

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY**

ADAM X., BRIAN Y., CASEY Z., on
behalf of themselves and all others
situated, and the AMERICAN CIVIL
LIBERTIES UNION OF NEW
JERSEY, and the ARC OF NEW
JERSEY,

Plaintiffs,

v.

NEW JERSEY DEPARTMENT OF
CORRECTIONS, VICTORIA KUHN,
in her official capacity as Acting
Commissioner of the New Jersey
Department of Corrections, NEW
JERSEY DEPARTMENT OF
EDUCATION, and ANGELICA
ALLEN-McMILLAN, in her official
capacity as Acting Commissioner of the
New Jersey Department of Education,

Defendants.

Civil Action No.: 3:17-cv-00188-
FLW-LHG

**CONSENT ORDER EXTENDING
DEADLINES**

WHEREAS, Adam X., Brian Y., Casey Z., the American Civil Liberties Union of New Jersey and the Arc of New Jersey (“collectively, “Plaintiffs”), and the New Jersey Department of Corrections (“DOC”); Victoria Kuhn, in her official capacity as Acting Commissioner of the DOC; the New Jersey Department of Education (“DOE”); and Angelica Allen-McMillan, in her official capacity as Acting Commissioner of the DOE (collectively, “Defendants,” together with Plaintiffs, the “Parties”) through their respective counsel entered into a settlement agreement on July 15, 2021 (ECF No. 135-3, the “Settlement Agreement”);

WHEREAS, on July 21, 2021, the Court issued an order preliminarily approving the proposed Settlement Agreement, approving the Class Notice, and approving the plan for how Class Notice would be disseminated to the Class. (ECF No. 136, the “Preliminary Approval Order”);

WHEREAS, the proposed Settlement Agreement provides, among other notice procedures, that the DOC will mail the Full Notice Package (also defined as the “Class Notice”) to “every SFEA [State Facilities Education Act] student” currently in DOC custody and the following people no longer in DOC custody: all students who were in DOC custody on or after January 11, 2015 and are no longer in DOC custody, but were eligible for special education and related services at that time; and all people who were in DOC custody on or after January 11, 2015 and were under 18 and did not have a high school diploma when they entered DOC custody and who were born after January 11, 1993;

WHEREAS, the Preliminary Approval Order set deadlines for (a) Class Members to send written notice objecting to the Settlement Agreement; (b) Class Counsel and counsel for Defendants to respond to any timely filed objections; (c) Plaintiffs to file a Motion for Final Approval; (d) counsel for Defendants and Class Counsel to provide declarations to the Court attesting to the manner in which they disseminated the Class Notice consistent with the proposed Settlement Agreement; and (e) a Fairness Hearing pursuant to Rule 23(e) of the Federal Rules of Civil Procedure (*see* ECF No. 136);

WHEREAS, on December 15, 2021, the Parties contacted Chambers to jointly request that the Court extend the above referenced deadlines.

IT IS HEREBY ORDERED AS FOLLOWS:

1. Unless otherwise stated, the terms in this Order have the meaning set forth in the Preliminary Approval Order (ECF No. 136) or the Settlement Agreement (ECF No. 135-3).

2. The deadline to object to the proposed Settlement Agreement is hereby extended from November 22, 2021 to January 26, 2022. Any member of the Class who wishes to object must do so in writing, and all objections must be received by Class Counsel no later than January 26, 2022 at the address listed in the Full Notice.

3. The deadline for Class Counsel and counsel for Defendants to respond to any timely filed objections is hereby extended from December 17, 2021 to February 9, 2022.

4. The deadline for Plaintiffs to file their Motion for Final Approval of Settlement is hereby extended from December 17, 2021 to February 9, 2022. This submission shall include Plaintiffs' motion for attorneys' fees pursuant to Rule 23(h) of the Federal Rules of Civil Procedure.

5. The deadline for counsel for Defendants and Class Counsel to provide declarations to the Court attesting to the manner in which they disseminated the Class Notice consistent with the proposed Settlement Agreement is hereby extended from December 17, 2021 to February 9, 2022.

6. The Fairness Hearing pursuant to Rule 23(e) of the Federal Rules of Civil Procedure before the undersigned is hereby continued from January 26, 2022 to March 3, 2022 at 11:00 a.m., and will be held via Zoom. The hearing may be continued from time to time without further notice.

7. The Court hereby approves an updated version of the Class Notice (the "Updated Class Notice"), attached to this Order, comprised of: an updated version of the Full Notice with the new deadlines for objections and the Fairness Hearing (the "Updated Full Notice"); the One-Page Flyer; and the Compensatory Education Form. The Updated Full Notice, as annexed hereto, is revised to reflect (a) the January 26, 2022 deadline for the receipt of any written objections to the proposed Settlement Agreement and (b) the revised date of March 3, 2022 at 11:00 a.m. for the Fairness Hearing, noting that it will be held remotely via Zoom, with information regarding

how to access the hearing to be made available on the American Civil Liberties Union of New Jersey (“ACLU-NJ”) and Disability Rights Advocates (“DRA”) websites in advance of that date.

8. Within ten days of the entry of this Order, the Parties shall provide notice to Class Members of these changes by distributing the Updated Class Notice as follows, consistent with the provisions of the proposed Settlement Agreement:

- a. The DOC, DOE, ACLU-NJ, and DRA will each post the links to the Updated Class Notice on their respective agency and organization websites.
- b. The DOC will post the Updated Class Notice, in English and Spanish, at every DOC Prison in the law library and classrooms or any other spaces where students receive general educational services;
- c. The DOC shall mail the Updated Class Notice in paper form along with a cover letter highlighting these new dates (the “Notice Cover Letter”), to every previously-identified SFEA student currently in DOC custody other than those described in paragraph 8.d below.
- d. Class Counsel shall mail the Updated Class Notice in paper form along with the Notice Cover Letter to the following people who are or were in DOC custody on or after January 11, 2015, whether or not they are still in DOC custody: (a) all previously-identified students who were eligible for special education and related services at that time, and (b) all people who were under 18 and did not have a high school diploma when they entered DOC custody and who were born after January 11, 1993.

9. Any Class Member who fails to properly and timely file and serve objections or comments shall be foreclosed from objecting to the Stipulation of Settlement, unless otherwise ordered by the Court. Any member of the Class may also request permission to speak at the Fairness Hearing by submitting a request in writing as outlined above, by this same deadline.

10. When the Court provides access information for the Zoom Fairness Hearing, ACLU-NJ and DRA will each post that information on their respective organization websites.

IT IS SO ORDERED.

DATED: December 20, 2021

/s/ Freda L. Wolfson
The Honorable Freda Wolfson
Chief Judge, United States District Court for
the District of New Jersey

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT

ATTENTION: If you are or were incarcerated a New Jersey prison at any point after January 11, 2015 and meet any of the following four descriptions, then you may be a member of the proposed settlement class affected by this lawsuit:

(1) you were identified as being entitled to special education services and reasonable educational accommodations, or

(2) you had a verified Individual Education Program (“IEP”) during or before to your time in prison, or

(3) you were diagnosed with an educational disability and an IEP was being developed but was not finished before you were released from prison, or

(4) were born after January 11, 1993 and under 18 years old when you entered prison, and did not have a high school diploma when you entered prison.

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

WHY AM I RECEIVING THIS NOTICE?

The purpose of this notice is to inform you of the proposed settlement in a pending class action lawsuit brought on behalf of people held in New Jersey prisons who are or were entitled to special education. The lawsuit, *Adam X. v. New Jersey Department of Corrections*, Case No. 3:17-cv-00188-FLW-LHG, filed in the U.S. District Court for the District of New Jersey in 2017, was brought by Named Plaintiffs Adam X., Brian Y. and Casey Z., the American Civil Liberties Union (“ACLU”) of New Jersey, and the Arc of New Jersey. The lawsuit alleges that the New Jersey Department of Corrections (“DOC”) and the New Jersey Department of Education (“DOE”) have discriminated against students with disabilities who are 21 years old or younger in state prisons. The Named Plaintiffs, Department of Corrections and Department of Education have reached an agreement to settle the lawsuit. That settlement must be approved by the Court before it can be finalized. The details of the settlement, described below, are contained in the Settlement Agreement.

AM I PART OF THE SETTLEMENT CLASS?

If you are or were held in any prison in New Jersey after January 11, 2015 and: (1) you were identified as being entitled to special education services and reasonable educational accommodations, or (2) you had a verified Individual Education Program (“IEP”) during or before to your time in prison, or (3) you were diagnosed with an educational disability and an IEP was being developed but was not finished before you were released from prison, or (4) were born after January 11, 1993 and under 18 years old when you entered prison, and did not have a high school diploma when you entered prison, you may be a member of the proposed settlement class affected by this lawsuit and the proposed Settlement Agreement. Please read this notice carefully because your rights may be affected.

WHAT WOULD THE PROPOSED SETTLEMENT AGREEMENT DO?

The Department of Corrections Has Agreed to Revise Policies

As part of the Settlement Agreement, the DOC has agreed to do the following:

- Assess the levels of education students entering prison have attained thus far, and their need for special education by, among other things, requesting records from the student's last school district;
- Develop and implement IEPs and Section 504 Plans according to the individual needs of each student;
- Provide individualized transition services, such as college-prep classes, job training, and/or independent living skills, as defined by federal law (the "Individuals with Disabilities Education Act") to students eligible for special education until June 30 of the School Year in which the student turns twenty-one years old;
- Provide interpretation and translation services to students with disabilities who are not fluent in English;
- Provide at least four hours of instruction per day in a regular classroom setting to students with disabilities, with only limited exceptions;
- Use appropriately certified teachers to provide special education services;
- Provide students with disabilities relevant make-up instruction when an entire morning or afternoon class must be canceled;
- Ensure that instructional personnel use proven instructional practices, and use worksheets only to supplement other educational methods or techniques;
- Track students' credits, educational levels, and instructional hours to ensure appropriate placement;
- Develop and implement behavioral assessments and plans for students with disabilities in appropriate circumstances;
- Determine whether disciplinary incidents that occur during the school day and result in a disciplinary charge are a result of the student's disabilities and, if so, not place students in the Restorative Housing Unit or other close custody unit for more than ten days unless certain limited exceptions apply;
- Take steps to ensure conditions of education for students in the Restorative Housing Unit or close custody units reflect classrooms in the general population;

- Limit the use of “cell study” to certain limited circumstances and provide the opportunity for in-person instruction with a certified teacher even in those circumstances;
- Adopt and maintain policies and procedures that ensure the preceding terms are accomplished;
- Train prison staff on all policies and procedures in the Settlement Agreement; and
- Provide Dr. Susan Roberts, a person appointed by the Court to monitor the implementation of these provisions, access to the people, places and records she needs.

Department of Education’s Obligation to Monitor the Department of Corrections

- As part of the Settlement Agreement, DOE has agreed to monitor DOC’s provision of special education and related services throughout New Jersey prisons, with input and oversight from Dr. Susan Roberts, a person who was appointed by the Court to ensure that the provisions referred to above are implemented properly. The DOE will visit prisons to interview students and teachers, observe classes, and review students’ educational files to determine whether the DOC is complying with special education laws and the settlement agreement. If the DOE finds that certain terms of the settlement are not being followed, it will develop plans with specific steps that the DOC needs to take to correct the problems, and will continue to monitor to verify that those steps are taken. Additionally, DOE may order additional education services if students have not been provided with services that they should have been provided during the past school year. This is called “compensatory education.” Monitoring will occur for a period of five years.
- After the end of the five years, DOE intends to place the DOC on its regular rotation for monitoring special education services, in other words, the same way it monitors other educational providers, like public schools.

Compensatory Education System

The Agreement also establishes a program so students can submit claims for make-up educational and vocational services and resources (called “compensatory education”) for services that were not provided between January 11, 2015 and October 31, 2020. Compensatory education for this period will be available for eligible students who are currently in prison as well as those who already have been released from prison. The award may consist of: services provided by the DOC or from a list of approved third-party educational, vocational, and reentry service providers; and/or funds to pay for correspondence courses, college, technical school or any other educational, vocational, or reentry program. Eligible class members may receive up to \$8,000 in educational, vocational, or reentry funds for each year that they should have received services but did not.

Class members who want to be considered for compensatory education through this program must submit the attached Compensatory Education Form within two years of the Court's final approval of the Settlement Agreement (also called "the Effective Date"). The Effective Date will likely be in January or February 2022, so class members who want to be considered for compensatory education through this program should submit the Compensatory Education Worksheet no later than January 2024. The Court-appointed External Monitor (Dr. Susan Roberts) will evaluate whether students are entitled to compensatory education services and, if so, the appropriate compensatory education award for each person. Class members who choose to be considered for compensatory education through this Settlement Agreement and who submit the Compensatory Education Form agree to **release all claims for compensatory education against the New Jersey Department of Corrections through October 31, 2020**, regardless of the outcome of the External Monitor's evaluation.

Class members who **do not** want to be considered for compensatory education through this Settlement Agreement, and instead wish to pursue their claims for compensatory education separate and apart from this lawsuit (in other words, to "opt out"), must fill out and submit the attached Compensatory Education Form within two years of the Effective Date (by approximately January 2024) to preserve their claims.

If class members do not fill out and submit the Compensatory Education Form within two years of the Effective Date (by approximately January 2024), they will be deemed to have released their claims for compensatory education and will not be able to pursue them.

To submit your completed Compensatory Education Form, please send it to the following address: ACLU of New Jersey, Attn: Class Action, P.O. Box 32159, Newark, NJ 07102.

Please note that the External Monitor will not begin reviewing Compensatory Education Forms or granting compensatory education to eligible class members until after the Effective Date (likely January 2022). However, you may still send in your Worksheet anytime between now and two years from the Effective Date (by approximately January 2024) to claim possible services or funds, or to opt out.

Role of the Court-Appointed External Monitor

For the five-year settlement term, the Court-appointed External Monitor, Dr. Susan Roberts, will monitor the DOE's and DOC's obligations under this agreement. For the first part of the settlement term, Dr. Roberts will also administer the compensatory education system as described above.

WHAT ELSE DO I NEED TO KNOW ABOUT THE SETTLEMENT AGREEMENT?

Resolution & Release of Claims

This Settlement Agreement resolves all claims brought by the Named Plaintiffs on behalf of themselves and the class, meaning once the Settlement Agreement is approved, the Named Plaintiffs and all class members will be deemed to have released the following claims:

- Any claims for systemic injunctive relief under IDEA or Section 504 regarding the special education system in DOC Prisons at issue in the Lawsuit that arose on or before the Effective Date of this Agreement; and
- Any claims for compensatory education in New Jersey prisons under IDEA or Section 504 that arose on or between the dates January 11, 2015 through October 31, 2020, **unless** Class Members opt out of the compensatory education relief by submitting the attached Compensatory Education Form on or before two years after the Effective Date (by approximately January 2024) (the individual Named Plaintiffs also release any claims for compensatory education that arose on or before the Effective Date of the Agreement).

The Settlement Agreement does **not** release any other claims by any of the Named Plaintiffs, class members, or any other person for:

- Any claims arising under the IDEA, Section 504, or the Americans with Disabilities Act, such as claims for compensatory education, individual due process claims, 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 that arose before January 11, 2015 or after the Effective Date (likely January 2022);
- Any claims regarding conditions of confinement arising under the United States Constitution or New Jersey law; or
- Any monetary claims that may exist under any relevant laws.

Additionally, the Settlement Agreement does not release any claims to enforce the terms of the Settlement Agreement, and the organizational plaintiffs, The Arc of New Jersey and the ACLU of New Jersey, do not release any claims of their individual members or constituents, although those individual members or constituents release certain claims if they are members of the class.

The Settlement Agreement does not provide for any monetary relief to be paid to members of the class (except up to \$8,000 per class member for each year that services were not provided in the form of educational, vocational, or reentry funds as described above (“COMPENSATORY EDUCATION PROGRAM”) and to the Named Plaintiffs for bringing this lawsuit as described further below (“Incentive Payments for Individual Named Plaintiffs”)).

Incentive Payments for Individual Named Plaintiffs

As part of the Settlement Agreement, DOC has agreed to pay the three individual Named Plaintiffs a total of \$15,000 as incentive payments for their participation in the lawsuit, as well as a total of \$64,000 as compensatory education payments to be used for educational, vocational, and/or reentry purposes only.

Attorneys' Fees

The class was represented by attorneys employed by the American Civil Liberties Union of New Jersey, Disability Rights Advocates, and Proskauer Rose LLP. The Settlement Agreement provides for the payment of \$975,000 for reasonable attorneys' fees and costs incurred during the course of the lawsuit, plus reasonable attorneys' fees and costs incurred in monitoring the implementation of the Settlement Agreement.

Fairness of Agreement

The class representatives and their attorneys have concluded that the terms and conditions of the proposed Settlement Agreement are fair, reasonable, and in the best interests of the class. In reaching this conclusion, the class representatives and their attorneys have considered the benefits of the settlement, the possible outcomes if they were to continue the lawsuit, and the expense and length of time associated with bringing the lawsuit to trial and any possible appeals.

WHAT IF I WANT TO OBJECT TO THE SETTLEMENT?

The Court has preliminarily approved the Settlement Agreement, and has scheduled a hearing for March 3, 2022 at 11:00 a.m. before the Honorable Judge Freda Wolfson, to determine whether the proposed Settlement Agreement is fair and reasonable and should be approved on a final basis. The hearing will take place via Zoom and access information will be available on the websites of the ACLU of New Jersey¹ and Disability Rights Advocates² prior to the hearing.

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to modify the terms of the Settlement Agreement; the Court can only approve or deny the Settlement Agreement. If the Court denies approval, the actions outlined in this notice will not occur and the lawsuit will continue. If that is what you want to happen, you must file an objection.

Although you are not required to attend the final approval hearing, as a Class Member, you may participate in, and be heard at, the hearing if you have filed a timely written objection that includes a statement of your intention to participate in the hearing. You may appear on your own or through an attorney. If you appear through an attorney, you are responsible for paying that attorney. The hearing date may be changed by the Court without further notice to the entire class. If you wish to receive electronic notice of any changes to the schedule, please file a notice of appearance with the Court and include a valid e-mail address at which you can receive notice.

To file an objection, please send it to the ACLU of New Jersey, Attn: Class Action, P.O. Box 32159, Newark, NJ 07102. **The deadline for written objections is January 26, 2022.** The written objection must be **received** by Class Counsel at this address by January 26, 2022.

IF YOU DO NOT TIMELY SUBMIT AN OBJECTION AS DESCRIBED HEREIN, YOU WILL BE DEEMED TO HAVE WAIVED YOUR OBJECTION AND SHALL BE FORECLOSED FROM MAKING ANY OBJECTION TO THE SETTLEMENT AGREEMENT.

IF YOU DO NOT OPPOSE THE SETTLEMENT AGREEMENT, YOU STILL NEED TO FILL OUT THE COMPENSATORY EDUCATION FORM TO BE CONSIDERED FOR COMPENSATORY EDUCATION OR TO OPT-OUT OF THAT PROGRAM IF YOU WANT TO PURSUE SUCH CLAIMS ON YOUR OWN.

WILL I BE BOUND BY THE SETTLEMENT?

The proposed Settlement Agreement, if given final approval by the Court, will bind all members of the Settlement Class. This will bar any person who is a member of the Settlement Class from seeking different or additional relief regarding all issues resolved in the Settlement Agreement for the term of the Settlement Agreement, except regarding compensatory education claims if you opt-out of the Compensatory Education Program through the Compensatory Education Form.

HOW DO I GET MORE INFORMATION?

This notice summarizes the proposed Settlement Agreement. You can review the actual Settlement Agreement and its precise terms and conditions by visiting www.aclu-nj.org and www.dralegal.org; or by contacting class counsel at the ACLU of New Jersey, Attn: Class Action, P.O. Box 32159, Newark, NJ 07102, prisoneducation@aclu-nj.org, Telephone 973-854-1700 or Disability Rights Advocates, Attn: Rebecca Rodgers, 655 Third Avenue, 14th Floor, New York, NY 10017, prisoneducation@dralegal.org, Telephone or Video Relay (212) 644-8644; or by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov> (Civil Action No. 3:17-cv-00188-FLW-LHG); or by visiting the office of the Clerk of the Court for the United States District Court for the District of New Jersey, 402 E State Street, Room 2020, Trenton, New Jersey 08608, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THE SETTLEMENT AGREEMENT.

This Notice is also available in Spanish. To obtain copies of this Notice in alternative accessible formats, please contact Class Counsel listed above.

Este aviso también está disponible en español. Para obtener copias de este Aviso en formatos accesibles alternativos, comuníquese con los Abogados del caso enumerados anteriormente.

¹ <https://www.aclu-nj.org/cases/adam-x-v-new-jersey-department-corrections-and-department-education>.

² <https://dralegal.org/case/adam-x-et-al-v-new-jersey-department-corrections-et-al/>