

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

**NEW YORKERS FOR STUDENTS' EDUCATIONAL  
RIGHTS ("NYSER"), *et al.*,**

**Plaintiffs,**

**-against-**

**THE STATE OF NEW YORK,**

**Defendant.**

Index No. 100274/2013  
(formerly 650450/2014)

Hon. Richard Latin, J.S.C.

**STIPULATION AND ORDER**

WHEREAS plaintiffs New Yorkers for Students' Educational Rights ("NYSER"), Rubnelia Agostino, Miriam Aristy-Farer, Kathryn Barnett, Ava Capote, Milagros Arcia G. Changlerth, Mona Davids, Rolando Garita, Sara Harrington, Sonja Jones, Nicole Iorio, Heidi Mouillesseaux-Kunzman, Gretchen Mullins-Kim, Ellen Trachtenberg, Heidi Teska-Prince, and Andy Willard ("Original Plaintiffs") brought the above-captioned case (the "Action") against The State of New York, Andrew M. Cuomo, the New York State Board of Regents, and John B. King, Jr. ("Original State Defendants") on February 11, 2014 (Index No. 650450/2014, NYSCEF No. 2);

WHEREAS the Original Plaintiffs along with Janet Duran and Annette Renaud ("Amended Complaint Plaintiffs") filed the Amended Complaint on March 28, 2014 against the Original State Defendants, asserting four causes of action, which the Original State Defendants moved to dismiss (Index No. 650450/2014, NYSCEF No. 10);

WHEREAS by Order dated September 2, 2014, the Action was consolidated with *Miriam Aristy-Farer et al. v. The State of New York et al.* and assigned the Index No. 100274/2013 (NYSCEF No. 3);

WHEREAS by Order dated June 27, 2017, the Court of Appeals dismissed the first and second causes of action asserted in the Amended Complaint in their entirety and the third and fourth causes of action to the extent they were asserted on a statewide basis (“Dismissed Claims”), but allowed the third and fourth causes of action to proceed as they related to the Syracuse City School District and New York City School District;

WHEREAS plaintiffs NYSER, Miriam Aristy-Farer, Milagros Arcia G. Changlerth, Kim Da Silva, Mona Davids, Janelle Hooks, Nicole Job, Mercedes Jones, Sonja Jones, Jamaica Miles, Samantha Pierce, Sam Pirozzolo, Heidi Teska-Prince, Bethamy Thomas, Elizabeth Velasquez, and Cory Wood filed the Second Amended Complaint on December 11, 2017 (NYSCEF No. 147);

WHEREAS the Third Amended Complaint was filed against defendant The State of New York (“Defendant”) on May 4, 2018 (NYSCEF No. 160), asserting claims on behalf of NYSER and students from five school districts: the Syracuse City School District, the Gouverneur Central School District, the Central Islip Union Free School District, the Schenectady City School District, and the City School District of the City of New York;

WHEREAS pursuant to stipulations, all claims brought by plaintiffs from the Syracuse City School District (NYSCEF No. 465), the Gouverneur Central School District (NYSCEF No. 295), and the Central Islip Union Free School District (NYSCEF No. 290) were discontinued (the “Discontinued Claims”);

WHEREAS the only remaining claims in this Action are the claims of plaintiffs Jamaica Miles (“Individual Schenectady Plaintiff”), Miriam Aristy-Farer, Milagros Arcia G. Changlerth,

Mona Davids, Nicole Job, Sam Pirozzolo, Bethamy Thomas (“New York City Individual Plaintiffs”) (together, the “Individual Plaintiffs”) and NYSER (collectively, “Plaintiffs”; together with Defendant, the “Parties”) asserted in the Third Amended Complaint against Defendant concerning the City School District of the City of New York and Schenectady City School Districts (the “Remaining Claims”);

WHEREAS Defendant’s Fiscal Year 2022 Enacted State Budget provides for certain payments of Foundation Aid for School Years 2022, 2023 and 2024, including a Foundation Aid phase-in increase factor of one hundred percent by School Year 2024;

WHEREAS, the Parties have engaged in extensive discovery since the filing of the Third Amended Complaint; and

WHEREAS the Parties wish to resolve this Action and any and all other disputes relating to the subject matter of the Action, between them, fully and voluntarily, without further litigation, except as described below, and without admission of fault or liability through this Stipulation;

IT IS HEREBY STIPULATED AND AGREED, through their undersigned counsel of record, as follows:

1) All proceedings in this Action (except proceedings as may be necessary to carry out the terms and conditions of this Stipulation) are hereby stayed until such date, if any, that (i) Plaintiffs move to vacate the stay and resume the Action on the Remaining Claims as set forth in Paragraph 2 below, or (ii) the case is withdrawn pursuant to the provisions of Paragraph 6 below.

2) The Parties agree that Plaintiffs may move to vacate the stay and resume the Remaining Claims if the Enacted State Budget for Fiscal Year 2023 or Fiscal Year 2024 provides for: (i) a reduction in the Foundation Aid phase-in increase factor below 50 percent or 100 percent, respectively; or (ii) a reduction in Foundation Aid or the value of such aid from what would be

provided for the respective school year based on the formula for calculation of Foundation Aid as of the Fiscal Year 2022 Enacted State Budget. Plaintiffs may only move to vacate the stay if there is a reduction as described in this paragraph. Defendant may only oppose Plaintiffs' motion to vacate the stay based on noncompliance with the terms of this Stipulation. This Stipulation has no impact on the Discontinued Claims or Dismissed Claims.

3) In the event Plaintiffs intend to move to vacate the stay, Plaintiffs must notify Defendant's counsel in writing at least fourteen (14) days prior to doing so.

4) If the motion to vacate the stay is granted, the Action shall resume in the same posture as of the date this Stipulation is filed with the Court, and all pending motions shall be restored to the Court's docket. Plaintiffs shall retain all rights to pursue any and all available relief, and Defendant shall retain all rights to assert any and all available defenses. Neither the existence of this Stipulation nor its terms shall constitute a waiver of any available claims, defenses, or remedies in the event the Remaining Claims are resumed.

5) Within fourteen (14) days of the entry of the Court's decision granting any motion to vacate the stay, the Parties will meet and confer in good faith to set a schedule for remaining discovery.

6) If Plaintiffs do not move to vacate the stay as set forth in Paragraph 2 no later than sixty (60) days after enactment of the Fiscal Year 2024 Enacted State Budget, the Action will be dismissed, and any party may file the Proposed Order (attached as Exhibit A) with the Court, dismissing the Action without prejudice. The sixty (60)-day time period after the enactment of the Fiscal Year 2024 Enacted State Budget may not be tolled or extended without agreement of the Parties.

7) Nothing in this Stipulation should be construed as obligating Defendant to take any

action, including with respect to any budget for any fiscal year. The Parties agree that no Court shall have the authority to enforce this Stipulation by issuing an order affecting the State budgetary process or by holding Defendant or any State agency or official in contempt for any acts or omissions related to the budget or budgetary process. The Court will not exercise authority with respect to this Stipulation except to enforce its terms.

8) This Stipulation is not to be construed as constituting any determination on the merits of any claims that have been or could have been asserted in this action, or any other proceeding, and shall have no precedential value. In addition, notwithstanding the provisions of any paragraph herein, this Stipulation shall not bind or collaterally estop Plaintiffs or Defendant (including, but not limited to, any and all agencies, departments, and subdivisions thereof) in any pending or future actions or proceedings in which the same or similar issues are raised, from pursuing or defending against all claims raised in said actions or proceedings, or from advancing or raising any and all available defenses.

9) This Stipulation is not to be construed as constituting any admission of wrongdoing or liability on the part of Defendant (including, but not limited to, any and all agencies, departments, and subdivisions thereof). Defendant expressly denies any wrongdoing or liability.

10) Nothing contained in this Stipulation shall be deemed to constitute a policy, practice, or custom of Defendant (including, but not limited to, any and all agencies, departments, and subdivisions thereof).

11) Under the terms of this Stipulation, neither Plaintiffs nor Defendant shall be deemed a “prevailing party” for any purpose, including, but not limited to, any statutory or contractual claim based upon “prevailing party” status.

12) The terms of this Stipulation may be modified only by a written agreement signed

by the attorneys for all parties, or upon Order of the Court.

13) This Stipulation contains all the terms and conditions agreed upon by the Parties, and there are no other terms relied upon by the Parties, verbal or otherwise.

14) This Stipulation may be executed in any number of counterparts, all of which taken together shall constitute one Stipulation, and electronic signatures shall have the same force and effect as original signatures.

Dated: New York, New York  
October 13, 2021

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*Attorney for Defendant State of New York*

SO ORDERED:

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Justice Richard Latin  
Long Island City Courthouse  
25-10 Court Square  
Long Island City, NY 11101

Dated: New York, New York  
\_\_\_\_\_, 2021



## **EXHIBIT A**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

**NEW YORKERS FOR STUDENTS' EDUCATIONAL  
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**-against-**

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Hon. Richard Latin, J.S.C.

**ORDER OF DISMISSAL**

Pursuant to the parties' stipulation (NYSCEF No. \_\_\_\_), IT IS HEREBY ORDERED  
THAT:

1. The above-captioned matter is dismissed without prejudice; and
2. Each party shall bear their own costs and attorneys' fees in connection with this action.

\_\_\_\_\_  
J.S.C.

Dated: \_\_\_\_\_, New York  
\_\_\_\_\_, 2023