

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

- against -

NEW YORK CITY DEPARTMENT OF  
EDUCATION,

Defendant.

**STIPULATION AND ORDER OF  
SETTLEMENT AND DISMISSAL**

16 Civ. 4291 (LAK)

WHEREAS, this Stipulation and Order of Settlement and Dismissal (“the Stipulation”) is entered into by and between plaintiff United States of America (the “United States”) and defendant the New York City Department of Education (the “DOE,” and together with the United States, the “Parties,” and each a “Party”);

WHEREAS, the United States filed suit to enforce the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, as amended (“Title VII”), asserting in the complaint in this action filed on June 9, 2016 (the “Complaint”), that the DOE engaged in a pattern or practice of discrimination based on race and retaliation in the hiring, retention, and employment conditions of teachers at Pan American International High School (“Pan American”) and asserting claims of discrimination on behalf teachers John Flanagan, Heather Hightower, and Lisa-Erika James and claims of retaliation on behalf of Mr. Flanagan and assistant principal Anthony Riccardo, all of whom were employed at Pan American during the 2012-2013 school year;

WHEREAS, in October 2013, Mr. Flanagan filed a lawsuit against the DOE, Ms. Zanca, and Mr. Mendez, and others, docketed as *Flanagan v. New York City Department of Education et al.*, No. 13 Civ. 8456 (LAK);

WHEREAS, in June 2016, Ms. James and Ms. Hightower filed a lawsuit against DOE, Ms. Zanca, and Mr. Mendez, docketed as *James et al. v. New York City Department of Education et al.*, No. 16 Civ. 4291 (LAK), and Mr. Riccardo filed a lawsuit against DOE, Ms. Zanca, and Mr. Mendez, docketed as *Riccardo v. New York City Department of Education et al.*, No. 16 Civ. 4891 (LAK);

WHEREAS, the DOE filed an Answer in this Action on July 21, 2016, in which it denied the United States' allegations that it violated Title VII in connection with the employment conditions of Mr. Flanagan, Ms. Hightower, Ms. James, and Mr. Riccardo during the 2012-2013 school year;

WHEREAS, a Stipulation and Order of Settlement and Dismissal of Claims Relating to John Flanagan, resolving the claims asserted in *Flanagan v. New York City Department of Education et al.*, No. 13 Civ. 8456 (LAK), and the claims of discrimination and retaliation asserted on behalf of Mr. Flanagan in this Action, was entered by the Court on January 27, 2020 (Dkt. No. 160);

WHEREAS, a Stipulation and Order of Settlement and Dismissal of Claims Relating to Heather Hightower, resolving claims pertaining to Ms. Hightower asserted in *James et al. v. New York City Department of Education et al.*, No. 16 Civ. 4291 (LAK), and the claim of discrimination asserted on behalf of Ms. Hightower in this Action, was entered by the Court on January 28, 2020 (Dkt No. 164);

WHEREAS, a Stipulation and Order of Settlement and Dismissal of Claims Relating to Anthony Riccardo, resolving the claims asserted in *Riccardo v. New York City Department of Education et al.*, No. 16 Civ. 4891 (LAK), and the claim of retaliation asserted on behalf of Mr.

Riccardo in this Action was entered by the Court on January 30, 2020 (Dkt No. 170);

WHEREAS, a Stipulation and Order of Settlement and Dismissal of Claims Relating to Lisa-Erika James, resolving claims pertaining to Ms. James asserted in *James et al. v. New York City Department of Education et al.*, No. 16 Civ. 4291 (LAK), and the claim of discrimination asserted on behalf of Ms. James in this Action was entered by the Court on May 14, 2020 (Dkt. No. 185);

WHEREAS, Chancellor's Regulation A-830 was amended on August 19, 2019, and no longer specifically provides that DOE's Office of Equal Opportunity ("OEO") will not conduct an internal investigation where a complaint of discrimination or retaliation is filed with an external agency or court of competent jurisdiction, but rather provides only that OEO "will transfer the matter to DOE's Legal Office" under such circumstances; and

WHEREAS, the United States and the DOE agree that it is in the Parties' best interests, and the United States believes that it is in the public interest, to resolve the remaining claim in this Action—based on an alleged pattern or practice of discrimination and retaliation at Pan American during the 2012-2013 school year—on mutually agreeable terms without further litigation.

**NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED** as follows:

1. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 2000e-6(b) and 28 U.S.C. §§ 1331 & 1345. The Parties agree that venue is appropriate pursuant to 28 U.S.C. § 1391(b)(1)-(2).
2. The United States has authority to initiate legal proceedings to enforce Title VII through litigation. 42 U.S.C. § 2000e-6(a).
3. The DOE is a person within the meaning of 42 U.S.C. § 2000e(a), and an employer



within the meaning of 42 U.S.C. § 2000e(b).

4. Without admitting liability, the DOE, by and through its officials, agents, employees, and all persons in active concert or participation with DOE in the performance of employment functions, agree not to engage in any act or practice that discriminates against any applicant for employment or employee on the basis of race or retaliates against any employee for engaging in protected activity as prohibited by Title VII.

5. In consideration for the settlements entered in *Flanagan v. New York City Department of Education et al.*, No. 13 Civ. 8456 (LAK), *Riccardo v. New York City Department of Education et al.*, No. 16 Civ. 4891 (LAK), and *James et al. v. New York City Department of Education et al.*, No. 16 Civ. 4291 (LAK), and the commitments set forth in paragraphs 6, below, and in light of the August 2019 amendment to Chancellor's Regulation A-830, the United States' First Claim for Relief (Pattern or Practice of Discrimination) is hereby dismissed with prejudice, and without costs, expenses, or fees.

6. The DOE will provide training to all school superintendents regarding the DOE's anti-discrimination policy and procedures, including (i) appropriate protocol for interacting with OEO when a complaint of discrimination or retaliation has been lodged against a DOE employee in the superintendent's reporting chain; (ii) which person or office to contact and under what circumstances to contact such person or office to determine the status of an OEO investigation; and (iii) which person or office to contact and under what circumstances to contact such person or office to determine whether it would be appropriate for the superintendent to take any interim actions based on the allegations in a complaint while OEO investigations and/or investigations by external agencies are pending and, if so, what actions. This training may be incorporated into

training DOE currently provides to its superintendents.

7. Nothing contained herein shall be deemed to be an admission by the City of New York or the New York City Department of Education of any of the allegations contained in the United States' complaint. This Settlement Agreement shall not be offered as evidence in, nor is it related to, any other litigation or settlement negotiations, except that the agreement may be used by either party in connection with any subsequent action or proceeding to enforce the terms of this Settlement Agreement.

8. Nothing contained in this Stipulation shall be deemed to constitute a policy or practice of the City of New York or the New York City Department of Education.

9. Within one year of the effective date of this Stipulation, the DOE shall provide to the United States a certification that all DOE superintendents participated in the training outlined in paragraph 6, the date(s) of the training(s) and a copy of the attendance log reflecting the date(s) of the training(s) and the names and job titles of the employees who attended the training(s). Thereafter, the DOE shall provide such certification for any superintendents subsequently appointed to the DOE within thirty (30) days of the end of each 12-month period after the effective date of this Stipulation. The certifications required by this paragraph shall be sent to the United States by first-class mail (United States Attorney's Office, 86 Chambers Street, 3rd Floor, New York, New York 10007; attention: (1) Chiefs, Civil Rights Unit; (2) AUSAs Natasha W. Teleanu and Christine S. Poscablo), and facsimile (212-637-2786; attention: (1) Chiefs, Civil Rights Unit; (2) AUSAs Natasha W. Teleanu and Christine S. Poscablo).

10. The effective date of this Stipulation is the date on which the Court enters the

Stipulation. This Stipulation shall remain in effect for two years from its effective date. The Court shall retain jurisdiction to enforce this Stipulation.

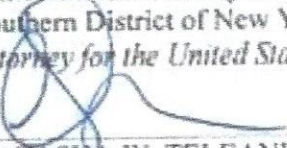
11. This Stipulation constitutes the entire agreement between the parties. No other statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written Stipulation shall be enforceable.

12. The individuals signing this Stipulation represent that they are authorized to bind the parties to this Stipulation.

Dated: New York, New York  
May 15, 2020

GEOFFREY S. BERMAN  
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Southern District of New York  
*Attorney for the United States of America*

By:

  
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Dated: New York, New York  
May 15, 2020

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**SO ORDERED:**

  
Lewis A. Kaplan

**United States District Judge**

By:

  
JESSICA GIAMBRONI  
Assistant Corporation Counsel

5/16/2020