses and TNP, to assist a student with administration of insulin, with the most appropriate care of the student being priority.

The 504 Team must discuss and determine the least restrictive environment for diabetes care based on the individual needs of the student and not available resources. Diabetes care may be provided in the classroom or wherever the student is, nurse's office, or other location, with a goal of minimizing missed instruction time and maximizing time with peers.

Specify the location for each diabetes care task:

Lunchtime insulin will be administered _____.

Correction insulin will be administered _____.

Snack time insulin will be administered _____.

Blood glucose will be monitored _____.

Ketones will be monitored _____.

B. Guide

Defendants, in consultation with Plaintiffs, made substantive modifications to the DOE Guide to provide guidance to Section 504 Coordinators, parents, and students to enable them to make LRE determinations. Additional modifications will include factors to consider in determining the LRE.

III. PROCESS FOR IMPLEMENTATION

Defendants agree that within thirty calendar days of the execution of this MOU, they will revise the DOE Guide and 504 Coordinator training slide deck to reflect content on LRE and submit them to Plaintiffs for advance review.

Plaintiffs will have ten business days to respond and/or approve the proposed revisions. If Plaintiffs fail to respond within ten business days, the revisions are deemed approved by Plaintiffs. If Plaintiffs express concerns with the proposed revisions or provide revisions, the parties will meet and confer and Defendants have fifteen business days to respond and/or accept the proposed revisions. If there are further revisions from Defendants, Plaintiffs once again have fifteen business days to respond and/or approve the proposed revisions, continuing the process described above until agreement is reached.

Defendants agree to distribute the Guide, revised to reflect the new guidance on Meeting Defendants' LRE obligations, to Section 504 Coordinators and members of Section 504 Teams of students with diabetes, and to provide training materials to Section 504 Coordinators on the relevant Template Section 504 Plan sections and revised Guide, and agree to provide 504 Coordinator training on an annual basis each school year, and as needed during the school year when new personnel are working with a student with diabetes.

Date: April 30, 2021

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Exhibit K

POST-FINAL APPROVAL CONFIDENTIALITY AGREEMENT

M.F., et al. v. NYC Dep't of Educ., et al., Case No. 18-cv-6109 (NG)(SJB)

The Parties and their counsel in the above-referenced action, Plaintiffs the American Diabetes Association, M.F. (by and through his natural guardian Yelena Ferrer), M.R. (by and through her natural guardian Jocelyne Rojas), I.F. (by and through her natural guardian Jennifer Fox), and Defendants the New York City Department of Education (“DOE”), the New York City Department of Health and Mental Hygiene, and the City of New York, et al., and the Court-approved External Monitor Peter D. Blanck, Ph.D., J.D., hereby agree to adhere to this Confidentiality Agreement, as follows:

1. The following documents and information provided by the Defendants during the course of the monitoring period under the auspices of the External Monitor, Dr. Blanck, and the Joint Expert, the American Diabetes Association as Joint Monitor, may be designated by any Defendants as “Confidential Material”:
 - a. any document(s) or information relating to any student, including but not limited to documents, information or data relating to student records, grades, assignments, coursework, grievances and complaints, nurse services, paraprofessional services, bus driver and/or bus attendant services, Section 504 accommodations, Individualized Education Programs (“IEPs”), Section 504 Plans, and/or their participation in DOE programs and activities or non-DOE extracurricular activities operated in a school building;
 - b. any document(s) or information prepared by or maintained in the custody of Defendants reflecting proprietary or internal-only information, student personal health information, student, parent, and/or employee or contractor personally identifiable information and/or demographic information (including identifying an individual’s protected class(es)), and/or information that is protected by the provisions of the Health Insurance Portability and Accountability Act (“HIPAA”), 42 U.S.C. § 1320 et seq., 45 C.F.R. Parts 160, 164; and
 - c. any document(s) or information which counsel for the Parties agree should be considered Confidential Material.
2. Confidentiality shall not apply to the use by the Joint Monitor, Joint Expert, or the Parties of any documents or information designated Confidential Material, where the documents or information can be reasonably: (1) anonymized or aggregated; or (2) redacted to remove any personally identifiable information, including if a value is between one and five. Use of anonymized, aggregated, and/or redacted documents or information includes but is not limited to reporting to the Parties or the Court, consulting with other knowledgeable persons as needed, and in filings or communications with the Court.
3. Nothing herein shall negate or obviate any requirement or obligation of confidentiality independent of this Confidentiality Agreement, including but not limited to the provisions of HIPAA, the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, 34 C.F.R. Part 99

("FERPA"), New York State Education Law § 2-d, the New York State Public Health Law, and the New York City Health Code.

4. Any dispute over the application of this Confidentiality Agreement which the Parties are unable to resolve, shall be presented to the Court for determination.
5. The Plaintiffs and Defendants do not waive the confidentiality or privilege of any communications, information, and records by including the External Monitor or Joint Expert in their settlement implementation.

Date: September 22, 2022

By: Torie Atkinson
Torie Atkinson
DISABILITY RIGHTS ADVOCATES
Attorneys for Plaintiffs

Date: September 22, 2022

By: Alan L. Yatvin
Alan L. Yatvin
WEIR GREENBLATT PIERCE LLP
Attorneys for The American Diabetes Association

Date: September 22, 2022

By: /s/
Chlarens Orsland
THE CITY OF NEW YORK
Attorneys for Defendants

Date: September 22, 2022

By: /s/
Peter D. Blanck

Exhibit L

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT

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

Do you have a child that:

- a) has Type 1 or Type 2 diabetes; and
- b) is now or will in the future be enrolled in a New York City Department of Education (DOE) public school?

TO: All students and parents of students with diabetes in need of diabetes-related care in school who are now or will be attending New York City Department of Education (DOE) schools. This does not apply to students who are attending charter schools, private schools, or pre-school programs.

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY LEGAL PROCEEDINGS IN THIS LITIGATION.

The proposed settlement (the “Settlement” or “Settlement Agreement”) resolves a lawsuit claiming that the DOE discriminated against students with diabetes who attend DOE schools. The lawsuit specifically addresses the provision of accommodations and services for students with diabetes in DOE schools.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

- **You can object**—you may write to the Court if you do not agree with the Settlement.
- **You can go to the Fairness Hearing**—you may ask to speak to the Court regarding the fairness of the Settlement.
- **If you do nothing** and the Court approves this Settlement, if you are a Class Member, you will be bound by the terms of the Settlement.
- These rights and options are explained in this Notice. **There are deadlines to exercise these rights and options.**

GENERAL INFORMATION

1. What is this lawsuit about?

Three children with diabetes, by and through their parents (the Named Plaintiffs), along with the American Diabetes Association (together, the Plaintiffs), filed a lawsuit against the New York City Department of Education seeking better care for children with diabetes in school. This lawsuit is called *M.F., et al. v. New York City Department of Education, et al.*, Civil No. 18-CV-6109.

The Plaintiffs alleged that New York City Department of Education schools violate Federal laws protecting people with disabilities, specifically diabetes, because schools:

- Failed to schedule and hold meetings called Section 504 meetings, and draft and implement plans called Section 504 Plans, that describe the diabetes-related care and accommodations that students with diabetes need to safely attend school and benefit from their education, including transportation and school-sponsored extracurricular activities;
- Failed to adequately train school nurses, paraprofessionals, aides, teachers, substitutes, and other staff on diabetes care to meet the needs of students with diabetes, such as training in blood glucose monitoring, glucagon administration, or school nurses on insulin administration;
- Unnecessarily segregated students with diabetes by making them leave the classroom to receive routine diabetes-related care, causing them to miss valuable instruction time;
- Excluded students with diabetes from school and school-related activities like field trips, school-sponsored afterschool and extracurricular activities, and school breakfast by not providing necessary diabetes-related care.

More information about the lawsuit, including the Complaint, is available here:

<https://dralegal.org/case/m-f-v-new-york-city-department-of-education/>

More information about diabetes care in New York City public schools is available here:

<https://www.schools.nyc.gov/school-life/health-and-wellness/staying-healthy/diabetes>

2. What is a class action?

The Plaintiffs made their claims on behalf of themselves and other students who might also have been impacted by these practices. The Plaintiffs have been appointed by the Court to serve as Class Representatives on behalf of all the impacted students (also called the Class Members or the Class).

3. Why is there a Settlement?

Rather than proceed to trial, the Plaintiffs and the Defendants have agreed to settle the case. Plaintiffs believe that the Settlement they have reached is fair, adequate, reasonable, and in the best interests of the Class Members. In reaching this conclusion, the Class Representatives and their lawyers have considered the benefits of the Settlement, the possible outcomes of continued court proceedings, and the expense and length of continued court proceedings and possible appeals.

4. Who is covered by the Settlement?

All students with diabetes who currently attend a DOE school or will attend a DOE school in the future.

5. What do I do if I'm not sure whether I or my child is included?

If you are not sure if you or your child is covered by the class, please email Disability Rights Advocates at diabeteslawsuit@dralegal.org or call (332) 217-2362 for more information.

6. Can a student receive money under the Settlement?

No. The Settlement does not give any monetary relief to Class Members.

WHAT THE SETTLEMENT PROVIDES FOR THE CLASS

If the Settlement is approved, the DOE will be putting in place certain policies and practices. The Settlement will be in effect from September 1, 2023 to August 15, 2026 (this timeframe may be adjusted if the Court approves a Settlement after August 31, 2023). An external monitor and joint expert will be monitoring the DOE's compliance with the Settlement's required actions during the term of the Settlement.

This notice summarizes the requirements in the Settlement:

- Improving planning for students with diabetes by ensuring Section 504 meetings are scheduled and held, and that Section 504 Plans are created and signed, and that Section 504 Plans include all accommodations decided by the Section 504 Team. Section 504 Plans describe the diabetes-related care and accommodations that students with diabetes need to safely attend school and benefit from their education and related activities.
 - For students with diabetes who are returning to the same school the next school year:

- For all student Class Members:
 - Section 504 Teams are required and will be reminded to use a Template Section 504 Plan developed in this lawsuit specifically for students with diabetes that lists the student's services and accommodations, as well as persons to be trained.
 - A student cannot be denied necessary accommodations due to lack of funding.
 - A Section 504 Plan shall be approved at the conclusion of the Section 504 meeting, when possible.
- Training of school nurses, paraprofessionals, aides, teachers, substitutes, bus drivers, bus attendants, and other school staff on diabetes care to meet the needs of students with diabetes:
 - All training materials will be updated as needed in consultation with the American Diabetes Association.
 - Nurses:
 - All new nurses will receive initial training on diabetes-related care, the rights of students with diabetes, Section 504 planning, and diabetes technology within six weeks of new staff nurses' first date of employment or during contract nurses' orientation. New nurses will not be placed at a school until their orientation is complete.
 - All nurses will receive student-specific training on the particular needs of the student they care for, such as diabetes technology. For example, a nurse treating a student who uses a Dexcom 6 Continuous Glucose Monitor (CGM) will receive training on that specific device.
 - Additional training will be provided if a student is diagnosed or enters school after the start of the school year, there is a new aspect of a student's diabetes treatment regimen, or additional training is clinically appropriate. Parents may request such additional training, and, if the Diabetes Team nurse or Supervising nurse agrees, the training must be provided to staff nurses within 5 school days of the need for training being identified, and to contract nurses no later than ten school days after the need has been identified.

- All nurses will receive annual refresher training on diabetes-related care prior to the start of the school year or as soon as possible thereafter.
- Paraprofessionals:
 - As soon as a Section 504 Team has determined that the assignment of a paraprofessional to provide diabetes-related care is appropriate, a paraprofessional will be identified promptly and in most cases within 5 school days.
 - All paraprofessionals will receive training on diabetes and the tasks they are expected to perform, as well as student-specific training for the individual student they are assisting.
 - A refresher training will be provided annually to all paraprofessionals who continue to be assigned to students with diabetes. Additional training may be provided as needed and parents may request additional training.
- Section 504 Coordinators:
 - All school staff serving as school Section 504 Coordinators at each school will receive training on Section 504 planning, including refresher training (for returning Section 504 Coordinators) to be completed by April 15 of each school year prior to Section 504 meetings being held in May and June.
- DOE teachers, coaches, and other adults with responsibility for a student with diabetes:
 - All such adults with responsibility for a student with diabetes shall receive Level 1 Training that includes a basic understanding of diabetes and how it may impact a student's ability to participate in school and school-related activities, how to recognize and respond to the signs and symptoms of hypoglycemia (low blood sugar) and hyperglycemia (high blood sugar), how to respond to hypoglycemia and hyperglycemia, whom to contact immediately in case of an emergency, and common accommodations considered for students with diabetes. This training will occur within 10 school days of having been identified as needing the training.
 - A sufficient number of adults shall receive Level 2 Training (for Paraprofessionals or identified school staff) that includes the content of Level 1 training plus training to carry out additional responsibilities such

as blood glucose monitoring, glucagon administration, ketone monitoring, supervising insulin administration, and what to do in case of a diabetes emergency. This ensures that at least 1 trained school staff is available during the school day, on field trips, during extracurricular activities (for example, a recognized breakfast program), or other school-related activities as needed. This training will occur within 15 school days of having been identified as needing the training.

- Bus drivers and bus attendants:

- All such adults the DOE identifies as transporting a DOE student with a DMAF shall receive Level 1 Training as described above, as well as training in the administration of glucagon. This training will occur before the first day of school for such drivers and attendants identified before the first day of school. After the training, the DOE will provide the driver and attendant with a “quick action guide” identifying the student’s symptoms of mild to moderate hypoglycemia, the common symptoms of severe hypoglycemia and hyperglycemia, the student’s form of prescribed glucagon, and where the glucagon, diabetes snacks, and water supplied by the parent are kept with the student (e.g., the front pocket of their backpack) while on the bus.

- Ensuring accommodations are provided in the least restrictive environment to allow the student to interact to the greatest extent possible with their peers who do not have disabilities, with the goals of limiting missed instruction time and separation from classmates.
- Ending the exclusion of students with diabetes from school and school-related activities like field trips, school-sponsored afterschool and extracurricular activities, and school breakfast by requiring that necessary diabetes-related care be provided during those activities.

7. Do I have to give up any rights if the Settlement is Approved?

Under the Settlement Agreement, the Named Plaintiffs agree to release (give up) certain claims and release certain claims on behalf of the Class.

- The Named Plaintiffs and the Class release any claims for systemic injunctive relief related to the provision of accommodations and services for students with diabetes that arose before the date the Settlement is effective. That means that neither the Named Plaintiffs nor any Class Member can bring another lawsuit challenging the lack of

accommodations and services for students with diabetes on a system-wide level based on events that occurred before this Settlement goes into place.

- Neither the Named Plaintiffs nor Class Members release any other individual diabetes-related claims such as due process claims arising under the Individuals with Disabilities Education Act or Section 504, or any monetary claims.

8. What does the Settlement provide for the Named Plaintiffs?

As part of the Settlement, the DOE has agreed to pay the three Named Plaintiffs \$5,000 each for class representative services.

9. When will the Court decide if it approves the Settlement?

The Court will hold a hearing (called a “Fairness Hearing”) on _____ in Courtroom 6D of the Honorable Judge Nina Gershon, United States District Court, Eastern District of New York, 225 Cadman Plaza East, Brooklyn, NY 11201, to determine whether the proposed Settlement Agreement is fair, adequate, and reasonable, and should be finally approved. The hearing may be held remotely. Please contact Disability Rights Advocates for any updated information on attending the hearing remotely. If the Court approves the Settlement after the Fairness Hearing, there could still be appeals. If any appeal is filed, it is uncertain how long it might take to resolve. If the Settlement is approved, and no appeal is filed, the DOE will start taking the actions required by the Settlement.

THE LAWYERS IN THE CASE

10. Do I have a lawyer in this case?

Yes. If you or your child is a Class Member, attorneys from Disability Rights Advocates, a non-profit law firm, represent you solely for purposes of this Settlement. Disability Rights Advocates is experienced in handling similar cases regarding disability rights. More information about Disability Rights and its lawyers’ experience is available at <http://www.dralegal.org>.

You will not be charged for being represented by these lawyers in this matter. If you want to get your own lawyer, you may hire one at your own expense.

11. How will the lawyers be paid?

The lawyers will be paid by the Defendants in this case. The Settlement Agreement states that the attorneys for the Class can seek reasonable attorneys’ fees from the DOE for investigating

the facts of this case, litigating the case, negotiating the Settlement, and monitoring and enforcing the Settlement. The payment of attorneys' fees will not impact the services provided by the DOE under this Settlement, or the policies and practices the DOE has agreed to implement.

OBJECTING TO THE SETTLEMENT

12. How do I tell the Court that I do not like the Settlement?

If you or your child is a member of the Class, you can object to the Settlement if you do not agree with it. You can give reasons why you think the Court should not approve the Settlement so that the Court can consider your views. You cannot ask the Court to change the terms of the Settlement; the Court can only approve or deny the Settlement. If the Court denies the Settlement, the actions outlined in this notice will not occur and the lawsuit will continue.

To object, you must send a letter saying you object to *M.F., et al. v. New York City Department of Education, et al.*, Civil No. 18-CV-6109. Be sure to mention the case name and number and include your name, address, telephone number, your signature, and the reasons you object to the Settlement. Mail the objection to the following addresses postmarked no later than _____:

Clerk of Court
United States District Court for the Eastern District of New York
U.S. Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201

Torie Atkinson
Disability Rights Advocates
655 Third Avenue, 14th Floor
New York, NY 10017

Chlarens Orsland
New York City Law Department – General Litigation Division
100 Church Street, Room 2-174
New York, NY 10007

13. When will the Court make a decision about approving the Settlement?

The Court will hold a Fairness Hearing on _____ in the Courtroom of the Honorable Judge Nina Gershon, United States Courthouse, 225 Cadman Plaza East, Courtroom 6D, Brooklyn, NY

11201, to determine whether the proposed Settlement Agreement is fair, adequate and reasonable, and should be approved. The hearing may be held remotely. If there are objections, the Court will consider them. The Judge will listen to people who have properly submitted requests to speak at the hearing. After the hearing, the Judge will decide whether to approve the Settlement.

14. Do I have to attend the hearing?

No. The lawyers from Disability Rights Advocates will attend the hearing and answer any questions the Judge may have about the case. You are welcome to attend the hearing if you would like, but you must pay for your own travel to the hearing if it is held in person or provide your own internet access if the hearing is held remotely.

If you sent an objection letter, you are not required to come to the hearing to talk about your letter. All you have to do to properly object is send your written letter by the deadline. If you have your own lawyer, you may also pay your lawyer to be at the hearing, but that is up to you.

15. Am I allowed to speak at the hearing?

You can ask the Court for permission to speak at the Fairness Hearing. Please note that any costs incurred for attending the hearing will be at your own expense. To request to speak at the hearing, you must send a letter saying that it is your intention to appear in *M.F. v. New York City Department of Education*, Civil No. 18-CV-6109 (NG). Make sure to include your name, address, telephone number, and signature, and list any witnesses you may call to testify and exhibits you intend to introduce into evidence at the hearing. You may also want to provide the Court with the information needed to contact you electronically.

Mail the objection to the following addresses postmarked no later than _____:

Clerk of Court
United States District Court for the Eastern District of New York
U.S. Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201

Torie Atkinson
Disability Rights Advocates
655 Third Ave, 14th Floor
New York, NY 10017

Chlarens Orsland

New York City Law Department – General Litigation Division
100 Church Street, Room 2-174
New York, NY 10007

16. What if I do not do anything?

You do not need to do anything to receive the future protections of this Settlement once it is approved.

GETTING MORE INFORMATION

17. Are there more details about the Settlement?

This notice summarizes the Settlement. There are more details in the Settlement Agreement itself. To the extent that this notice varies from the Agreement, the terms of the Agreement are correct.

You can access a copy of the Agreement by visiting the Disability Rights Advocates website at:

[LINK FOR AGREEMENT]

You can also request a copy of the Agreement or ask questions about the Agreement by calling (332) 217-2362 or emailing diabeteslawsuit@dralegal.org.

You can access the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://pacer.uscourts.gov> or by visiting the office of the Clerk of the Court for the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

Please do not call the Court or the Court Clerk's office to ask about this Settlement.

If you or your child is a student with diabetes and you are experiencing issues related to your child's care in school, you may reach out directly to DOE:

Section 504 Program Manager for New York City Department of Education,
Office of School Health
718-786-5041
504Questions@schools.nyc.gov

OR

The Health Director for your child's school:

ACCESS/District 79 (Transfer Schools, District 79 & Consortium/Internationals/ NYC Outward Bound Schools)

Health Director: Norberto Perez
Email: NPerez4@schools.nyc.gov
Phone Number: 646-413-5069
Address: 131 Livingston St, 6th Fl, Brooklyn, NY 11201

Brooklyn North (Districts 13, 14, 15, 16, 19, 23, 32)

Health Director: Norberto Perez (I.A.)
Email: OCineus2@schools.nyc.gov; BkNorthHealth@schools.nyc.gov
Phone Number: 718-935-5661
Address: 131 Livingston St, 5th Fl, Brooklyn, NY 11201

Brooklyn South (Districts 17, 18, 20, 21, 22)

Health Director: Juliana Felix-Barret
Email: JFelixBarret@schools.nyc.gov
Phone Number: 718-759-4921
Address: 131 Livingston St, Rm 509, Brooklyn, NY 11201

Bronx (Districts 7, 8, 9, 10, 11, 12)

Health Director: Marleni Moreira
Email: MMoreira3@schools.nyc.gov
Phone Number: 718-828-4785
Address: 1230 Zerega Avenue, Bronx, NY 10462

Manhattan (Districts 1, 2, 3, 4, 5, 6)

Health Director: Magdalene Gomes
Email: MGomes6@schools.nyc.gov
Phone Number: 212-356-7530
Address: 1230 Zerega Ave Bronx, NY 10462

Queens North (Districts 24, 25, 26, 30)

Health Director: Carin Jean Pierre-Destin
Email: CPierre@schools.nyc.gov
Phone Number: 718-391-8572
Address: 28-11 Queens Plaza North, Long Island City, NY 11101

Queens South (Districts 27, 28, 29)

Health Director: Edith Richards
Email: ERichards7@schools.nyc.gov; QSHHealthDirector@schools.nyc.gov
Phone Number: 718-348-2956
Address: 82-01 Rockaway Blvd, Rm 420, Queens, NY 11416

Staten Island (District 31)

Health Director: Stephanie Caloir
Email: SCaloir@schools.nyc.gov
Phone Number: 718-556-8383; 646-369-2502
Address: 715 Ocean Terrace, Rm. A-309 Staten Island, NY 10301

District 75

Health Director: Shona Gibson
Adam Breier
Email: SGibson4@schools.nyc.gov
ABreier@schools.nyc.gov
Phone Number: 212-802-1552
718-923-5087
Address: 400 First Avenue, Rm 715 New York, NY 10010

If you have questions about this Settlement, you may contact Class counsel Disability Rights Advocates:

DISABILITY RIGHTS ADVOCATES
diabeteslawsuit@dralegal.org
655 Third Ave, 14th Floor
New York, NY 10017
Tel: (332) 217-2362
<http://www.dralegal.org>

If you have questions about diabetes in schools, you can contact:

AMERICAN DIABETES ASSOCIATION
1-800-DIABETES (342-2383)
askada@diabetes.org
<http://www.diabetes.org/safeatschool>

Exhibit M

**YOU OR YOUR CHILD MIGHT BE AFFECTED BY A PROPOSED CLASS ACTION
SETTLEMENT ABOUT DIABETES-RELATED CARE IN SCHOOL AT NEW YORK CITY
DEPARTMENT OF EDUCATION PUBLIC SCHOOLS**

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

Your child might be a member of a proposed settlement class if they:

- a) have Type 1 or Type 2 diabetes; and**
- b) are now or will in the future be enrolled in a New York City Department of Education (DOE) public school.**

In 2018, three children with diabetes, by and through their parents, along with the American Diabetes Association (together, the Plaintiffs), filed a lawsuit against the DOE seeking better care for children with diabetes in school. This lawsuit is called *M.F., et al. v. New York City Department of Education, et al.*, Civil No. 18-CV-6109.

In 2022, the DOE settled the lawsuit by agreeing to put in place certain policies, practices, and procedures. In summary, the settlement provides for: 1) improving planning for students with diabetes by ensuring the creation and adoption of robust Section 504 Plans that describe the diabetes-related care and accommodations that students with diabetes need to safely attend school and benefit from their education and school-sponsored activities; 2) training of school nurses, paraprofessionals, teachers and other school staff, bus drivers, and bus attendants on diabetes care to meet the needs of students with diabetes; 3) ensuring diabetes-related care and accommodations are provided in the least restrictive environment to allow the student to interact to the greatest extent possible with their peers who do not have disabilities, with the goals of limiting missed instruction time and separation from classmates; and 4) ensuring students with diabetes have equal access to school and school-related activities like field trips, school-sponsored after-school and extracurricular activities, and a recognized breakfast program, by requiring that they receive necessary diabetes-related care and accommodations during those activities.

**TO LEARN MORE, OR TO GET A COPY OF THE FULL SETTLEMENT NOTICE OR
AGREEMENT, VISIT DRALEGAL.ORG, EMAIL
DIABETESLAWSUIT@DRALEGAL.ORG, OR CALL (332) 217-2362.**

Exhibit N

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK**

M.F., a minor, by and through his parent and natural guardian YELENA FERRER; M.R., a minor, by and through her parent and natural guardian JOCELYNE ROJAS; I.F., a minor, by and through her parent and natural guardian JENNIFER FOX, on behalf of themselves and a class of those similarly situated; and THE AMERICAN DIABETES ASSOCIATION, a nonprofit organization,

Plaintiffs,

-against-

THE NEW YORK CITY DEPARTMENT OF EDUCATION; THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE; THE OFFICE OF SCHOOL HEALTH; THE CITY OF NEW YORK; ERIC ADAMS, in his official capacity as Mayor of New York City; DAVID C. BANKS, in his official capacity as Chancellor of the New York City Department of Education; ASHWIN VASAN, Commissioner of the New York City Department of Health and Mental Hygiene; and ROGER PLATT, in his official capacity as Chief Executive Officer of the Office of School Health,

Defendants.

18-CV-6109 (NG) (SJB)

**SCOPE OF WORK FOR
EXTERNAL MONITOR
PETER D. BLANCK**

This is an agreement among Disability Rights Advocates (“DRA”), Weir Greenblatt Pierce LLC (“WGP”), the City of New York (the “City”), New York City Department of Education (“DOE”), the New York City Department of Health and Mental Hygiene (“DOHMH”), and Peter D. Blanck, PhD., J.D. (“External Monitor”) for services in the case of *M.F. v. City of New York*, 18-CV-6109, pending in the United States District Court for the Eastern District of New York (the “Litigation”).

A. OVERVIEW OF LITIGATION

This civil action was brought by Plaintiffs M.F. (by and through his natural guardian Yelena Ferrer), M.R. (by and through her natural guardian Jocelyne Rojas), I.F. (by and through her natural guardian Jennifer Fox), and the American Diabetes Association (collectively, “Plaintiffs”) against the DOE, DOHMH, the Office of School Health (“OSH”), the City, the Chancellor of the DOE, the Commissioner of DOHMH, and then-Chief Executive Officer of the

Office of School Health Dr. Roger Platt (collectively, “Defendants”) concerning the Defendants’ policies, practices, and procedures related to the provision of diabetes-related care in school and during school-related activities.

Plaintiffs allege that Defendants’ systemic failures to provide students with diabetes a free and appropriate public education (“FAPE”) as well as equal access to school and all school-related programs and activities violate Section 504 of the Rehabilitation Act of 1973 (“Section 504”), the Americans with Disabilities Act (“ADA”), and the New York City Human Rights Law (“NYCHRL”). Plaintiffs bring this case on behalf of themselves and a class, certified on June 18, 2019, defined as:

“All students with diabetes who are now or will be entitled to receive diabetes-related care and attend New York City Department of Education schools.”

The Parties have entered into a Settlement Agreement (“Agreement”)¹ to resolve these issues, to be submitted to the Court for preliminary approval on or before September 29, 2022. This Agreement contemplates monitoring work to be performed by the External Monitor to determine compliance with the Agreement.

B. WORK TO BE PERFORMED

The External Monitor’s work will include all duties and obligations of the External Monitor set forth in the Agreement, including the following:

1. Development, with the Parties, of an appropriate metric for determining the standard deviation that would trigger the process outlined in Paragraph 45(a)(i).
2. Review of concerns and/or inquiries received through the Emergency Relief process (including all responsibilities listed under Section VII), as well as documentation of action(s) taken in response thereto under Paragraph 37.
3. Review of data collection and reporting (including all responsibilities listed under Section VI), and determination of compliance with agreed-to metrics, corrective action, and meetings (including all responsibilities under Sections VIII and IX).
4. Development and distribution of compliance reports as outlined in Paragraphs 26 and 45.
5. Attending ten (10) Section 504 meetings per year, selected by the External Monitor and Defendants, as set forth in Paragraph 39.
6. Twice a year, or on an alternative schedule upon mutual agreement of the Parties, where either Party requests the External Monitor’s attendance, meeting with the Parties to discuss the implementation of injunctive relief under the Agreement, as set forth in Paragraph 44. The Parties may mutually agree to waive such meetings.

¹ A copy of the Settlement Agreement is attached as Exhibit A. Hereinafter all cites are to the Agreement.

7. Conferencing with the Parties pursuant to Paragraphs 45(a)(i)-(ii) and 46(a) regarding supplemental data samples, and the dispute resolution mechanism in Section X (and Paragraphs 38, 46(d)), which may include unilateral discussions with the Parties.
8. Consulting and/or collaborating with the Joint Expert, American Diabetes Association, as appropriate.
9. Any other duties and responsibilities the Parties and External Monitor jointly determine are reasonably necessary to ensure compliance with the Agreement.

C. PAYMENT OF COSTS

All reasonable fees and expenses incurred by the External Monitor, including any reasonable expenses incurred due to engaging, in accordance with Paragraph 7 of this Scope of Work below, any experts, consultants, accountants, or other additional qualified staff as is reasonably necessary to fulfill the External Monitor's duties and evaluate compliance with this Agreement, shall be paid by Defendants, in a manner which will be agreed upon by Defendants.

1. **Submission of Itemized Statements.** The External Monitor will submit to Defendants every sixty (60) days an itemized statement of fees and expenses incurred in connection with the Agreement, with the first such statement to be received within sixty (60) days of final approval of the Settlement by the Court.
2. **Payment.** Absent timely objection or objection for good cause by Defendants, Defendants will pay the External Monitor's itemized billing statements within sixty (60) calendar days after receipt. In the event of a timely objection by Defendants, Defendants shall timely pay any undisputed portion of the itemized statement and may withhold payment of the disputed portion pending resolution of the dispute.
3. **Objections and Disputes.** If Defendants object to all or any portion of any itemized statement submitted by the External Monitor, they shall submit a written objection to the External Monitor and Plaintiffs within two (2) weeks after receipt of the statement. Defendants' objection shall specify the particular item or item to which objection is made and Defendants' basis for the objection. The External Monitor and Defendants shall thereafter expeditiously meet and confer in an effort to resolve Defendants' dispute informally. If the Parties resolve the dispute, the agreed-upon amount of the disputed portion shall be paid within twenty (20) business days of such resolution. If the External Monitor and Defendants are unable to resolve the dispute, they shall notify the Court that there is a fee dispute that could not be resolved. If the parties are unable to resolve the dispute, the External Monitor may request Court approval of any fees and expenses to which Defendants have objected.
4. **Hours in Excess of 200 Per Year.** In the event the total hours billed by the External Monitor and his staff exceed two hundred (200) in any single calendar year, Defendants shall be deemed to have objected to the hours in excess of two hundred (200) without the necessity of a timely written objection, and Defendants shall not be obligated to pay for the hours in excess of two hundred (200) absent mutual agreement.

5. **Hourly Rates.** The professional fees of the External Monitor and his staff, which include overhead and fixed expenses, are approved as follows:
 - a. External Monitor (Peter Blanck): four hundred and seventy-five dollars (\$475) per hour;
 - b. Graduate student assistants: twenty-five to fifty dollars (\$25-50) per hour. The foregoing hourly rates will not decrease or increase during the term of the Agreement.

The External Monitor shall maintain records of all time spent on the matter, identifying tasks performed in increments of 1/10th of an hour.

6. **Costs and Expenses.** Defendants shall also reimburse the External Monitor for all costs and expenses reasonably incurred by the External Monitor in connection with his duties and responsibilities under the Agreement, excluding the cost of travel to and from New York City, absent advance authorization from Defendants. The External Monitor shall itemize all such costs and expenses on the statements submitted to Defendants in accordance with Paragraph 1, and shall maintain records supporting all such expenditures, including receipts.
7. **Engagement of Other Professionals and Qualified Staff.** If the External Monitor determines that it is reasonably necessary to engage any experts, consultants, accountants, or other qualified staff, he shall provide advance written notice to the Parties and, if requested, shall meet and confer regarding the need for the engagement and, upon authorization of Defendants, the terms of the engagement. Itemized billing statements for the fees and expenses of such experts, consultants, accountants, or other qualified staff shall be submitted and paid in accordance with the procedures set forth in Paragraphs 1-3 above.

D. CONFIDENTIALITY

The External Monitor and any other individuals engaged by the External Monitor are subject to the Confidentiality Agreement attached as Exhibit K to the Agreement.

E. RESPONSIBILITIES

It is understood that the External Monitor will: (i) make a reasonable effort to be available upon reasonable advance notice; (ii) preserve any written materials, including emails, generated or received by the External Monitor in connection with this engagement, as such materials are potentially discoverable in litigation; and (iii) not during the course of this engagement consult for, or otherwise represent, any person or entity with an interest adverse to any Party's interests in or concerning the Litigation or Agreement, or the events or occurrences out of which the Litigation arises.

Dated September 13, 2022

DISABILITY RIGHTS ADVOCATES

_____/s/
Torie Atkinson
655 Third Avenue, 14th Floor
New York, NY 10017
Tel: (212) 644-8644
sseaborn@dralegal.org
tatkinson@dralegal.org

*Attorneys for Plaintiffs M.F., M.R., I.F., and
the American Diabetes Association*

WEIR GREENBLATT PIERCE LLC

_____/s/
Alan L. Yatvin
The Widener Building, Suite 500
1339 Chestnut Street
Philadelphia, PA 19107
Tel: (215) 665-8181
ayatvin@wgpllp.com
*Attorneys for Plaintiff American Diabetes
Association*

CITY OF NEW YORK
NEW YORK CITY DEPARTMENT OF
EDUCATION
NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE

_____/s/
Chlarens Orsland
Corporation Counsel of the City of New York
100 Church Street
New York, New York 10007
Tel: (212) 356-2086
corlsand@law.nyc.gov

Exhibit O

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
M.F., a minor, by and through his parent and natural guardian YELENA FERRER; M.R., a minor, by and through her parent and natural guardian JOCELYNE ROJAS; I.F., a minor, by and through her parent and natural guardian JENNIFER FOX, on behalf of themselves and a class of those similarly situated; and THE AMERICAN DIABETES ASSOCIATION, a nonprofit organization,

Plaintiffs,

-against-

THE NEW YORK CITY DEPARTMENT OF EDUCATION; THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE; THE OFFICE OF SCHOOL HEALTH; THE CITY OF NEW YORK; ERIC ADAMS, in his official capacity as Mayor of New York City; DAVID C. BANKS, in his official capacity as Chancellor of the New York City Department of Education, ASHWIN VASAN, in his official capacity as Acting Commissioner of the New York City Department of Health and Mental Hygiene; and ROGER PLATT, in his official capacity as Chief Executive Officer of the Office of School Health,

Defendants.

**[PROPOSED] ORDER RE:
EXTERNAL MONITOR
COMPENSATION**

2018-CV-6109 (NG) (SJB)

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WHEREAS, Plaintiffs commenced this action alleging *inter alia*, that Defendants failed to provide appropriate care to students with type 1 or type 2 diabetes in New York City public schools;

WHEREAS, on September ___, 2022, the parties executed a Settlement Agreement that indicated provision for the appointment of a monitor and a three (3) year monitoring period;

WHEREAS, the parties have selected Peter D. Blanck, Ph.D., J.D. (“External Monitor”), to work with Joint Expert the Plaintiff American Diabetes Association;

WHEREAS, by Order dated ___, 2022, this Court preliminarily approved the Settlement Agreement and has directed notice to be provided to the class;

WHEREAS, the parties and proposed External Monitor have agreed to a scope of work and amount of compensation;

NOW, THEREFORE IT IS ORDERED that the following terms shall govern the compensation and payment of the External Monitor and his staff:

1. The External Monitor shall submit to the Defendants every sixty (60) days an itemized statement of fees and expenses.

2. The Defendants shall pay the External Monitor itemized billing statements within sixty (60) calendar days after receipt.

3. In the event of a timely objection or objection for good cause by the Defendants in accordance with Paragraph 4 below, Defendants shall timely pay any undisputed portion of the itemized statement and may withhold payment of the disputed portion pending resolution of the dispute.

4. **Objections and Disputes.** If the Defendants objects to all or any portion of any itemized statement submitted by the External Monitor, it shall submit a written objection to the External Monitor and Plaintiffs’ counsel within two (2) weeks after receipt of the statement. Defendants’ objection shall specify the particular item or items to which objection is made and

Defendants' basis for the objection. The External Monitor and Defendants shall thereafter expeditiously meet and confer in an effort to resolve Defendants' dispute informally. If the parties resolve the dispute, the agreed-upon amount of the disputed portion shall be paid within twenty (20) business days of such resolution. If the External Monitor and Defendants are unable to resolve the dispute, they shall notify the Court that there is a fee dispute that could not be resolved. If the parties are unable to resolve the dispute, the External Monitor may request Court approval of any fees and expenses to which Defendants have objected.

5. **Hours in Excess of 200 Per Year.** In the event the total hours billed by the External Monitor and his staff exceed two hundred (200) in any single calendar year, Defendants shall be deemed to have objected to the hours in excess of two hundred (200) without the necessity of a timely written objection, and Defendants shall not be obligated to pay for the hours in excess of two hundred (200) absent an order of the Court upon application by the External Monitor. The External Monitor may apply to the Court for approval of statements that include hours in excess of two hundred (200) and the Court may approve such invoices if the hours expended appear to have been reasonably necessary for the External Monitor to fulfill his duties and responsibilities under the Remedial Order.

6. **Hourly Rates.** The professional fees of the External Monitor and his staff, which include overhead and fixed expenses, are approved as follows:

- a. External Monitor (Peter Blanck): four hundred and seventy-five dollars (\$475) per hour;
- b. Graduate student assistants: twenty-five to fifty dollars (\$25-50) per hour.

The foregoing hourly rates will not decrease or increase during the three (3) year term of the External Monitor. The External Monitor shall maintain records of all time spent on the matter, identifying tasks performed in increments of 1/10th of an hour.

7. **Costs and Expenses.** Defendants shall also reimburse the External Monitor for all costs and expenses reasonably incurred by the External Monitor in connection with his duties and responsibilities, excluding the cost of travel to and from New York City, absent advance authorization from Defendants. The External Monitor shall itemize all such costs and expenses on the statements submitted to DOE in accordance with Paragraph 1, and shall maintain records supporting all such expenditures, including receipts.

8. **Protection from Liability.** As an agent and officer of the Court, the External Monitor and those working at his direction shall receive the same protections from being compelled to give testimony and from liability for damages as those received by other federal judicial adjuncts performing similar functions.

So ordered:

Hon. Nina Gershon
United States District Judge

Dated: _____, 2022