

The Honorable Lauren King

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

N.D. et al., on behalf of a class of those
similarly situated,

Plaintiffs,

v.

CHRIS REYKDAL, in his capacity as the
SUPERINTENDENT OF PUBLIC
INSTRUCTION and OFFICE OF THE
SUPERINTENDENT OF PUBLIC
INSTRUCTION, a Washington State
agency,

Defendants.

No. 2:22-cv-01621-LK

**PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND ISSUE OF
JUDGMENT AGAINST THE
DEFENDANT**

Note on Motion Calendar:

February 26, 2025

Plaintiffs respectfully submit this Motion for Final Approval of a Class Action Settlement and approval pursuant to Federal Rule of Civil Procedure 17 and LCR 17. Consistent with the Amended Order Granting Plaintiffs' Motion for Preliminary Approval, Counsel is filing this motion contemporaneously with their Motion for Attorneys Fees. Because the Class will receive appropriate notice through the plan developed by Plaintiffs,

1 and because the Settlement Agreement is “fair, adequate, and reasonable,” this Court
2 should grant final approval and issue judgment against the Defendants.

3 To date, no class members have filed objections to the settlement and class counsel
4 will respond to any objections as appropriate.

5 **I. FACTUAL BACKGROUND**

6 Plaintiffs filed this putative class action in November of 2022, seeking declaratory
7 and injunctive relief against Defendants Superintendent Chris Reykdal and the Office of
8 Superintendent of Public Instruction (“OSPI,” collectively “Defendant”), alleging that they
9 violated the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq.,
10 by failing to ensure school districts in Washington provide FAPE to “all children with
11 disabilities ... between the ages of 3 and 21, inclusive.” 20 U.S.C. § 1412(a). Washington law,
12 as currently written, only requires LEAs to provide a FAPE until the end of the school year
13 in which a student turns twenty-one. Wash. Rev. Code § 28A.155.020 and Wash. Admin.
14 Code § 392.172A.02000(2)(c). In defense of this law, Defendants relied on 20 U.S.C. §
15 1412(a)(1)(B)(i), which provides an exception to the age twenty-two requirement if
16 “application to [students age 18 to 21] would be inconsistent with State law or practice...,”
17 alleging that Washington does not provide free public education to students older than
18 twenty-one and therefore could exit students once they turned twenty-one. Plaintiffs sought
19 provisional class certification and a preliminary injunction (Dkt. No. 35) preventing
20 enforcement of Wash. Rev. Code § 28A.155.020 and Wash. Admin. Code §
21 392.172A.0200(2)(c). The Court denied the preliminary injunction (Dkts. No. 58 and 72)
22 and Plaintiffs appealed.
23
24
25

26 The Ninth Circuit reversed, holding that “Washington in fact provides free public
27 education to nondisabled students of age 21 and older” and therefore, “[u]nder *E.R.K.*, that

1 makes section 1412(a)(1)(B)(i) inapplicable to Washington.” *N.D. v. Reykdal*, 102 F.4th
2 982, 994 (9th Circ. 2024) (cleaned up).

3 Following remand from the Ninth Circuit, the Court granted provisional certification
4 to a class of students yet to be exited from special education and issued a preliminary
5 injunction (Dkts. No. 75 and 83). The Court also issued the following declaratory judgment:
6

- 7 (a) OSPI’s Refusal to ensure the provision of FAPE to Plaintiff E.A. and the members
of the provisional class on account of their ages violates the IDEA;
- 8 (b) By this conduct, OSPI has violated 20 U.S.C. § 1407 and 20 U.S.C. § 1412(11);
- 9 (c) Section 28A.155.020 of the Revised Code of Washington and Section
10 392.172A.02000 of the Washington Administrative Code are invalid as contrary
11 to the IDEA to the extent they do not ensure eligible students receive a FAPE
until they turn 22.

12 On July 3, 2024, Defendants provided to Plaintiffs an Offer of Judgment pursuant
13 to Federal Rule of Civil Procedure 68. Following further negotiations, the parties reached a
14 settlement agreement. On November 22, 2024 this Court granted preliminary approval of
15 the settlement agreement. OSPI then proceeded consistent with the settlement agreement,
16 requiring LEAs to notify students of the agreement and the opportunity to both seek
17 compensatory education and submit objections. *See Declaration of Alex Hagel*, ¶ 5
18

19 According to OSPI, as of the date of the filing of this Motion, it has received the
20 following reports from LEAs:

- 21
- 22 • 4 individuals responded to decline any offer of compensatory education.
 - 23 • 42 individuals continue to be served in school, with no break in services (they
24 did not require a notification letter, as their exit codes were changed back to
25 enrolled).
 - 26 • 3 individuals requested an IEP meeting to discuss compensatory education.
- 27

- 38 individuals had not responded to the notification as of the end of December 2024.

Hagel Decl. ¶ 9. OSPI has yet to receive reports from many LEAs, accounting for approximately 250 other individuals who received RMA or D2 exits. OSPI suspects that with many Districts closed for Winter Break until the date of this filing – January 6 – there is a delay in reporting. OSPI will be following up with Districts this week. *Id.* Additionally, Plaintiffs’ counsel has fielded four calls from class members seeking clarification and responded to one email from the parent of a class member. *Hagel Decl.* ¶ 10 Plaintiffs plan to submit additional information once it is received and both parties will be prepared to provide updated information at the Final Approval Hearing scheduled for February 26, 2025.

II. SETTLEMENT AGREEMENT TERMS

The following generally summarizes the Agreement’s terms. The complete agreement is available at Dkt. 92.1 and on OSPI’s website - <https://ospi.k12.wa.us/student-success/special-education>

1. Settlement Class

The proposed Settlement Class is comprised of:

All students in Washington who were exited from special education services due to age before their 22nd birthday between November 11, 2020 and the present.

The proposed class is the result of extended negotiations between the parties about which students may be eligible, including the Court’s ruling regarding the provisional class. Dkt. No. 83 at 11. (“the Court agrees with Plaintiffs that the carve-out [for students exited based on receiving a high school diploma] is unnecessary”). The class definition also accounts for the IDEA’s two-year statute of limitations. *See* 20 U.S.C. § 1415(6)(B). The

1 Court certified the above class its Amended Order Granting Preliminary Approval (Dkt.
2 #95).

3 **2. Further Declaratory Relief**

4 As part of the Preliminary Approval Order, the Court also issued the following
5 declaratory relief, consistent with the Settlement Agreement:

6 the state’s policy of aging students out of special education at the end
7 of the school year in which they turn 21 pursuant to Wash. Rev. Code
8 § 28A.155.020 and Wash. Admin. Code § 392.172A.02000(2)(c)
9 presently violates the IDEA, has violated the IDEA at all times during
10 the two years preceding the filing of this lawsuit, and will continue to
11 violate the IDEA absent a substantial change in the state’s policies
for charging and waiving tuition for its adult secondary education
programs.

12 **3. Actions to be taken by OSPI**

13 The Settlement Agreement and Order Granting Preliminary Approval required that
14 OSPI take the following actions to ensure that LEAs comply with the Court’s ruling that
15 Wash. Rev. Code § 28A.155.020 and Wash. Admin. Code § 392.172A.02000(2)(c) violate
16 the IDEA;

- 17 a. Direct LEAs to extend age eligibility for special education
18 services until the student’s 22nd birthday.
- 19 b. Direct LEAs to offer to immediately resume services under the
20 last implemented IEP for each student who has not yet turned 22
who aged out during the pendency of the lawsuit.
- 21 c. Direct LEAs to reconvene IEP teams for all students in the class
22 who wish to receive an award of compensatory education.
- 23 d. Direct LEAs that they may not decline to provide
24 compensatory education on grounds of age for IEP services
25 not provided to class members as a result of their exit prior to
26 turning age 22.
27

1 To Plaintiffs knowledge, OSPI has complied with those requirements. *See Hagel*
2 *Decl.* Specifically, its Assistant Superintendent of Special Education Dr. Tania May sent
3 an email to all LEA superintendents on or about November 26, 2024 directing them to
4 take the above actions. OSPI contemporaneously posted information about the settlement
5 on their website (*supra* at 4). *See Hagel Decl.* ¶ 8.

6
7 **4. Provision of Compensatory Education to Settlement Class Members**

8 Under this agreement, the provision of compensatory education to eligible students
9 will be handled by LEAs based on the recommendation of each class member’s properly
10 constituted IEP team. As mentioned above, OSPI will utilize its supervisory powers, to the
11 extent authorized by law, to ensure that LEAs provide the necessary compensatory
12 education. Additionally, should the LEA and class member agree, they may receive
13 monetary compensation in lieu of compensatory education. Also, any class member who
14 has privately paid for educational programs may seek reimbursement of those expenses
15 from their LEA.
16

17 The agreement preserves the right of class members to use of either Due Process
18 Hearing procedures (Wash. Admin. Code § 392-172A-05090) or OSPI’s Community
19 Complaint process (Wash. Admin. Code § 392-172A-05025) to challenge any proposed
20 offers of compensatory education by an LEA, or the failure of an LEA to reconvene an IEP
21 team.
22

23 As noted above, at the time of filing, 3 students have already sought compensatory
24 education. Plaintiffs will supplement this information as schools return from Winter Break.
25

26 **5. Reimbursement to guardians of N.D. and E.A.**
27

1 The agreement further provides direct reimbursement by OSPI to the guardians of
2 N.D. and E.A. for documented educational expenses. For E.A. this totals up to \$60,000 that
3 his family has incurred to provide private educational services since his exit on August 31,
4 2023, in lieu of his return to the Selah School District. For N.D., OSPI will either directly
5 pay for or reimburse his guardians up to \$150,000 in documented educational expenses,
6 the specifics of which are identified in the agreement. That fund will be available to use for
7 five years from the entry of judgment.
8

9 **6. Reasonable Attorneys' Fees and Costs**

10 OSPI has agreed to pay all of Plaintiffs' reasonable attorney's fees and costs incurred
11 in this action, through the entry of the final approval by this court as the prevailing party
12 under 20 U.S.C. § 1415(i)(3). This includes fees incurred as part of the preliminary
13 injunction appeal, consistent with Dkt. No. 80. As promised, a Motion for Attorneys Fees
14 is being filed contemporaneously with this motion – seeking \$448,478 in fees and costs.
15

16 **7. Notice**

17 Notice is in the process of being provided to class members in multiple ways using
18 one of two notice forms. Within five business days of the granting of preliminary approval
19 by this Court, OSPI directed LEAs to provide direct notice to all class members who were
20 assigned an "exit code" of "RMA" (Reached Maximum Age) or "D2" since November 11,
21 2020. *See* Dkt. No. 35-3 at 36 for OSPI's explanation of exit codes. That was completed on
22 November 26, 2024 via an email to all district superintendents from OSPI's Assistant
23 Superintendent of Special Education. *Hagel Decl.* ¶ 6. The full text of that notice template
24 is attached to the Settlement Agreement at Exhibit A. That notice informs potential class
25 members of the nature of the suit, the settlement terms, how to obtain more information
26 about settlement, how the class member may object if they disagree with the Agreement,
27

1 and specify who class members should contact at the LEA to schedule the required IEP
2 meeting. LEAs were directed to send the notices to the student’s last known address – both
3 physical and email, or if an address for the student is unknown, the last known address of
4 the students’ parents and/or legal guardians.

5 Further notice was provided through OSPI’s website and its regular bulletins
6 starting within five business days of the Court’s order granting preliminary approval. OSPI
7 has maintained the notice on their website since the Court granted preliminary approval.
8 OSPI has also sent the same publication information to various disability advocacy
9 organizations in Washington, including The Arc of Washington State, the Washington
10 Autism Alliance, and Disability Rights Washington, with permission to republish the
11 notice. That notice, attached to the Settlement Agreement as Exhibit B, contained the same
12 information above, except without reference to a specific individual, instead recommending
13 that students contact their district’s director of special education or Plaintiffs’ counsel to
14 schedule the required IEP meeting.
15

16 OSPI will further direct LEAs to report the number of students who have scheduled
17 or attempted to schedule an IEP meeting by a specific date – at least thirty days prior to the
18 planned fairness hearing. Again, once this information is confirmed, it will be promptly
19 shared with the Court.
20

21 **8. Retaining Jurisdiction**

22 Finally, the parties requested that this Court retain jurisdiction over “the
23 administration, consummation, enforcement, and interpretation of any approved
24 settlement agreement and any Court orders approving the settlement agreement for five
25 years.”
26
27

III. ARGUMENT

As a matter of “express public policy,” federal courts strongly favor and encourage settlements, particularly in class actions and other complex matters, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (noting the “strong judicial policy that favors settlements, particularly where complex class action litigation is concerned”). Fed. R. Civ. P. 23(e) provides that a class action may be settled “only with the court's approval.” Rule 23(e)(2) requires that a proposed settlement be evaluated to be “fair, reasonable, and adequate.” As the Court noted, this agreement would not “bind” the class members (Dkt #95 at 15), and thus consideration under Rule 23(e)(2) is not strictly necessary. However, given the nature of the relief being made available, Plaintiffs believe that consideration under Rule 23(e)(2) provides important assurances to the Court of the appropriateness of the relief.

1. The Settlement should be approved

The court’s role at final approval stage is to conduct the same inquiry done at the preliminary approval stage - ensure that “the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (citation omitted). Plaintiffs Third Motion for Preliminary Approval (Dkt. #92) addressed at length all but one of the factors articulated in *Hanlon*. The last factor – the reaction of Class Members to the proposed settlement – also supports final approval at this stage.

1 **a. The Settlement is the Product of Serious, Informed, and Non-**
2 **Collusive Negotiations.**

3 The parties negotiated the settlement at arm’s length over weeks of back and forth
4 between skilled and competent practitioners, following remand from the Ninth Circuit.
5 Although parties intended to engage in mediation (Dkt. Nos. 82 and 84), mediation was
6 ultimately not necessary to reach an agreement on the disputed issues. Counsel negotiated
7 the settlement with the benefit of many years of prior experience working, both in class
8 actions and within the special education context and with a solid understanding of the facts
9 and law of this case, having conducted significant fact discovery prior to the reaching an
10 agreement. The recommendation of experienced counsel weighs in favor of granting
11 approval and creates a presumption of reasonableness. See *Bellinghausen v. Tractor*
12 *Supply Co.*, 306 F.R.D. 245, 257 (N.D. Cal. 2015) (“The trial court is entitled to, and should,
13 rely upon the judgment of experienced counsel for the parties.”)
14

15
16 **b. The injunctive nature of the relief and use of IEP teams to determine**
17 **compensatory education is appropriate.**

18 Plaintiffs continue to believe that the use of individual IEP teams to determine
19 compensatory education for class members provides an effective means of determining
20 individual compensatory education awards and alleviates the need for the parties to
21 potentially litigate those issues for all class members. In fact, IEP teams are better
22 positioned to provide individualized review of each class members’ needs by a team
23 familiar with both the student and the resources available to the specific LEA. It is also
24 aligned with “the core of the IDEA” which is “the cooperative process that it establishes
25 between parents and schools... The central vehicle for this collaboration is the IEP
26 process.” *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 53 (2005).
27

1 OSPI's obligation to ensure LEAs convene IEP teams provides a tangible benefit to
2 all class members, whether or not the class member ultimately makes use of those services.
3 Further, class members who do not agree with the proposed compensatory education have
4 available to them two different options for challenging the decision – filing for due process
5 or submitting a Community Complaint to OSPI. With those procedural safeguards in
6 place, Plaintiffs' counsel believes proposed settlement is fair and reasonable.
7

8 **c. Individual Reimbursements to N.D. and E.A. are Reasonable**

9 As part of the agreement, OSPI has agreed to reimburse E.A.'s guardians up to
10 \$60,000 and N.D.'s guardians up to \$150,000 for expenses incurred educating their
11 children after being exited. To access these awards, Plaintiffs are required to submit
12 evidence showing "documented expenses." Under the settlement agreement, this type of
13 reimbursement model is potentially available to any class member working with their
14 individual IEP team;
15

16 If a student, IEP team, and LEA agree, a student may receive
17 monetary compensation in lieu of compensatory education.
18 Any class members who have paid privately for special
19 education services after having been exited due to age from
20 LEA-provided special education programs may seek
21 reimbursement of such documented expenses, and OSPI shall
22 direct LEAs to offer reimbursement of reasonable expenses in
23 line with the prior recommendations of the class member's
24 IEP team.

25 The sole distinction is that the funds will come directly from OSPI, rather than their LEAs.
26 While not necessarily a "service" or "incentive" award, "[i]ncentive awards that are
27 intended to compensate class representatives for work undertaken on behalf of a class 'are
fairly typical in class action cases.'" *In re Online DVD*, 779 F.3d at 943 (quoting *Rodriguez
v. West Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009)). Because the same type of award
is available to all members of the class, and because they are based on documented expenses

1 related directly to the lost educational opportunities, the individual awards to N.D. and
2 E.A.’s guardians are appropriate.

3 For example, attached to P.A.’s declaration submitted in support of this motion is a
4 spreadsheet of expenses E.A.’s family incurred once continued enrollment in the Selah
5 School District for the 2023-2024 school year appeared impossible. *Exhibit 1*. The primary
6 bulk of expenses includes the hiring of a private 1:1 paraeducator to allow E.A. to attend
7 some classes at Yakima Valley College. Those expenses alone total more than \$55,000.
8

9 Similarly, N.D.’s family has submitted a declaration outlining the various needs
10 identified in his most recent IEP. N.D. received specially designed instruction in all
11 academic areas (math, reading, and writing) as well as adaptive/life skills, communication,
12 and social/behavioral. *Declaration of T.D.* ¶ 5. Given N.D.’s significant disability related
13 needs, which continue to this day, N.D.’s previous “least restrictive environment” was
14 placement at an “out-of-state residential school” – specifically the New England Center for
15 Children (“NECC”), an OSPI approved non-public agency. *T.D. Decl.* Exhibit 1 at 30. The
16 family intends to recreate as much as possible N.D.’s educational environment at NECC for
17 an additional year – including by providing the following services:
18

- 19 • occupational therapy,
- 20 • vocational instruction/counseling,
- 21 • speech therapy,
- 22 • applied behavior analysis,
- 23 • tutoring, social activities,
- 24 • day programming
- 25

26 *Id.* at ¶ 7. Consistent with the settlement agreement, N.D.’s family will be submitting
27 reimbursement requests directly to OSPI.

1 **d. Plaintiffs’ Request for Fees Are Reasonable**

2 Defendant has agreed to pay all Plaintiffs’ reasonable attorney’s fees and costs
3 incurred in this action through the entry of the settlement decree by the Court, which as of
4 the date of filing totals \$448,478. A contemporaneously filed motion supports that fee
5 amount.

6 **e. No class members have voiced disagreement**

7 Plaintiffs acknowledge that the timeline for submitting disagreements is still in the
8 early stages and will submit any response necessary to potential disagreements. However,
9 at this early stage, no disagreements have been voiced by class members either officially or
10 anecdotally. *See Hagel Decl.* ¶ 10

11 **2. Plaintiffs seek further approval under FRCP 17(c) and LCR 17.**

12 “District courts have a special duty, derived from Federal Rule of Civil Procedure
13 17(c), to safeguard the interests of litigants who are minors.” *Robidoux v. Rosengren*, F.3d
14 1177 (9th Cir. 2011). “In the context of proposed settlements in suits involving minor
15 plaintiffs, this special duty requires a district court to conduct its own inquiry to determine
16 whether the settlement serves the best interests of the minor.” *Id.* (citing to *Dacanay v.*
17 *Mendoza*, 573 F.2d 1075, 1080 (9th Cir. 1978). “Although *Robidoux* expressly limited its
18 holding to cases involving settlement of a minors federal claims... district courts have
19 applied this rule in the context of an *incompetent litigant’s* state law claims” *Private Client*
20 *Fiduciary Corporation v. Chopra*, 22-CV-00436-LK , 2023 WL 8828842 at 2 (W.D. Wash.,
21 December 21, 2023) (citing to *Fletcher v. Fresno Food Concept, Inc.*, 1:22-cv-00180-AWI-
22 BAM, 2022 WL 2802282 (E.D. Cal., July 18, 2022) (emphasis added). “The Ninth Circuit
23 in *Robidoux* stated that in cases involving minors, ‘[s]o long as the net recovery to each
24 minor plaintiff is fair and reasonable in light of their claims and average recovery in similar
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1 cases, the district court should approve the settlement as proposed by the parties.” *Id.*,
2 citing Robidoux, 638 F.3d at 1182.

3 As previously averred, both N.D. and E.A. are “incompetent” under Washington law,
4 as their parents have been appointed legal guardians. *See Dkt. #35.2 and #35.1.* This Court
5 has previously affirmed that because “a general guardian has been previously appointed for
6 E.A. and N.D., the Court need not appoint guardian ad litem for them.” *Dkt. #95 at 13.* For
7 this same reason, the Court can dispense with appointing a guardian to “investigate the
8 adequacy of the offered settlement and report thereon” under LCR 17(c).

10 Recovery to E.A. and N.D., as well as the rest of the class is “fair and reasonable in
11 light of their claims.” Under the IDEA, a district court is empowered to grant such relief as
12 determined appropriate. 20 U.S.C. § 1415(i)(2)(C)(iii). That includes “the power to order
13 school authorities to reimburse parents for their expenditures on private special education
14 for a child if the court ultimately determines that such placement... is proper under the Act.”
15 *School Comm. of Burlington v. Department of Ed. of Mass.*, 471 U.S. 359, 370 (1985)
16 (applying the Education of the Handicapped Act, the predecessor of the IDEA). Here, the
17 services being reimbursed are “proper.” The Settlement Agreement limits the type of
18 reimbursement available to E.A. and N.D. – “documented expenses incurred to provide him
19 with private educational and related supports services since he was exited from the Selah
20 School District” and “documented expenses for educational services, including without
21 limitation occupational therapy, vocational instruction/counseling, speech therapy,
22 applied behavior analysis, tutoring, social activities, day programming, or any other
23 services that could be available to special education students under the IDEA, including
24 related services such as transportation” respectively. *See Dkt. 92-1 at ¶¶ 13, 14.* The
25 limitations imposed are directly related to the students’ special education needs. *See P.A.*

1 *Decl.* and *T.D. Decl.* That type of recovery is squarely within the bounds of the types of
2 recovery available in special education lawsuits. *See e.g. S.H. v. Issaquah School District,*
3 *2:21-cv-00137-DGE, 2023 WL 3011732 (W.D. Wash., March 14, 2023)* (discussing
4 reimbursement for an out-of-state private placement totaling \$201,462). The amounts
5 provided are also adequate. For E.A., the amounts reflect the actual expenses incurred in
6 educating E.A. during the period before he turned 22. For N.D., in light of his complex and
7 significant needs, and the difficulty of securing compensatory education (he had previously
8 been educated in a residential school on the East coast because no appropriate
9 programming was available in the state), the amount provided reflects an amount
10 reasonably necessary to provide meaningful benefit, and the flexibility to secure and
11 determine educational services over a five-year period, given the difficulty of securing such
12 services in this region.
13

14 Similarly, because the recovery by class members (many of which are also likely
15 subject to guardianships) will be guided by both their most recent IEPs, as well as
16 appropriately constituted IEP teams, and subject to review by the Office of Administrative
17 Hearings and/or OSPI, and subject to appeal to federal and state court, there exists
18 sufficient safeguards and due process to ensure the appropriate relief is available.
19

20 For the foregoing reasons, the Court should also approve the settlement pursuant to
21 FRCP 17(c) and LCR 17.
22

23 IV. CONCLUSION

24 For the foregoing reasons, the Plaintiffs respectfully request that the Court grant
25 final approval of the settlement under both FRCP 23 and 17, and issue judgment against
26 the Defendant according to the terms of the settlement agreement.
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Dated: January 6, 2025.

Respectfully submitted,

By: /s/ Ian B. Crosby
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Attorneys for Plaintiffs

CERTIFICATE OF COMPLIANCE

I certify that this reply contains 3978 words, in compliance with the Local Civil Rules.

/s/ Ian B. Crosby
Ian B. Crosby, WSBA 28461

CERTIFICATE OF SERVICE

I hereby certify that on this day I caused the foregoing document to be served,
via electronic mail, per agreement, on the following:

BRIAN ROWE, WSBA #56817
S. TODD SIPE, WSBA #23203
Assistant Attorneys General
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Brian.Rowe@atg.wa.gov
Todd.Sipe@atg.wa.gov
Counsel for Defendants

I declare under penalty of perjury under the laws of the State of Washington and
the United States of America that the foregoing is true and correct.

DATED this 6th day of January, 2025, at Seattle Washington.

/s/ Ian B. Crosby
Ian B. Crosby, WSBA #28461

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PLAINTIFFS' SECOND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT AND FOR
CERTIFICATION OF SETTLEMENT CLASS - 1

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

N.D. et al., on behalf of a class of those similarly situated,

No. 2:22-cv-01621-LK

Plaintiffs,

v.

CHRIS REYKDAL, in his capacity as the SUPERINTENDENT OF PUBLIC INSTRUCTION and OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION, a Washington State agency,

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL APPROVAL

Defendants.

This matter comes before the Court on Plaintiffs' motion for final approval of a class action settlement. pursuant to FRCP 23 and FRCP 17. The Court heard argument on the Final Approval of the Settlement Agreement on February 26 at 10:00 am.

Being fully advised, the Court GRANTS Plaintiffs Motion for Final Approval of Class Action Settlement.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court finds that the Settlement Agreement is fair, reasonable, and adequate. The Court GRANTS final approval under FRCP 23.
2. The Court finds the Settlement Agreement is fair and reasonable in light of the plaintiffs'

1 claims. The Court GRANTS final approval under FRCP 17)(c) and LCR 17(c)

- 2 3. The Court approves the (1) reimbursement to the guardians of E.A. for up to \$60,000 in
3 documented expenses incurred to provide him with private educational and related
4 support services since he was exited from the Selah School District, and (2)
5 reimbursement or direct payment to the guardians of N.D. for up to \$150,000 in
6 documents expenses for educational services.
- 7 4. The Court approves the attorneys' fees and costs payment of \$448,478. A separate order
8 will issue.
- 9 5. JUDGMENT is hereby entered against Defendants, Chris Reykdal and the Office of
10 Superintendent of Public Instruction consistent with the terms set forth within the
11 Settlement Agreement.

12
13
14 SO ORDERED this _____ day of _____, 2025.

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16 _____
17 HONORABLE LAUREN KING
18 UNITED STATES DISTRICT JUDGE
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1 Presented by:

2 /s/ Ian B. Crosby

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10 /s/ Lara Hruska

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22 *Attorneys for Plaintiffs*

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25
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The Honorable Lauren King

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

N.D. et al., on behalf of a class of those
similarly situated,

Plaintiffs,

v.

CHRIS REYKDAL, in his capacity as the
SUPERINTENDENT OF PUBLIC
INSTRUCTION and OFFICE OF THE
SUPERINTENDENT OF PUBLIC
INSTRUCTION, a Washington State agency,

Defendants.

No. 2:22-cv-01621-LK

**DECLARATION OF ALEX HAGEL IN
SUPPORT OF MOTION FOR FINAL
APPROVAL**

I, Alex Hagel, declare as follows:

1. I am over the age of eighteen and competent to testify to the matters set forth herein.

I make this Declaration based on personal knowledge.

2. I am currently a partner at the law Cedar Law PLLC. I am an attorney of record on behalf of the class members in this lawsuit.

3. Following Remand from the Ninth Circuit, OSPI and Plaintiffs began discussing settlement terms. Parties agreed to engage in mediation.

1 4. On July 3, 2024, OSPI provided to Plaintiffs and Offer of Judgment pursuant to
2 Federal Rule of Civil Procedure 68 and the IDEA, 20 U.S.C. § 1415(i)(3)(D). The parties engaged
3 in additional, limited negotiations and reached an agreement on July 18, 2024.

4 5. On November 22, 2024, this Court granted preliminary approval of the settlement
5 agreement, which required OSPI to take a number of steps to ensure eligible class members received
6 notice. To my knowledge, OSPI has taken those steps.

7 6. On November 26, 2024 Dr. Tania May sent an email to all superintendents across the
8 state requiring them to provide the notice required in the District Court’s order. That email also
9 included detailed explanations – a full page in length – on how Districts were to report the results
10 of the notification plan to OSPI.

11 7. OSPI has also shared the terms of the settlement agreement with the named disability
12 rights organizations, Arc of Washington, Washington Autism Alliance, and Disability Rights
13 Washington.

14 8. OSPI has also maintained information on the class action on their website.
15 <https://ospi.k12.wa.us/student-success/special-education>. That website contains the Court Order,
16 Settlement, and the generic Settlement Notice. As of the date of writing, that website remains up.

17 9. On January 3, 2025, OSPI through the Attorney General’s Office provided me the
18 following information:

19 The reporting OSPI has received so far is preliminary and incomplete, in part because
20 many school districts are on holiday break until Monday, January 6. So far, here is
21 the reporting OSPI has received:

- 22 • 4 individuals responded to decline any offer of compensatory education.
 - 23 • 42 individuals continue to be served in school, with no break in services (they
24 did not require a notification letter, as their exit codes were changed back to
25 enrolled).
 - 26 • 3 individuals requested an IEP meeting to discuss compensatory education.
- 27

- 38 individuals had not responded to the notification as of the end of December 2024.

OSPI has yet to receive reporting on approximately 250 other individuals who received RMA or D2 exit codes. OSPI will follow up on those next week.

10. In my capacity as class counsel, I have fielded four phone calls with class members or parents of class members since November 22, 2024. I also responded to one email message. All of those calls and the email involved me providing information on who they could contact at their schools to access compensatory education. Nobody has expressed dissatisfaction with the agreement to me.

11. As OPSI receives additional information from the school districts, I will provide additional status reports to this Court prior to the scheduled Fairness Hearing.

I declare under the penalty of perjury under the laws of the United States the above is true and correct.

Dated January 6, 2025



Alex Hagel

The Honorable Lauren King

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

N.D. et al., on behalf of a class of those
similarly situated,

Plaintiffs,

v.

CHRIS REYKDAL, in his capacity as the
SUPERINTENDENT OF PUBLIC
INSTRUCTION and OFFICE OF THE
SUPERINTENDENT OF PUBLIC
INSTRUCTION, a Washington State agency,

Defendants.

No. 2:22-cv-01621-LK

**DECLARATION OF T.D. IN SUPPORT
OF MOTION FOR FINAL APPROVAL.**

I, T.D., declare as follows:

1. I am over the age of eighteen and competent to testify to the matters set forth herein.

I make this Declaration based on personal knowledge.

2. I am legal co-guardian to my son N.D., a named Plaintiff in this action.

3. N.D. received special education and related services at a residential school – the New England Center for Children, in Massachusetts –from October 2017 until August 31, 2022, paid for by his local school district pursuant to his individualized education program (“IEP”). I

1 know that the individual cost of attendance at NECC greatly exceeds \$150,000 a year for a student
 2 such as N.D.

3 4. Under the terms of his last implemented IEP, N.D. was entitled to the following
 4 services:

Special Education and Related Services

Meeting Date: 10/14/2021

PURPOSE: The information on this page is a summary of the student's program/services, including when services will begin, where they will be provided, who will be responsible for providing them, and when they will end.

Services 10/15/2021 - 09/14/2022

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
No	ADAPTIVE/LIFE SKILLS	Special Education Staff	Special Education Teacher	870 Minutes / Weekly	Special Education	10/15/2021	09/14/2022
No	COMMUNICATION	Special Education Staff	Special Education Teacher	60 Minutes / Weekly	Special Education	10/15/2021	09/14/2022
No	MATH	Special Education Staff	Special Education Teacher	300 Minutes / Weekly	Special Education	10/15/2021	09/14/2022
No	READING	Special Education Staff	Special Education Teacher	300 Minutes / Weekly	Special Education	10/15/2021	09/14/2022
No	SOCIAL/BEHAVIOR	Special Education Staff	Special Education Teacher	60 Minutes / Weekly	Special Education	10/15/2021	09/14/2022
No	WRITTEN LANGUAGE	Special Education Staff	Special Education Teacher	300 Minutes / Weekly	Special Education	10/15/2021	09/14/2022

Total minutes per week student spends in school: 1890 minutes per week
 Total minutes per week student is served in a special education setting: 1890 minutes per week
 Percent of time in general education setting: 0% in General Education Setting

17 As documented, N.D. received full time specially designed instruction in six areas – adaptive/life
 18 skills, communication, math, reading, social/behavior, and written language.

20 5. In order to access his education, his IEP team determined that:

[N.D.] will attend the New England Center for Children... where he has no access to non-disabled/general education peers. Since he attends a residential school for students with autism, he is unable to participate in the general curriculum at this time. He receives Specially Designed Instruction in the special education setting, not with non-disabled students, for adaptive/life skills, reading, math, written language, social/behavior, and communication. Extra-curricular and non-academic activities are provided and available in his residential placement and in the greater Boston community. PE is provided by NECC. He attends a residential facility that does not provide traditional, general

1 education PE classes. Students are provided regular
2 opportunities to participate in physical activities.

3 6. My family intends to use the funds made available by OSPI to provide educational
4 services and experiences for N.D. We can never replicate a round-the-clock, highly coordinated
5 program here—that is the precise reason N.D. was placed on the East Coast, as no facility or provider
6 in this region could meet his needs. That said, we intend to provide him with meaningful educational
7 benefits such as educational trips, social activities, day programming, speech and language services,
8 and vocational opportunities to the extent we are able to secure such services for N.D., who is
9 severely impacted by his disability, and with the understanding that there is a paucity of providers
10 who serve adults. We will have five years, once the settlement is finally approved, to secure such
11 services, which will allow the flexibility and time period needed to confer some meaningful
12 educational benefits on him despite the dearth of appropriate providers here. Returning him to his
13 residential school is not an option, as they would not accept him given his age by this point. The
14 settlement amount is what will enable us to realistically provide a benefit to him here given the
15 realities of what is available, and is sufficient for that purpose.

16
17 I declare under the penalty of perjury under the laws of the United States the above is true
18 and correct.

19
20 Dated January 6, 2025

21
22 

23 _____
T.D., legal co-guardian of N.D.

The Honorable Lauren King

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

N.D. et al., on behalf of a class of those
similarly situated,

No. 2:22-cv-01621-LK

Plaintiffs,

v.

CHRIS REYKDAL, in his capacity as the
SUPERINTENDENT OF PUBLIC
INSTRUCTION and OFFICE OF THE
SUPERINTENDENT OF PUBLIC
INSTRUCTION, a Washington State agency,

**DECLARATION OF P.A. IN SUPPORT
OF MOTION FOR FINAL APPROVAL.**

Defendants.

I, P.A., declare as follows:

1. I am over the age of eighteen and competent to testify to the matters set forth herein.

I make this Declaration based on personal knowledge.

2. I am legal co-guardian to my son E.A., a named Plaintiff in this action.

3. E.A. received special education and related services from the Selah School District pursuant to an individualized education program (“IEP”).

4. Under the terms of his last implemented IEP, E.A. was entitled to the following services:

Services 04/25/2022 - 04/24/2023

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
No	One to One Paraeducator	1:1 Para Educator	Special Education Teacher	348 Minutes / 1 Times Daily	General Education	04/25/2022	04/24/2023
Special Education							
No	Social/Emotional	Para Educator	Special Education Teacher	30 Minutes / 5 Times Weekly	General Education	04/25/2022	04/24/2023
No	Adaptive	Para Educator	Special Education Teacher	15 Minutes / 5 Times Weekly	General Education	04/25/2022	04/24/2023
No	Speech Therapy	Speech Language Pathologist Assistant	Speech Language Pathologist	25 Minutes / 1 Times Weekly	Special Education	04/25/2022	04/24/2023
No	Math	Para Educator	Special Education Teacher	60 Minutes / 5 Times Weekly	General Education	04/25/2022	04/24/2023
No	Reading	Para Educator	Special Education Teacher	30 Minutes / 5 Times Weekly	General Education	04/25/2022	04/24/2023
No	Written Expression	Para Educator	Special Education Teacher	30 Minutes / 5 Times Weekly	General Education	04/25/2022	04/24/2023
Transportation							
No	Transportation					04/25/2022	04/24/2023

Total minutes per week student spends in school: 1740 minutes per week
Total minutes per week student is served in a special education setting: 25 minutes per week
Percent of time in general education setting: 98.56% in General Education Setting

Of particular note was E.A.’s access to a paraeducator for his school day – listed above on the first line, documenting 1:1 para educator at 348 minutes/ 1 times daily.


5. Once the Motion for a Preliminary Injunction was denied, and it was clear the Ninth Circuit would not imminently rule on the appeal, I took what I believe to be appropriate action to mitigate the harm E.A. was experiencing by not being able to attend Selah High School. I enrolled E.A. in a few classes at Yakima Valley College (YVC) in order to create a routine for E.A. to follow. My husband and I then hired a full-time paraeducator Amber Rodriguez to support E.A. while attending the classes at YVC. As documented in the attached **Exhibit 1**, my family has incurred \$55,472.59 in expenses trying to replicate the environment at Selah High School.

6. While attending YVC, E.A. did not have access to many of the specialized services he would otherwise be entitled to – social/emotional support and speech therapy for example – and

1 we intend to use the remaining money to provide those missed services and submit reimbursement
2 to OSPI for the same.

3
4 I declare under the penalty of perjury under the laws of the United States the above is true
5 and correct.

6
7 Dated January 6, 2025

8
9  _____

10 P.A., mother of E.A.

Exhibit 1

EA School Expenses 2023-2024

September 1, 2023 - August 31, 2024

	Tuition	1:1 Para Educator Payroll	1:1 Para Payroll Taxes	1:1 Para Trainings (ESD 105)	Chrome-books & Computer	Supplies / Other	Mileage	Legal / State	Quick Books Payroll Fees	Totals
YVC -Fall 2023	1,420.80									1,420.80
YVC - Winter 2024	1,520.82									1,520.82
YVC - Spring 2024	1,293.72									1,293.72
ESY Summer 2024 YMCA	93.00									93.00
Payroll 9/1/23 - 8/31/24		34,668.75	4,188.63							38,857.38
Accrued PTO 9/1/23-8/31/24		450.00	40.42							490.42
1:1 Para Substitute		1,887.50								1,887.50
L&I Worker's Comp Ins - 9/1/23 - 8/31/24			1,153.25							1,153.25
QuickBooks Payroll Service Sept 1, 2023 - Aug 31, 2024									588.68	588.68
1:1 Para & EA Chromebooks					1,014.77					1,014.77
Dedicated Laptop for Payroll					1,239.73					1,239.73
Lunch (\$3/day * 212 days) - NOTE: lunch is free in SSD						636.00				636.00
Mileage							2,088.11			2,088.11
2 Autism/ABA Trainings for Para @ ESD105 & ABA book				150.00		30.85				180.85
Set up LLC with Employment Agreement for 1:1 Para								1,465.00		1,465.00
WA Secretary of State Fee								200.00		200.00
WA State DOR Fee								100.00		100.00
Program supplies: Workbooks, books, class supplies, mini microwave and cleaning supplies related to life skills goals, online computer program (required), etc.						1,242.56				1,242.56
	<u>4,328.34</u>	<u>37,006.25</u>	<u>5,382.30</u>	<u>150.00</u>	<u>2,254.50</u>	<u>1,909.41</u>	<u>2,088.11</u>	<u>1,765.00</u>	<u>588.68</u>	<u>\$ 55,472.59</u>