

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, )  
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 )  
 Plaintiff, )  
 )  
 v. ) Case No. 96-0374  
 ) (FB) (RML)  
 NEW YORK CITY BOARD OF EDUCATION, *et al.*, )  
 )  
 Defendants, )  
 )  
 and )  
 )  
 JOHN BRENNAN, *et al.*, )  
 )  
 Intervenor, )  
 )  
 and )  
 )  
 JANET CALDERO, *et al.*, )  
 )  
 Intervenor, )  
 )  
 and )  
 )  
 PEDRO ARROYO, *et al.*, )  
 )  
 Intervenor. )  
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 )  
 JOHN BRENNAN, *et al.*, )  
 )  
 Plaintiffs, )  
 )  
 v. ) Case No. 02-0256  
 ) (FB) (RML)  
 ERIC HOLDER, *et al.*, )  
 )  
 Defendants. )  
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**[PROPOSED] SETTLEMENT AGREEMENT**

To fully resolve all outstanding claims raised in the above-captioned actions, except as expressly indicated below, this Settlement Agreement (“Agreement”) is entered into by the following parties, through their respective counsel (if any): (i) the United States of America (“United States”), which includes the United States Department of Justice, the United States Attorney General, and the Assistant Attorney General for the Civil Rights Division; (ii) the City School District of the City of New York d/b/a the New York City Department of Education, including any predecessor or successor City agencies, departments, or entities and any other City agency, department, or entity with direct authority over the relevant personnel responsibilities and functions identified in this Settlement Agreement (hereinafter “DOE”); (iii) the “Brennan Intervenors,”<sup>1</sup> on behalf of themselves as well as the class certified in Case Nos. 96-0374 and 02-0256; (iv) the “Arroyo Intervenors”<sup>2</sup>; (v) the “Caldero Intervenors”<sup>3</sup>; (vi) certain other provisional or permanent Custodian Engineers<sup>4</sup> (if any) who were afforded retroactive,

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<sup>1</sup> The Brennan Intervenors are: James Ahearn, John Brennan, John Mitchell, Dennis Mortensen, Eric Schauer, and Scott Spring.

<sup>2</sup> The Arroyo Intervenors are: Pedro Arroyo, Jose Casado, Celestino Fernandez, Kevin LaFaye, Steven Lopez, Anibal Maldonado, James Martinez, Wilbert McGraw, Silvia Ortega de Green, and Nicholas Pantelides.

<sup>3</sup> For purposes of this Agreement, the Caldero Intervenors are: Janet Caldero, Celia I. Calderon, Martha Chellemi, Andrew Clement, Salih Chioke, Kristen D’Alessio, Laura Daniele, Charmaine DiDonato, Dawn L. Ellis Polosino, Marcia P. Jarrett, Mary Kachadourian, Jerry Dale Lewis, Kathleen Luebker, Marianne Manousakis, Adele A. McGreal, Margaret McMahan, Sandra D. Morton, Maureen Quinn, Harry Santana, Carl D. Smith, Kim Tatum, Frank Valdez, Gerardo Villegas, and Irene Wolkiewicz.

<sup>4</sup> Custodian Engineers are responsible for maintaining buildings operated by the New York City public school system. Duties include making repairs, cleaning buildings, and maintaining heating and air conditioning systems. There are two “levels,” Level 1 and Level 2, of Custodian Engineer; those at Level 2 must have licenses to operate high-pressure boilers and, thus, may engage in that activity as well. Prior to the year 2000, there were two separate job titles:

competitive seniority and/or permanent appointments pursuant to the settlement agreement entered into in Case No. 96-0374, *U.S. v. NYBOE*, by the DOE and the United States and other parties in 1999<sup>5</sup>; and (vii) all certified class members in Case No. 96-0374, *U.S. v. NYBOE*, and Case No. 02-0256, *Brennan v. Holder*.<sup>6</sup> The foregoing parties (collectively the “Parties” and singularly “Party”) state as follows:

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Custodian and Custodian Engineer, with only the latter required to have the high-pressure boiler license. In 2000, the DOE combined the two titles, and reclassified those who were “Custodians” to “Custodian Engineer Level 1.” Those who were “Custodian Engineers” were reclassified to “Custodian Engineer Level 2.” The term “Custodian Engineer” is used in this Agreement to refer to those at either level, including those who had the job title “Custodian” prior to the combining of the titles.

<sup>5</sup> In addition to the Caldero Intervenors and the Arroyo Intervenors, the 25 other Custodian Engineers who were afforded retroactive, competitive seniority and/or permanent appointments pursuant to the settlement agreement entered into in Case No. 96-0374, *U.S. v. NYBOE*, by the DOE and the United States and other parties in 1999 are: Lloyd Bailey, Joseph Christie, Ricardo Cordero, Ciro Dellaporte, Elaine Farr, Thomas Fields, Marilyn Gusek, Edwin Howell, Ronald Johnson, Carla Lambert, Belfield Lashley, Joseph Lin, Joseph Marcelin, Vernon Marshall, Angel Pagan, Anthony Pantiledes, Percival Punter, Gilbert Rivera, Sean Rivera, Peter Robertin, Bernard Rowell, Fidel Seara, Felix Torres, Luis Torres, and Mayra Cintron. Pursuant to Paragraphs 38 through 45 below, each of these Custodian Engineers who is still working for the DOE as of the Execution Date, as well as the estate of Joseph Lin, will receive notice and a reasonable opportunity to present objections, consistent with the provisions of 42 U.S.C. § 2000e-2(n), as well as an opportunity to sign this Agreement on or before the date of the Fairness Hearing and thereby become a Party to the Agreement. Those who do sign the Agreement (if any) will be listed on the signature pages at the end of the Agreement.

<sup>6</sup> In line with the Court’s April 25, 2007 Order, the following persons constitute the certified class: “all custodial employees whose seniority for purposes of transfers, TCAs [temporary care assignments] and layoff protection has been adversely affected by the grant of seniority benefits to the Offerees.” In addition, pursuant to Paragraph 23 below, the Parties will seek certification, for settlement purposes, of a Fed. R. Civ. P. 23(b)(3) class, with Messrs. Brennan, Mitchell, Schauer, and Spring as its representatives. That proposed class would be all non-Offeree Custodian Engineers with seniority dates (for school transfer purposes) on or after January 23, 1989, and on or before January 1, 2002.

## I. BACKGROUND

1. In January 1996, the United States filed suit against the DOE, Case No. 96-0374 (E.D.N.Y.). That case is referred to herein as “*U.S. v. NYBOE*.” The *U.S. v. NYBOE* complaint alleged that, in connection with hiring Custodian Engineers to work in New York City public schools, the DOE engaged in race, sex, and national origin discrimination in violation of Section 707 of Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended, 42 U.S.C. § 2000e-6.

2. In 1999, after more than two years of discovery, including expert discovery, the United States and the DOE entered into a settlement agreement (“1999 Settlement Agreement”) and moved the Court to enter it as a consent decree. In February 2000, Magistrate Judge Levy entered an order approving the 1999 Settlement Agreement, which, by its terms, expired after four years. (Case No. 96-0374, Docket Number 140). Pursuant to the 1999 Settlement Agreement, 59 individuals identified as African-American, Asian, Hispanic, and/or female who were provisional or permanent Custodian Engineers at the time were afforded retroactive, competitive seniority (the “Offerees”). Offerees who were provisional Custodian Engineers received permanent positions as well.

3. In 2001, a group of incumbent Custodian Engineers working for the DOE intervened in *U.S. v. NYBOE*. They also, along with other incumbent employees, filed a separate class action, Case No. 02-0256 (E.D.N.Y.), against the United States as well as against the DOE alleging that the retroactive seniority afforded to the Offerees under the 1999 Settlement Agreement discriminated against them, and others, in violation of the Equal Protection Clause, Title VII, and 42 U.S.C. §§ 1981, 1983, and 1985. That matter is referred to herein as “*Brennan v. Holder*.” The United States moved to dismiss itself as a party to that action; however, the Court did not decide the motion and instead consolidated *U.S. v. NYBOE* and *Brennan v. Holder*.

In the consolidated cases, the Court certified a class under Federal Rule of Civil Procedure 23(b)(2) consisting of “all custodial employees whose seniority for purposes of transfers, TCAs and layoff protection had been adversely affected by the grant of seniority benefits to the Offerees.” (Case No. 96-0374, Docket Numbers 592 and 622).

4. In 2002, the United States indicated that it would no longer support the provision of retroactive, competitive seniority to all 59 Offerees. Subsequently, various Offerees intervened to defend the seniority and other benefits that they had received pursuant to the 1999 Settlement Agreement. The Parties then engaged in extensive discovery, including additional expert discovery.

5. Various opinions by the United States District Court for the Eastern District of New York and the United States Court of Appeals for the Second Circuit (“Second Circuit”) have been issued in these and related cases and describe some of the procedural history and rulings that have been made. They include (in chronological order) *United States v. New York City Board of Education*, 85 F. Supp. 2d 130 (E.D.N.Y. 2000); *Brennan v. New York City Board of Education*, 260 F.3d 123 (2d Cir. 2001); *United States v. New York City Board of Education*, Case Nos. 96-0374, 02-0256, 2002 WL 31663069 (E.D.N.Y. Nov. 26, 2002); *United States v. New York City Board of Education*, 448 F. Supp. 397 (E.D.N.Y. 2006); *United States v. New York City Board of Education*, 487 F. Supp. 2d 220 (E.D.N.Y. 2007); *Miranda v. New York City Department of Education*, Case No. 06-2921, 2007 WL 2471694 (E.D.N.Y. Aug. 30, 2007); *United States v. New York City Board of Education*, 556 F. Supp. 2d 202 (E.D.N.Y. 2008); *United States v. New York City Board of Education*, 620 F. Supp. 2d 413 (E.D.N.Y. 2009); and *United States v. Brennan*, 650 F.3d 65 (2d Cir. 2011).

6. Since the Second Circuit's 2011 decision, the Parties have engaged in extensive settlement discussions with the assistance of the Court through Magistrate Judge Levy. The Parties have decided, in light of the numerous court rulings, the unsettled nature of the law and the complex statutory and constitutional issues raised in these litigations, as well as the likelihood of years of burdensome and expensive litigation with highly uncertain outcomes, to enter into this Agreement.

## **II. DEFINITIONS**

7. "Agreement" means this settlement agreement, including any attached exhibits.

8. "1999 Settlement Agreement" means the settlement agreement filed in *U.S. v. NYBOE*, Case No. 96-0374, Docket Number 67.

9. "Offerees" means the 59 individuals who were provisional or permanent Custodian Engineers and who were afforded retroactive, competitive seniority pursuant to the 1999 Settlement Agreement.

10. "Actual Permanent Hiring Date" means, for those Offerees who received a permanent position as a consequence of an offer made pursuant to the 1999 Settlement Agreement, the date as of which they actually commenced working as permanent Custodian Engineers (either Level 1 or 2) in February or March 2000, i.e., the date listed in the last column of Exhibit 50 to Docket Number 466 (Case No. 96-0374); and, for those who did not receive a permanent appointment pursuant to the 1999 Settlement Agreement, the date listed on the first page of Docket Number 483 (Case No. 96-0374), Exhibit 62. For each of the 35 Offerees employed by the DOE as of the Execution Date of this Agreement, the Actual Permanent Hiring Date is listed in the second column of Attachment A to this Agreement.

11. "Brennan Injunctive Relief Class" means the already-existing Rule 23(b)(2) class for the purpose of resolving the existing certified class's claims for injunctive and declaratory

relief. As already certified, this class includes “all custodial employees whose seniority for purposes of transfers, TCAs and layoff protection has been adversely affected by the grant of seniority benefits to the Offerees.” The Brennan Injunctive Relief Class includes all of the Custodian Engineers who filed claims against the DOE for individual damages in the cases listed in Paragraph 56.

12. “Brennan Future Damages Class” means a settlement class consisting of all non-Offeree Custodian Engineers with seniority dates (for school transfer purposes) on or after January 23, 1989, and on or before January 1, 2002.

13. “Brennan Class Member” refers to an individual who is a member of either the Brennan Injunctive Relief Class, the Brennan Future Damages Class, or both. “Brennan Classes” refers to both the Brennan Injunctive Relief Class and the Brennan Future Damages Class collectively.

14. A “Disputed Transfer” is a school transfer sought by both a Brennan Future Damages Class Member and an Offeree in which the Transfer Date is subsequent to the Execution Date of this Agreement. A Disputed Transfer exists if, when the transfer is sought:

- a. The Offeree would obtain the school that is the subject of the Disputed Transfer (under rules in existence at the time the transfer list was promulgated) with the seniority s/he received pursuant to the 1999 Settlement Agreement; and
- b. The Brennan Future Damages Class Member would otherwise obtain the school that is the subject of the Disputed Transfer (under the same rules) if:
  - i. Offerees who are in Custodian Engineer Level 1 or Custodian Engineer Level 1 (with refrigeration license) positions and did not receive a permanent

appointment pursuant to the 1999 Settlement Agreement, had seniority dates and list numbers based on their Actual Permanent Hiring Dates, and

- ii. Offerees who did receive a permanent appointment pursuant to the 1999 Settlement Agreement and at the time of the transfer are in the same Levels (*i.e.*, Custodian Engineer Level 1 or Custodian Engineer Level 2) they held at the time of their permanent appointment, had seniority dates of January 1, 2002, and
- iii. Celestino Fernandez had a list number for his Custodian Engineer Level 2 seniority date based upon his actual permanent hiring date as a Custodian Engineer Level 1 of March 6, 2000. For purposes of actually awarding school transfers as described in Paragraph 24, Celestino Fernandez's list number remains 35.5.

15. "Displacee" means a Brennan Future Damages Class Member who would have directly won a Disputed Transfer under the circumstances set forth in Paragraph 14b.

16. "Court" means the United States District Court for the Eastern District of New York.

17. "Parties" means (i) the United States of America ("United States"), which includes the United States Department of Justice, the United States Attorney General, and the Assistant Attorney General for the Civil Rights Division; (ii) the City School District of the City of New York d/b/a the New York City Department of Education, including any predecessor or successor City agencies, departments, or entities and any other City agency, department, or entity with direct authority over the relevant personnel responsibilities and functions identified in this Settlement Agreement; (iii) the "Brennan Intervenors" as listed in footnote 1 and all other

Brennan Class Members; (iv) the “Arroyo Intervenors” as listed in footnote 2; and (v) the “Caldero Intervenors” as listed in footnote 3. In addition, the “Parties” may include some or all of the other provisional or permanent Custodian Engineers who were afforded retroactive, competitive seniority pursuant to the 1999 Settlement Agreement, as listed in footnote 5, and/or Local 891, provided that they become signatories to this Agreement on or before the date of the Fairness Hearing. Any such additional Parties are listed in the signature pages at the end of the Agreement.

18. “Execution Date” means the date upon which all of the Parties listed in (i) – (v) of Paragraph 17, and/or their counsel of record, shall have signed the Agreement.

19. “Effective Date” means the date upon which, if this Agreement has not been voided under Paragraph 54, the Final Judgment approving this Agreement, entered by the Court in a form substantively identical to the order attached hereto as Attachment C, is no longer subject to appeal, or, in the event of an appeal, upon the date of final resolution of said appeal.

20. “Reasonably Comparable Schools” means: (a) (i) for schools that are 277,000 sq. feet or larger, schools that are in the same Large School District (as defined below) as the school that was the subject of the Disputed Transfer, or (ii) for schools that are smaller than 277,000 sq. feet, schools that are located within the same school district or an adjoining school district within the same borough of the school that was the subject of the Disputed Transfer; and (b) in each case, schools that have a pension salary equal to or greater than the larger of (i) 110% of the pension salary of the Displacee’s current school, or (ii) 90% of the pension salary of the school that was the subject of the Disputed Transfer. For purposes of this provision there are eight “Large School Districts”: the boroughs of Bronx and Staten Island, Manhattan from 57<sup>th</sup> Street north, Manhattan south of 57<sup>th</sup> Street, North Brooklyn, South Brooklyn, Queens from the Van

Wyck Expressway west, and Queens east of the Van Wyck Expressway. North Brooklyn includes the following schools: Brooklyn Technical, Grand Street Campus, Boys & Girls, and Franklin K. Lane. South Brooklyn includes the following schools: Erasmus Hall, Franklin D. Roosevelt, Edward R. Murrow, John Dewey, Sheepshead Bay, South Shore, and Fort Hamilton.

21. “Temporary Care Assignments” or “TCAs” mean the process the DOE uses to fill temporary school vacancies that result from illness, vacation, or leave.

22. “Transfer Date” is the date that a Custodian Engineer actually transfers to, and begins work at, a school obtained through the school transfer process.

### **III. CLASS CERTIFICATION**

23. Upon execution of this Agreement, the Parties shall file a joint motion asking the Court to certify, for settlement purposes, pursuant to Fed. R. Civ. P. 23(b)(3) the Brennan Future Damages Class, defined as “all non-Offeree Custodian Engineers with seniority dates (for school transfer purposes) on or after January 23, 1989, and on or before January 1, 2002.” Individual members of the Brennan Future Damages Class will have the right to opt out with respect to future claims for damages. This Agreement will affect the future damages claims only of those who are defined members of the Brennan Future Damages Class and have not opted out of that class.

### **IV. SCHOOL TRANSFERS**

#### *Settlement Claims Process*

24. Offerees will receive all school transfers to which they are entitled as a consequence of the job benefits they received pursuant to the 1999 Settlement Agreement, including all Disputed Transfers, and all other school transfers to which they are entitled as a result of job qualifications that they otherwise obtained. In accordance with this Agreement, the Brennan Injunctive Relief Class Members waive the right to seek injunctive relief or take any

other legal action that would prevent the award of such school transfers to Offerees, including Disputed Transfers. Nothing herein prohibits a Brennan Class Member from challenging the award of a transfer to an Offeree on the ground that it is not a Disputed Transfer because the Offeree should not have received it even with the seniority provided by the 1999 Settlement Agreement. Members of the Brennan Future Damages Class waive the right to seek damages as a result of a Disputed Transfer, except as set forth in Paragraphs 25 to 35 below.

25. A Displacee may make a claim to the DOE, and obtain compensation from the DOE, as set forth in herein and in Paragraphs 26 through 35 of this Agreement, except that:

- a. If the Displacee receives another school from the same transfer list in which the Disputed Transfer occurs, and the school received by the Displacee has an equivalent or larger pension salary than the school that was the subject of the Disputed Transfer, the Displacee shall not be entitled to compensation; or
- b. If the Displacee receives another school from the same transfer list in which the Disputed Transfer occurs, and the school received by the Displacee is ranked higher on the Displacee's "list of choices" than the school that was the subject of the Disputed Transfer, the Displacee shall not be entitled to compensation.

26. The compensation owed to the Displacee by the DOE will be considered salary in calculating that Displacee's pension.

27. Under no circumstance will the Displacee receive compensation from the DOE beyond the earlier of (a) the Transfer Date of the tenth transfer list after the list that resulted in the Disputed Transfer, or (b) three years from the Transfer Date of the lost school transfer caused by the Disputed Transfer taking effect. The DOE's payment of compensation shall be subject to

the Displacee's reasonable duty to mitigate as set forth in Paragraphs 34 and 35 of this Agreement.

28. If a Brennan Future Damages Class Member qualifies as a Displacee more than once on the same transfer list (i.e., loses more than one transfer because an Offeree(s) obtained a Disputed Transfer(s)), the Brennan Future Damages Class Member shall be compensated by the DOE only for the transfer resulting in the greatest loss of pension salary.

29. If, during the period in which a Displacee receives compensation for a Disputed Transfer, the Displacee again qualifies as a Displacee on a separate and unrelated transfer list, and the pension salary of the school that was the subject of the second Disputed Transfer is greater than the pension salary of the school that was the subject of the first Disputed Transfer, the Displacee will no longer receive the amount from the first Disputed Transfer and will receive the amount from the second Disputed Transfer pursuant to the terms set forth in Paragraph 32 below, and the period for receipt of such compensation shall be reset pursuant to the terms set forth in Paragraph 27 above. If the pension salary of the school that was the subject of the second Disputed Transfer is less than the pension salary of the school that was the subject of the first Disputed Transfer, the Displacee will continue to receive the amount from the first Disputed Transfer and will not receive the amount from the second Disputed Transfer, until the end of the time period for compensation from the first Disputed Transfer. After that, the Displacee will receive the amount from the second Disputed Transfer, but only for the remaining time period for compensation from that Disputed Transfer, as set forth in Paragraph 27, above.

30. In the event a Displacee seeks and obtains a transfer to another school during the period he or she is receiving compensation from the DOE under this Agreement, 85% of any increase in pension salary received as a result of the transfer shall be a set-off against the

compensation paid pursuant to this Agreement. Under no circumstances will compensation paid by the DOE under this Agreement increase as a result of such transfer.

31. Any Brennan Future Damages Class Member who believes himself or herself to be a Displacee must make a claim in writing for compensation to the Division of School Facilities of the DOE within 90 days of the Transfer Date of a Disputed Transfer. The claim must set forth why the Displacee is entitled to compensation under this Agreement. The DOE shall provide notice of any claim to the Offeree whose school transfer is the subject of the claim and, upon request by that Offeree, a copy of the claim. Regardless of when the claim is made (or resolved pursuant to Paragraph 33), the Displacee will be entitled to compensation for the time period beginning on the Transfer Date of the Disputed Transfer.

32. In the event that a Displacee loses a Disputed Transfer as defined under this Agreement and makes a timely claim, the Displacee will get each month, as compensation from the DOE, 85% of the difference in monthly pension salary that the Displacee receives and the monthly pension salary of the school that was the subject of the Disputed Transfer. However, in the event that the Displacee obtains, on the same transfer list in which the Disputed Transfer occurred, a school with a lower pension salary than the school held by the Displacee immediately prior to the Transfer Date for that list, the Displacee will get 85% of the difference between the pension salaries of the school that the Displacee held immediately prior to the Transfer Date for that list and the school that was the subject of the Disputed Transfer.

33. If the DOE concludes that a Brennan Future Damages Class Member who has made a claim pursuant to Paragraph 31 above is not entitled to compensation from the DOE under this Agreement, it will withhold payment of any compensation and so advise the Brennan Future Damages Class Member in writing. The Brennan Future Damages Class Member may

ask the Court to resolve this dispute. Provided that the Court exercises jurisdiction over a timely-filed dispute, this is the exclusive avenue for resolution of such a dispute. The Parties shall bear their own fees and costs in connection with such resolution.

Mitigation

34. A Displacee has a reasonable duty to mitigate by applying for transfers to Reasonably Comparable Schools to the school that was the subject of the Disputed Transfer.

35. If the DOE believes that a Displacee has not engaged in reasonable efforts to mitigate and that the Displacee would have obtained a Reasonably Comparable School if he or she had engaged in such efforts, the DOE may provide the Displacee with 30 days' notice, in writing, that the DOE: (a) will cease to compensate the Displacee (if the pension salary for the Reasonably Comparable School is equal to or greater than the pension salary for the school that the Displacee lost in the Disputed Transfer) from the Transfer Date of the transfer list on which the Reasonably Comparable School appeared or (b) will reduce the amount of compensation to the Displacee by 85% of the amount by which the pension salary for the Reasonably Comparable School exceeds the pension salary for his or her current school from the Transfer Date of the transfer list on which the Reasonably Comparable School appeared. Within 30 days after receiving such notice, the Displacee may ask the Court to resolve any dispute. If the Displacee does so, the DOE will place the amounts at issue in escrow pending the resolution of the dispute. If the Displacee does not ask the Court to resolve a dispute, the DOE may thereafter cease or reduce (as appropriate) such compensation. Provided that the Court exercises jurisdiction over a timely-filed dispute, this is the exclusive avenue for resolution of such a dispute. The Parties shall bear their own fees and costs in connection with such resolution.

**V. LAYOFFS**

36. For purposes of layoffs, the Offerees for whom dates are listed on the right hand column of Schedules A and B attached to the 2008 final judgment of the Court (Case No. 96-0374, Docket Number 659) will have those seniority dates. All other Offerees will have their Actual Permanent Hiring Date as their seniority date for purposes of layoffs. The seniority dates for purposes of layoffs of those Offerees employed by the DOE as of the Execution Date of this Agreement are listed in the fourth column of Attachment A.

**VI. TEMPORARY CARE ASSIGNMENTS (TCAs)**

37. This Agreement will have no impact on TCAs. Offerees will retain their retroactive, competitive seniority for purposes of TCAs.

**VII. NOTICE OF AGREEMENT AND FAIRNESS HEARING**

38. Upon execution of this Agreement, the Parties shall file with the Court a joint motion seeking entry of an Order, in the form set forth in Attachment B, in which the Court, *inter alia*: (a) preliminarily approves dismissal, upon the Effective Date of this Agreement, of the United States from *Brennan v. Holder*, pursuant to Fed. R. Civ. P. 41(a)(2), with final approval of that dismissal, as well as the effectiveness of that dismissal, subject both to the satisfaction of the requirements of Fed. R. Civ. P. 23(e) and entry by this Court of a Final Judgment, or other final approval order, that is substantially identical to the one attached hereto as Attachment C; (b) certifies the Brennan Future Damages Class for settlement purposes; (c) provisionally approves this Agreement; (d) approves the plan for notice to Brennan Class Members and Offerees not Parties to this Agreement, as set forth in Paragraphs 39, 41, and 42 of this Agreement, as reasonable under Federal Rule of Civil Procedure 23(e)(1) and in accordance with 42 U.S.C. § 2000e-2(n); (e) directs the Parties to provide notice to Brennan Class Members

and Offerees not Parties to this Agreement in accordance with that plan; (f) approves the form of the Notice, attached hereto as Attachment H; and (g) schedules a Fairness Hearing on the terms of this Agreement so that the Court may determine whether the terms of this Agreement are fair, reasonable, adequate, and otherwise consistent with applicable law.

39. The purpose of the Fairness Hearing, and the related notification provisions of this Agreement, is to provide to all persons who may be affected by the terms of this Agreement, including any Brennan Class Members who may be bound by this Agreement, Offerees not Parties to this Agreement, and Local 891, with notice and an opportunity to present objections prior to final entry of this Agreement, in accordance with Section 703(n) of Title VII, 42 U.S.C. § 2000e-2(n), and Fed. R. Civ. P. 23(e).

a. At any time on or before the date of the Fairness Hearing, an Offeree listed in footnote 5 of this Agreement may notify Counsel for any of the Parties, as indicated on the signature pages of this Agreement, that he or she would like to become a Party to this Agreement. Any Counsel so notified will inform Counsel for the other Parties and an amendment to the signature pages of this Agreement will be prepared and provided to the Offeree for his/her signature.

b. Local 891 and the estate of Joseph Lin shall be similarly afforded an opportunity to sign this Agreement and thereby become a Party to it.

40. Prior to and at the Fairness Hearing referenced in Paragraph 39: (i) the Parties shall jointly request the Court's final approval of this Agreement, pursuant to Federal Rule of Civil Procedure 23(e) and 42 U.S.C. § 2000e-2(n), and (ii) no Party shall seek to withdraw from this Agreement nor make any representations to the Court that are inconsistent with this Agreement or its legal appropriateness as a means of resolving these cases. However, no Party

shall be limited in that Party's ability to propose alternate terms to any provisions in the Agreement, including to address questions or concerns about the legality of those provisions from the Court or persons who object to the Agreement, in furtherance of obtaining final approval of the Agreement. All Parties agree that they will, through the Fairness Hearing stage of this proceeding, support and defend fully the legality of this Agreement. If, after the Fairness Hearing, the Court approves this Agreement as fair, adequate, and reasonable, and otherwise consistent with applicable law, the Parties consent to entry of Final Judgment in a form substantively identical to the Final Judgment attached hereto as Attachment C.

Notice of the Agreement

41. No later than seventy-five (75) days prior to the Fairness Hearing, the DOE or its designee shall provide copies of the Notice, Instructions for Filing an Objection and Opting Out Prior to the Fairness Hearing, a blank Objection to the Entry of the Settlement Agreement Form, and a blank Opt-Out Form, in the formats set forth in Attachments H, E, F, and G respectively, to each Brennan Injunctive Relief Class member, each Brennan Future Damages Class member, and all Offerees not Parties to this Agreement who are still working for the DOE as of the Execution Date via hand delivery at the place of the person's employment, or as an attachment to or enclosure with each such person's regularly distributed paycheck or notice of electronic deposit, along with a cover letter in the format set forth in Attachment I to this Agreement. At the same time, the DOE will also provide to the estate of Joseph Lin and Local 891 a complete copy of the Settlement Agreement. At or before the time notices are provided pursuant to this Paragraph, the DOE shall provide to Counsel for all Parties a list stating the name and last known address of each person to whom such notice is being provided. If the DOE, in its discretion, provides Notice to Custodian Engineers other than those who are members of the Brennan

Classes, the provision of such Notice shall not constitute a concession by the DOE that such individuals are members of the Brennan Classes.

42. No later than seventy-five (75) days prior to the Fairness Hearing, the DOE shall post the Notice, Instructions for Filing an Objection and Opting Out Prior to the Fairness Hearing, and a blank Objection to the Entry of this Agreement and Opt-Out form in the formats set forth in Attachments H, E, F, and G, respectively, as well as a complete copy of this Agreement, on the DOE's website in a conspicuous location.

Objections

43. Persons who wish to object to the terms of this Agreement may file objections, in accordance with the requirements set forth in Attachment E, as follows:

- a. An objection must be made on the Objection to the Entry of the Settlement Agreement Form and shall state the objector's name, address, and telephone number; set forth a description of the objector's basis for objecting; include copies of any documentation supporting the objection; and state whether the objector wishes the opportunity to be heard in Court at the Fairness Hearing.
- b. Objections shall be mailed, or emailed, to Counsel for the Brennan Classes at the following address:

Michael Rosman  
General Counsel  
Center for Individual Rights  
1233 20<sup>th</sup> Street N.W., Suite 300  
Washington D.C. 20036  
rosman@cir-usa.org

- c. Objections must be sent to Counsel for the Brennan Classes by mail that is postmarked, or email that is transmitted, no later than forty-five (45) days prior to the date set for the Fairness Hearing. Any person who fails to do so shall be deemed to have waived any right to object to the terms of this Agreement, except for good cause as determined by Counsel for the Brennan Classes.

44. By no later than thirty (30) days prior to the date set for the Fairness Hearing, Counsel for the Brennan Classes shall serve Counsel for all Parties with copies of the objections it has received.

45. By no later than ten (10) days prior to the Fairness Hearing, Counsel for the Brennan Classes shall file with the Court copies of all timely objections received by Counsel for the Brennan Classes, so those documents will be publicly available. If Counsel for the Brennan Classes receives any objection(s) timely sent as set forth in Paragraph 43 but received after the deadline set forth in Paragraph 44 above, Counsel for the Brennan Classes will supplement promptly its filing with the Court and serve Counsel for each of the Parties with the supplementation. In addition, no later than ten (10) days prior to the Fairness Hearing, the Parties shall file their responses, if any, to all objections timely sent to Counsel for the Brennan Classes.

*Opting Out, Including its Effect on Ability to Object*

46. Brennan Future Damages Class members may “opt out” of the class for purposes of the settlement claims process for school transfers set forth in Paragraphs 25 to 35 above.

47. No one may opt out of the Brennan Injunctive Relief Class. Thus, no one may opt out of the injunctive relief provided in this Agreement.

48. If a Brennan Future Damages Class Member opts out of the class, his/her future damages claims will be preserved, but s/he will receive no compensation under this Agreement, and s/he may not use the settlement claims process described in Paragraphs 25 to 35 above.

49. Regardless of whether a Brennan Future Damages Class member opts out of the class, s/he may object to this Agreement; however, only those who do not opt out may object to this Agreement’s terms related to compensation for future damages claims.

50. Persons who wish to opt out of the Brennan Future Damages Class can do so, in accordance with the requirements set forth in Attachment E, as follows:

- a. Complete the Opt-Out Form, including your name, address, and telephone number; and
- b. Indicate that you wish to opt out of the Brennan Future Damages Class for purposes of future damages compensation under the Agreement.
- c. Opt-Out Forms shall be mailed, or emailed, to Counsel for the Brennan Classes at the following address:

Michael Rosman  
General Counsel  
Center for Individual Rights  
1233 20<sup>th</sup> Street N.W., Suite 300  
Washington D.C. 20036  
rosman@cir-usa.org

- d. Opt-Out Forms must be sent to Counsel for the Brennan Classes by mail that is postmarked, or email that is transmitted, no later than forty-five (45) days prior to the date set for the Fairness Hearing. Any person who fails to do so shall be deemed to have agreed to be part of the Brennan Future Damages Class for purposes of receiving relief under this Agreement.

51. By no later than thirty-five (35) days prior to the date set for the Fairness Hearing, Counsel for the Brennan Classes shall serve Counsel for all Parties with copies of any Opt-Out notices it has received.

52. By no later than ten (10) days prior to the Fairness Hearing, Counsel for the Brennan Classes shall file with the Court copies of all timely Opt-Out notices received by Counsel for the Brennan Classes, so those documents will be publicly available. If Counsel for the Brennan Classes receives any Opt-Out notice(s) timely sent as set forth in Paragraph 50 but received after the deadline set forth in Paragraph 51 above, Counsel for the Brennan Classes will supplement promptly its filing with the Court and serve Counsel for each of the Parties with the supplementation.

Option to Nullify Agreement

53. If 5% or more of Brennan Future Damages Class members opt out of the class, then the DOE may elect, in its sole discretion, to nullify and void this Agreement. To do that, the DOE must file a notice with the Court indicating that it is exercising its rights under this Paragraph. Such a notice must be filed no later than fifteen (15) days before the date set for the Fairness Hearing.

54. This Agreement shall be void if: (a) the DOE voids it pursuant to Paragraph 53 above; (b) it is disapproved by a final court order not subject to further judicial review; or (c) the Court does not enter a Final Judgment, or other final approval order, that is substantially identical to the one attached hereto as Attachment C, unless any modification is agreed to by Counsel for the Parties and any unrepresented Parties.

**VIII. FINAL ENTRY OF THE SETTLEMENT AGREEMENT**

55. All provisions of this Agreement shall become binding on all Parties upon the Effective Date of this Agreement. As of the Execution Date of this Agreement, all claims that could be timely filed by any Party as of that date, or between the Execution Date and the Effective Date, shall be tolled and held in abeyance until (a) this Agreement is voided pursuant to Paragraph 54 or (b) the Effective Date. Claims by Displacees for compensation under this Agreement for lost Disputed Transfers occurring after the Execution Date, but before the Effective Date, may be made at any time prior to ninety (90) days after the Effective Date.

**IX. RELEASE OF CLAIMS**

56. The DOE shall pay Counsel for the Brennan Classes four-hundred thirty-seven thousand five-hundred dollars (\$437,500.00) for attorneys' fees and costs incurred in *U.S. v. NYBOE; Brennan v. Holder; Wise v. New York City Department of Education*, Case No. 11-5403

(E.D.N.Y.); *Miranda v. New York City Department of Education*, Case No. 06-2921 (E.D.N.Y.); and *Brennan v. New York City Department of Education*, Case No. 08-3032 (E.D.N.Y.).

57. The United States shall pay Counsel for the Brennan Classes four-hundred thirty-seven thousand five-hundred dollars (\$437,500.00) for attorneys' fees and costs incurred in *U.S. v. NYBOE*.

58. Upon the Effective Date of this Agreement, as consideration for agreeing to the terms of this Agreement and to the entry of the Final Judgment attached hereto as Exhibit C, except as set forth in Paragraphs 59 and 60, all Parties hereby waive, release, and discharge any and all claims, causes of action, motions, or requests for equitable or monetary relief (including, without limitation, as to attorneys' fees, costs, indemnification, and contribution), whether known or unknown, against any and all of the other Parties, that: (i) accrued on or before the Execution Date; (ii) have been or could have been raised in any case listed in Paragraph 56 or any administrative proceeding related to any of those cases; and (iii) arose out of, or are related to, the facts or circumstances at issue in any case listed in Paragraph 56 or any administrative proceeding related to any of those cases. Any Offeree not Party to this Agreement who is still working for the DOE as of the Execution Date shall also be bound by the provisions of this Paragraph in accordance with 42 U.S.C. § 2000e-2(n).

59. This Agreement shall not be construed as a waiver or release by the Brennan Class Members of any claim for non-class, individual damages against the DOE based upon events prior to the Execution Date, including the pending claims against the DOE for individual damages in the cases listed in Paragraph 56.

60. This Agreement shall not be construed as a waiver or release by the Brennan Class Members of their right or ability to pursue and/or receive reimbursement from the DOE for

attorneys' fees or other costs incurred or expended on or after January 1, 2013 in connection with any claim for individual damages in any of the cases listed in Paragraph 56.

61. Each Party shall bear its, his, or her own attorneys' fees, costs, and expenses that are incurred as a result of obligations imposed by this Agreement, including costs associated with notice procedures and the procedure available to resolve claims by the Brennan Future Damages Class.

#### **X. DISMISSAL OF CLAIMS**

62. The United States' consent to be bound as a Party to this Agreement is conditioned upon its dismissal as a party from *Brennan v. Holder*. All Parties to *Brennan v. Holder* consent to the United States' dismissal with prejudice from *Brennan v. Holder* as of the Effective Date of this Agreement, pursuant to Fed. R. Civ. P. 41(a)(2), subject both to the satisfaction of the requirements of Fed. R. Civ. P. 23(e) and entry by this Court of a Final Judgment, or other final approval order, that is substantially identical to the one attached hereto as Attachment C, including the provisions in Paragraphs 2 through 4 of Attachment C which effectuate the Court's continued jurisdiction to enforce the Agreement against the United States (as a party to *U.S. v. NYBOE*) and all other Parties to the Agreement pursuant to the standards set forth in *Kokkonen v. Guardian Life Insurance Company*, 511 U.S. 375 (1994). Concurrently with the Parties filing their joint motion for approval of the Agreement pursuant to Paragraph 38, the Brennan Class Members shall file a motion, in the form of Attachment D to this Agreement, requesting the Court to dismiss with prejudice, as of the Effective Date of this Agreement, all claims that they asserted against the United States in *Brennan v. Holder*, pursuant to Fed. R. Civ. P. 41(a)(2).

63. Except for those claims identified above in Paragraphs 59 and 60, regarding

certain individual damages claims against the DOE and subject to the Court's continued jurisdiction to enforce this Agreement pursuant to Paragraph 70, all Parties agree to the dismissal, with prejudice, of all claims, demands, and causes of action raised in *Brennan v. Holder* and *U.S. v. NYBOE*, upon the Effective Date of this Agreement.

## **XI. OTHER MATTERS**

### *Agreement not to Attack Offerees' Seniority-Based Benefits*

64. As additional consideration for the relief contained in this Agreement, all Parties agree not to attack, and upon approval of this Agreement by the Court shall thereby be enjoined from attacking, the Offerees' pensions, current and future salaries, current and future positions, permanent appointments, competitive and noncompetitive job benefits and conditions, whether through union grievances or otherwise, based on any allegations with respect to the lawfulness of the 1999 Settlement Agreement or any allegations that have been raised or could have been raised in these lawsuits. The pensions, current and future salaries, current and future positions, permanent appointments, competitive and noncompetitive job benefits and conditions of the Offerees, including those Offerees who have retired or otherwise separated from the DOE, will not be adversely affected by this Agreement, except as provided in Paragraph 36 above. Local 891 shall also be bound by the provisions of this Paragraph in accordance with 42 U.S.C. § 2000e-2(n).

### *Agreement to Defend the Agreement*

65. All Parties agree, with regard to any proceeding challenging the Agreement's lawfulness, that they will not, collectively or individually: (1) collaterally attack the Agreement; (2) take any action (not to include inaction) to impede any Party's efforts to defend the Agreement; or (3) take a position (not to include abstaining from taking a position) that is adverse to the effectuation of the Agreement's terms. Any Offeree not Party to this Agreement

who was still working for the DOE as of the Execution Date will also be bound by the terms of the preceding sentence in accordance with 42 U.S.C. § 2000e-2(n). Further, after the Fairness Hearing referenced in Paragraph 39, the Arroyo Intervenors, the Brennan Intervenors, the Caldero Intervenors, and the DOE agree to support and defend fully the legality of this Agreement if it is challenged in any forum.

*Non-Retaliation*

66. The DOE shall not retaliate against any person because that person has opposed allegedly discriminatory policies or practices of the DOE in the recruitment or the selection of Custodian Engineers Level I or II, has filed a charge with the Equal Employment Opportunity Commission or any state or local equal employment or human rights agency (including the New York City Commission on Human Rights and New York State Division of Human Rights), has participated in or cooperated with the United States in its investigation and/or litigation of these cases, was designated an Offeree under the 1999 Settlement Agreement, or has intervened or otherwise participated in any case listed in Paragraph 56 or any administrative proceeding related to any of those cases. Local 891 shall also be bound by the provisions of this Paragraph in accordance with 42 U.S.C. § 2000e-2(n).

*Incentive Payments*

67. The DOE will pay \$2,000 to each of the six class representatives in *Brennan v. Holder*.

*No Admission of Liability and Preservation of Defenses*

68. This Agreement is not and will not be construed:
- a. as an admission by any Party of the truth of any allegation or the validity of any claim asserted in these actions against it or any claim that affects that Party in any way;

- b. as an admission or presumption of wrongdoing or liability on the part of any Party;
- c. as a concession or an admission of any fault or omission in any act or failure to act; or
- d. as an admission by any Party that any Party was a proper Party to these actions, that any Party “prevailed” against any other Party, or that any Party would be subject to attorney’s fees or costs for the positions it took, or the results obtained, in these actions.

Tax Responsibilities

69. Each person who, or entity that, makes, receives, or benefits (either directly or indirectly) from any payment(s) per this Agreement shall, with respect to such payment(s), be solely responsible for complying with all of that person’s or entity’s obligations, if any, under applicable federal, state, and local tax laws. Nothing in this Agreement waives or modifies federal, state, or local law pertaining to taxes, offsets, levies, and/or liens that may apply to this Agreement or monies paid per this Agreement. No Party has relied on any other Party’s representation as to the application of any such law.

Duration of the Agreement/ Continuing Jurisdiction/ Changes to Agreement

70. The Parties agree to request that the Court shall retain jurisdiction over this Agreement for as long as is necessary for the purpose of resolving any disputes or entering any orders that may be appropriate to implement this Agreement. Absent any pending motion related to this Agreement, any Party may file a motion with the Court to terminate the Court’s continued jurisdiction over this Agreement six months after the date on which the last Offeree dies. That motion shall be granted by the Court unless one of the other Parties to this Agreement demonstrates good cause for continued jurisdiction by the Court for a specific period of time and for a specific purpose. Notwithstanding the foregoing sentences, the United States may move, consistent with Fed. R. Civ. P. 60(b)(5), to terminate the Court’s jurisdiction over it, except that

any such motion by the United States shall not seek to terminate the Court's continued obligation to enforce the United States's obligations under Paragraphs 64 of the Agreement until six months after the date on which the last Offeree dies. The Parties' rights and responsibilities under the Agreement shall remain in effect even after the Court's jurisdiction over the Agreement and/or any Party to the Agreement ends.

71. Before seeking action by the Court, the interested Parties shall attempt to resolve, informally and in good faith, any dispute that may occur under this Agreement.

72. By mutual agreement, the Parties may change the terms of this Agreement, provided that such mutual agreement is memorialized in writing, signed by the Counsel for the Parties and any unrepresented Parties, and approved by the Court.

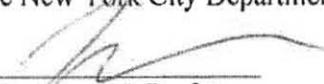
Entire Agreement as to Matters Resolved by the Agreement

73. This Agreement constitutes the entire agreement of the Parties as to all matters that are resolved by this Agreement and supersedes all prior agreements, representations, negotiations, and undertakings on such matters that are not set forth or incorporated herein, including the 1999 Settlement Agreement. To the extent there are any conflicting provisions between the 1999 Settlement Agreement and this Agreement, those provisions are superseded by this Agreement.

Regarding Draftsmanship and Construction

74. The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party participated jointly in the drafting of this Agreement and, therefore, the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.

The City School District of the City of New York  
d/b/a the New York City Department of Education

By: 

Lawrence J. Profeta  
Labor and Employment Division  
New York City Law Department  
100 Church Street  
New York, NY 10007  
(212) 356-2630

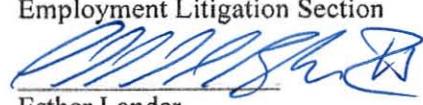
Counsel to the New York City Department of Education

Date: November 13, 2013

The United States of America

Jocelyn Samuels  
Acting Assistant Attorney General  
Civil Rights Division

Delora Kennebrew  
Chief  
Employment Litigation Section

By: 

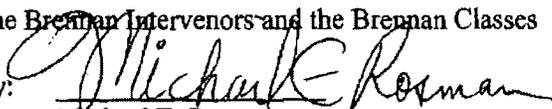
Esther Lander  
Principal Deputy Chief  
Trevor Blake  
Senior Trial Attorney  
U.S. Department of Justice  
Civil Rights Division  
Employment Litigation Section  
Patrick Henry Building, Room 4918  
950 Pennsylvania Ave., NW  
Washington, DC 20530  
(202) 514-5034

Counsel to the United States of America

Date: November 13, 2013

The Brennan Intervenors and the Brennan Classes

By:



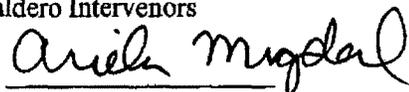
Michael E. Rosman  
Center for Individual Rights  
1233 20th Street, NW, Suite 300  
Washington DC 20036  
(202) 833-8400 x104

Counsel for the Brennan Intervenors and the Brennan Classes

Date: November 13, 2013

The Caldero Intervenors

By:



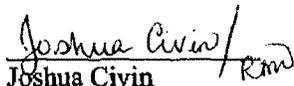
Ariela Migdal  
Lenora M. Lapidus  
Women's Rights Project  
American Civil Liberties Union Foundation  
125 Broad Street  
New York, NY 10004  
(212) 519-7861

Counsel for the Caldero Intervenors

Date: November 13, 2013

The Arroyo Intervenors

By:



Joshua Civin  
Johnathan Smith  
NAACP Legal Defense and  
Educational Fund, Inc.  
1444 I Street, NW, 10th floor  
Washington, DC 20005  
(202) 682-1300

Sherrilyn Ifill  
Ria Tabacco Mar  
NAACP Legal Defense and  
Educational Fund, Inc.  
40 Rector Street, 5th floor  
New York, NY 10013  
(212) 965-2200

Counsel for the Arroyo Intervenors

Date: November 13, 2013

# **ATTACHMENT A**

<b>Offeree Employed by the DOE as of the Execution Date of this Agreement</b>	<b>Actual Permanent Hiring Date (pursuant to 1999 Settlement Agreement)</b>  <b>Sources: Doc. 466, Ex. 50; Doc. 483, Ex. 62</b>	<b>Retroactive Seniority Date (pursuant to 1999 Settlement Agreement)</b>  <b>Source: Beneficiaries Chart, A-4367-4368</b>	<b>Seniority Date for Layoff Protection</b>  <b>Sources: Doc. 466, Ex. 50; Doc. 483, Ex. 62; Doc. 659</b>	<b>Seniority Date for Current Position</b>
Arroyo, Pedro	February 24, 2000	April 13, 1990 (CE2)	October 8, 1992	April 13, 1990 (CE2)
Caldero, Janet	April 4, 1997	January 23, 1989 (CE1)	April 4, 1997	January 23, 1989 (CE1)
Calderon, Celia I.	February 23, 2000	November 7, 1994 (CE1)	February 23, 2000	November 7, 1994 (CE1)
Casado, Jose	February 22, 2000	June 16, 1995 (CE1)	October 27, 1997	April 16, 2010 (CE2)
Chioke, Salih	February 25, 2000	June 3, 1996 (CE2)	February 25, 2000	June 3, 1996 (CE2)
Christie, Joseph*	February 28, 2000	January 23, 1989 (CE1)	January 23, 1989	January 23, 1989 (CE1)
Clement, Andrew	April 4, 1997	January 30, 1995 (CE1)	April 4, 1997	September 22, 2006 (CE2)
Cordero, Ricardo*	January 23, 1998	January 23, 1989 (CE1)	January 23, 1989	June 20, 2003 (CE2)
D'Alessio, Kristen	February 24, 2000	June 28, 1996 (CE2)	February 24, 2000	June 28, 1996 (CE2)
Daniele, Laura	February 24, 2000	January 23, 1989 (CE1)	February 24, 2000	January 23, 1989 (CE1)
Fernandez, Celestino	March 6, 2000	May 8, 1995 (CE1)	October 27, 1997	October 18, 2000 (CE2)
Jarrett, Marcia P.	February 24, 2000	November 7, 1994 (CE1)	February 24, 2000	November 7, 1994 (CE1)
LaFaye, Kevin	February 29, 2000	April 13, 1990 (CE2)	October 8, 1992	April 13, 1990 (CE2)
Lambert, Carla*	February 23, 2000	January 23, 1989 (CE1)	February 23, 2000	January 23, 1989 (CE1)
Lewis, Jerry Dale	February 25, 2000	November 8, 1994 (CE1)	February 25, 2000	November 8, 1994 (CE1)
Lopez, Steven	February 23, 2000	November 6, 1995 (CE2)	February 23, 2000	November 6, 1995 (CE2)
Luebker, Kathleen	October 3, 1997	December 3, 1993 (CE1)	October 3, 1997	December 3, 1993 (CE1)
Maldonado, Anibal	October 3, 1997	June 16, 1995 (CE1)	October 3, 1997	June 16, 1995 (CE1)
Manousakis, Marianne	February 23, 2000	June 20, 1994 (CE1)	February 23, 2000	June 20, 1994 (CE1)

<b>Offeree Employed by the DOE as of the Execution Date of this Agreement</b>	<b>Actual Permanent Hiring Date (pursuant to 1999 Settlement Agreement)</b>  <b>Sources: Doc. 466, Ex. 50; Doc. 483, Ex. 62</b>	<b>Retroactive Seniority Date (pursuant to 1999 Settlement Agreement)</b>  <b>Source: Beneficiaries Chart, A-4367-4368</b>	<b>Seniority Date for Layoff Protection</b>  <b>Sources: Doc. 466, Ex. 50; Doc. 483, Ex. 62; Doc. 659</b>	<b>Seniority Date for Current Position</b>
Martinez, James	February 24, 2000	February 12, 1996 (CE1)	October 27, 1997	June 20, 2003 (CE2)
McGraw, Wilbert	February 24, 2000	April 13, 1990 (CE2)	October 8, 1992	April 13, 1990 (CE2)
McGreal, Adele A.	March 10, 2000	November 9, 1992 (CE1)	March 10, 2000	November 9, 1992 (CE1)
McMahon, Margaret	February 24, 2000	September 23, 1994 (CE2)	February 24, 2000	September 23, 1994 (CE2)
Morton, Sandra D.	February 24, 2000	January 30, 1995 (CE1)	February 24, 2000	January 30, 1995 (CE1)
Ortega de Green, Silvia	February 29, 2000	June 16, 1995 (CE1)	October 27, 1997	June 16, 1995 (CE1)
Pagan, Angel*	February 24, 2000	January 23, 1989 (CE1)	February 24, 2000	January 23, 1989 (CE1)
Pantiledes, Anthony*	February 4, 2000	January 23, 1989 (CE1)	February 4, 2000	January 23, 1989 (CE1)
Pantiledes, Nicholas	June 12, 1998	January 23, 1989 (CE1)	October 27, 1997	January 23, 1989 (CE1)
Rivera, Gilbert*	January 23, 1998	January 23, 1989 (CE1)	January 23, 1989	January 23, 1989 (CE1)
Rivera, Sean*	February 4, 2000	November 7, 1995 (CE1)	February 4, 2000	October 5, 2007 (CE2)
Robertin, Peter*	March 9, 2000	January 23, 1989 (CE1)	January 23, 1989	January 23, 1989 (CE1)
Santana, Harry	February 25, 2000	January 30, 1995 (CE1)	February 25, 2000	January 30, 1995 (CE1)
Smith, Carl D.	February 28, 2000	February 12, 1996 (CE1)	February 28, 2000	February 12, 1996 (CE1)
Torres, Luis*	February 24, 2000	October 8, 1992 (CE2)	February 24, 2000	October 8, 1992 (CE2)
Valdez, Frank	February 25, 2000	February 12, 1996 (CE2)	February 25, 2000	February 12, 1996 (CE2)

\* denotes unrepresented

# **ATTACHMENT B**



**[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT**

The Court hereby Orders, Finds, Adjudges, and Decrees that:

1. The Court has already certified a class pursuant to Federal Rule of Civil Procedure 23(b)(2), which consists of all custodial employees of the New York City Department of Education whose seniority for purposes of transfers, temporary care assignments, and layoff protection has been adversely affected by the grant of seniority benefits to the Offerees (the “Brennan Injunctive Relief Class”) (Case No. 96-0374, Docket Numbers 592 and 622). In addition, the Court hereby certifies, for settlement purposes only, another class pursuant to Federal Rule of Civil Procedure 23(b)(3), which consists of all non-Offeree Custodian Engineers with seniority dates (for school transfer purposes) on or after January 23, 1989, and on or before January 1, 2002 (the “Brennan Future Damages Class” and collectively with the Brennan Injunctive Relief Class, the “Brennan Classes”).

2. The Court confirms that John Brennan, James Ahearn, Scott Spring, Dennis Mortensen, John Mitchell, and Eric Schauer are representatives of the Brennan Injunctive Relief Class; and John Brennan, John Mitchell, Eric Schauer, and Scott Spring are hereby appointed as representatives of the Brennan Future Damages Class. The Court hereby appoints the Center for Individual Rights as class counsel for the Brennan Classes.

3. Preliminary approval is hereby granted to the Settlement Agreement as being fair, reasonable, and adequate.

4. The Court preliminarily approves the Brennan Classes’ dismissal, pursuant to Fed. R. Civ. P. 41(a)(2), of the United States as a party to *Brennan v. Holder*, Case No. 02-0256, upon the Effective Date of the Agreement, as that term is defined in the Agreement. Final approval of that dismissal, and the effectiveness of that dismissal, is subject to both satisfaction

of the applicable requirements set forth in Fed. R. Civ. P. 23 and 41 and entry by this Court of a Final Judgment, or other final approval order, that is substantially identical to the one attached as Attachment C to the Agreement, including the provisions in Paragraphs 2 through 4.

5. The plan for Notice, as set forth in Paragraphs 39, 41, and 42 of the Settlement Agreement, is approved as reasonable under Federal Rule of Civil Procedure 23(e)(1) and in accordance with 42 U.S.C. § 2000e-2(n). The Parties are directed to provide Notice pursuant to that plan to the Brennan Classes, Local 891 and all Offerees not Parties to the Agreement as listed in footnote 5 of the Agreement who were still working for the DOE as of the Execution Date, as well as to the estate of Joseph Lin.

6. The form of Notice appended as Attachment H of the Settlement Agreement is hereby approved.

7. The Court finds that no other forms of Notice are required in order to provide reasonable and effective Notice to all members of the Brennan Classes, Local 891, and Offerees not Parties to this Agreement.

8. A Fairness Hearing is hereby scheduled for \_\_\_\_\_, to determine whether the Settlement Agreement should be approved as fair, reasonable, and adequate, and whether an order approving the Settlement Agreement should be entered pursuant to Federal Rule of Civil Procedure 23(e), as well as to provide an opportunity to present objections in accordance with Section 703(n) of Title VII, 42 U.S.C. § 2000e-2(n).

9. Between the execution date of the Settlement Agreement and the Fairness Hearing, the Parties shall direct all inquiries from members of the Brennan Classes to Counsel for the Brennan Classes.

10. Any person who wishes to object to the terms of the Settlement Agreement, or the

entry of an Order approving the Settlement Agreement, must file written comments with Counsel for the Brennan Classes, as provided in the Notice.

11. In order to have an objection considered and heard at the Fairness Hearing, such objection must be received by Counsel for the Brennan Classes in writing in the form specified by the Notice by \_\_\_\_\_.

12. Any person who wishes to opt-out of the Brennan Future Damages Class must file an Opt-Out Form with Counsel for the Brennan Classes, as provided in the Notice.

13. The Parties shall each be entitled to respond, in writing, to any objections by \_\_\_\_\_.

14. The Fairness Hearing may, from time to time and without further notice to the Brennan Classes, be continued or adjourned by order of the Court.

Dated: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE FREDERIC BLOCK  
United States District Judge

# **ATTACHMENT C**



**[PROPOSED] ORDER APPROVING SETTLEMENT AGREEMENT  
AND DIRECTING ENTRY OF A RULE 54 FINAL JUDGMENT**

Following this Court's Order preliminarily approving the proposed Settlement Agreement (the "Agreement"), the Parties disseminated a Notice of Proposed Settlement and Fairness hearing to the Brennan Classes, Local 891, and Offerees not Parties to the Agreement who were still working for the DOE as of the Execution Date, as well as the estate of Joseph Lin. After consideration of the written submissions of the Parties, the Agreement between the Parties, all objections to the Agreement, all filings in support of the Agreement, and the presentations at the hearing held by the Court, pursuant to Federal Rule of Procedure 23(e) and 42 U.S.C. § 2000e-2(n), to consider the fairness of the Agreement, the Court hereby Orders, Finds, Adjudges, and Decrees that:

1. The Agreement between the Parties is finally approved as fair, reasonable, and adequate, and consistent with Federal Rule of Civil Procedure 23(e) and 42 U.S.C. § 2000e-2(n). The Court finds that the Brennan Injunctive Relief Class, certified pursuant to Federal Rule of Civil Procedure 23(b)(2), consists of all custodial employees of the New York City Department of Education whose seniority for purposes of transfers, temporary care assignments, and layoff protection has been adversely affected by the grant of seniority benefits to the Offerees. The Court finds that the Brennan Future Damages Class, certified for settlement purposes only pursuant to Federal Rule of Civil Procedure 23(b)(3), consists of all non-Offeree Custodian Engineers with seniority dates (for school transfer purposes) on or after January 23, 1989, and on or before January 1, 2002. The Court further finds that the following individuals have opted out of the Brennan Future Damages Class:

---

2. Pursuant to the standards set forth in *Kokkonen v. Guardian Life Insurance*

*Company*, 511 U.S. 375 (1994), the Agreement (attached hereto as Exhibit “A”) is hereby incorporated as part of this Order, and the Court shall retain jurisdiction over the Agreement as long for as is necessary for the purpose of resolving any disputes or entering any orders that may be appropriate to implement the Agreement.

3. Having found that the applicable requirements of Fed. R. Civ. P. 23 and 41(a)(2) have been satisfied, the Court expressly approves the dismissal, with prejudice, of the United States as a party to *Brennan v. Holder*, Case No. 02-0256, upon the Effective Date of the Agreement, as that term is defined in the Agreement, subject to the Court’s continued jurisdiction to enforce this Agreement against the United States and all other Parties to the Agreement pursuant to the preceding paragraph.

4. Except for those claims identified in Paragraphs 59 and 60 of the Settlement Agreement regarding certain individual damages claims against the DOE and subject to the Court’s continued jurisdiction to enforce this Agreement pursuant to Paragraph 2 of this Order, the Court approves the dismissal, with prejudice of all claims, demands, and causes of action raised in *Brennan v. Holder* and *U.S. v. NYBOE*, upon the Effective Date of this Agreement. The Court therefore expressly determines that there is no just reason for delaying the entry of judgment in *Brennan v. Holder* and *U.S. v. NYBOE*, subject to the terms of this Order.

5. The Court hereby awards attorneys’ fees and costs of \$875,000 in litigation costs and expenses consistent with the terms set forth in Paragraphs 56 and 57 of the Agreement.

Dated: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE FREDERIC BLOCK  
United States District Judge

# **ATTACHMENT D**

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

<hr/>		)	
JOHN BRENNAN, <i>et al.</i> ,		)	
		)	
	Plaintiffs,	)	
		)	
v.		)	Case No. 02-0256
		)	(FB) (RML)
ERIC HOLDER, <i>et al.</i> ,		)	
		)	
	Defendants.	)	
<hr/>		)	

**MOTION FOR THE DISMISSAL, WITH PREJUDICE, OF DEFENDANT  
UNITED STATES OF AMERICA AS A PARTY**

Pursuant to Fed. R. Civ. P. 41(a)(2), through their counsel, the plaintiffs to the above-captioned action move this Court to dismiss, with prejudice, Defendant United States of America as a party to the above-captioned action, upon the Effective Date of the Settlement Agreement, as that term is defined in the Agreement, subject to both satisfaction of the applicable requirements set forth in Fed. R. Civ. P. 23 and 41 and entry by this Court of a Final Judgment, or other final approval order, that is substantially identical to the one attached as Attachment C to the Agreement, including the provisions in Paragraphs 2 through 4 of Attachment C. Counsel for all Parties to the above-captioned action consent to such dismissal. Further, in accordance with Fed. R. Civ. P. 23 and 41, the Parties ask that the Court approve this dismissal after the procedures set forth in Fed. R. Civ. P. 23(e) and 42 U.S.C. § 2000e-2(n) have occurred.

Dated: \_\_\_\_\_

Respectfully submitted:

John Brennan, *et al.*, Plaintiffs

By: \_\_\_\_\_

Michael E. Rosman  
Center for Individual Rights  
1233 20th Street, NW, Suite 300  
Washington DC 20036  
(202) 833-8400 x104

# **ATTACHMENT E**



INSTRUCTIONS FOR FILING AN OBJECTION  
AND/OR OPTING OUT PRIOR TO THE FAIRNESS HEARING

**If you agree with the terms of the Settlement Agreement, you do not need to fill out any form.**

**If you object to the terms of the Settlement Agreement:**

**Anyone may object to the terms of the Settlement Agreement.** If you object, please complete and send (via U.S. Mail or electronic mail) the attached Objection to the Entry of Settlement Agreement Form to Counsel for the Brennan Classes. The Objection Form must be postmarked, or transmitted by email, no later than [date 45 days prior to the Fairness Hearing]. Absent good cause, anyone who fails to fully complete and submit the Objection Form by that date will waive his/her right to object. You do not have to opt out of the Brennan Future Damages Class in order to object to the terms of the Settlement Agreement.

**If you are eligible for and wish to participate in the Brennan Future Damages Class, you do not need to fill out any form. If you wish to opt out of the Brennan Future Damages Class:**

**Only members of the Brennan Future Damages Class may opt out. The Brennan Future Damages Class includes all Custodian Engineers with seniority dates (for school transfer purposes) on or after January 23, 1989, and on or before January 1, 2002, except for the 59 individuals known as the Offerees.** If you are a member of the Brennan Future Damages Class and you wish to opt out, please complete, sign, and send (via U.S. Mail or electronic mail) the attached Opt-Out Form to Counsel for the Brennan Classes. The Opt-Out Form must be postmarked, or transmitted by email, no later than [date 45 days prior to the Fairness Hearing]. Any person who qualifies for the Brennan Future Damages Class and fails to complete, sign, and timely submit an Opt-Out Form by that date will be deemed to have agreed to be part of the Brennan Future Damages Class. Whether or not you opt out of the Brennan Future Damages Class, you may object to the terms of the Settlement Agreement, although individuals who opt out cannot object to the provisions related to the school transfer claims process set forth in Paragraphs 25 through 35 of the Settlement Agreement.

The mailing address of Counsel for the Brennan Classes is: Michael Rosman, General Counsel, Center for Individual Rights, 1233 20<sup>th</sup> Street N.W., Suite 300, Washington D.C. 20036.  
The email address of Counsel for the Brennan Classes is: [rosman@cir-usa.org](mailto:rosman@cir-usa.org).

# **ATTACHMENT F**

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

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UNITED STATES OF AMERICA,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 96-0374
	)	(FB) (RML)
NEW YORK CITY BOARD OF EDUCATION, <i>et al.</i> ,	)	
	)	
Defendants,	)	
	)	
and	)	
	)	
JOHN BRENNAN, <i>et al.</i> ,	)	
	)	
Intervenors,	)	
	)	
and	)	
	)	
JANET CALDERO, <i>et al.</i> ,	)	
	)	
Intervenors,	)	
	)	
and	)	
	)	
PEDRO ARROYO, <i>et al.</i> ,	)	
	)	
Intervenors.	)	
-----	)	
	)	
JOHN BRENNAN, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 02-0256
	)	(FB) (RML)
ERIC HOLDER, <i>et al.</i> ,	)	
	)	
Defendants.	)	

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OBJECTION TO THE ENTRY OF SETTLEMENT AGREEMENT FORM

This form must be postmarked (if sent via U.S. Mail) or transmitted (if sent via electronic mail) by [date 45 days prior to the Fairness Hearing] to:

Michael Rosman, General Counsel  
Center for Individual Rights  
1233 20<sup>th</sup> Street N.W., Suite 300  
Washington D.C. 20036  
rosman@cir-usa.org

NAME: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

I WANT THE OPPORTUNITY TO BE HEARD IN COURT AT THE FAIRNESS HEARING ON [DATE].  Yes  No

The Court will, taking into account the number of requests to speak and time available, determine whether the request to speak can be granted, the order of speakers, and the time allocated for each speaker.

**PLEASE DESCRIBE THE BASIS FOR YOUR OBJECTION ON THE NEXT PAGE.**



# **ATTACHMENT G**



OPT-OUT FORM

This form must be postmarked (if sent via U.S. Mail) or transmitted (if sent via electronic mail) by [date 45 days prior to the Fairness Hearing] to:

Michael Rosman, General Counsel  
Center for Individual Rights  
1233 20<sup>th</sup> Street N.W., Suite 300  
Washington D.C. 20036  
rosman@cir-usa.org

NAME: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

MY SIGNATURE BELOW INDICATES THAT I WISH TO OPT OUT OF THE BRENNAN FUTURE DAMAGES CLASS FOR PURPOSES OF FUTURE DAMAGES COMPENSATION. I UNDERSTAND THAT BY OPTING OUT I WILL HAVE NO RIGHT TO RECEIVE ANY COMPENSATION PURSUANT TO THE TERMS OF THE 2013 SETTLEMENT AGREEMENT SHOULD I LOSE A SCHOOL TRANSFER TO AN OFFEREE. I FURTHER UNDERSTAND THAT BY OPTING OUT I WILL NOT GIVE UP THE RIGHT TO BRING MY OWN LAWSUIT BUT I MUST DO SO AT MY OWN EXPENSE.

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

**PLEASE NOTE THAT NO ONE MAY OPT OUT OF THE BRENNAN INJUNCTIVE RELIEF CLASS.**

# **ATTACHMENT H**

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

<hr/>		)	
UNITED STATES OF AMERICA,		)	
	Plaintiff,	)	Case No. 96-0374
v.		)	
NEW YORK CITY BOARD OF EDUCATION, <i>et al.</i> ,		)	Honorable Frederic Block
	Defendants,	)	
and		)	
JOHN BRENNAN, <i>et al.</i> ,		)	
	Intervenors,	)	
and		)	
JANET CALDERO, <i>et al.</i> ,		)	
	Intervenors,	)	
and		)	
PEDRO ARROYO, <i>et al.</i> ,		)	
	Intervenors.	)	
<hr style="border-top: 1px dashed black;"/>		)	
JOHN BRENNAN, <i>et al.</i> ,		)	
	Plaintiffs,	)	
v.		)	Case No. 02-0256
ERIC HOLDER, <i>et al.</i> ,		)	
	Defendants.	)	Honorable Frederic Block
<hr/>		)	

**NOTICE OF PROPOSED  
CLASS ACTION SETTLEMENT**

**A FEDERAL COURT HAS AUTHORIZED THIS NOTICE.  
PLEASE READ IT CAREFULLY. IT CONTAINS IMPORTANT  
INFORMATION THAT MAY AFFECT YOUR RIGHTS.**

The United States District Court is considering whether to approve a Settlement Agreement in two lawsuits alleging discrimination in connection with the hiring of Custodian Engineers to work in New York City public schools. These long-running cases are known as *United States v. New York City Board of Education, et al.* (“*US v. NYBOE*”) and *John Brennan, et al. v. Eric Holder, et al.* (“*Brennan v. Holder*”).

This Notice describes the proposed Settlement Agreement and how it may affect your legal rights. The proposed Settlement Agreement will not go into effect until (1) individuals whose rights may be affected by the proposed Settlement Agreement have had the chance to

object to it, and (2) the Court has a hearing and approves the Settlement Agreement as fair, adequate, and reasonable, and all appeals from that approval have been exhausted.

You may object to the proposed Settlement Agreement, but you do not have to object. The deadline for submitting objections is [DATE]. Additional information about how to object is below.

You may attend the court hearing about the proposed Settlement Agreement, but you are not required to attend. The hearing will occur at [TIME] on [DATE] before the Honorable Frederic Block, United States District Judge, at United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, NY 11201, in Courtroom 10C S. More information about the hearing is below.

### What are these lawsuits about?

In 1996, the United States filed *US v. NYBOE*. In that lawsuit, the United States alleged that the New York City Department of Education (the “DOE”) violated Title VII of the Civil Rights Act of 1964 by engaging in race, sex, and national origin discrimination in connection with hiring Custodian Engineers to work in New York City public schools. When the term “Custodian Engineer” is used in this Notice, it refers to individuals who are either Level 1 or Level 2, as well as those who had the job title “Custodian” prior to the combining and reclassification of the Custodian and Custodian Engineer job titles.

After years of litigation in the *US v. NYBOE* lawsuit, the United States and the DOE entered into a Settlement Agreement in 1999 (the “1999 Settlement Agreement”). Under the 1999 Settlement Agreement, permanent positions as Custodian Engineers and/or retroactive seniority were provided to 59 Custodian Engineers identified as African-American, Asian, Hispanic, and/or female. Those individuals are the “Offerees.” Although the seniority and/or permanent positions received by the Offerees may have other benefits, they could be particularly useful for Custodian Engineers seeking:

- Protection in the event of layoffs (“**Layoff Protection**”);
- Transfers to new schools (“**School Transfers**”); and
- Temporary assignments of schools or buildings that are not assigned to any other Custodian Engineer (“**Temporary Care Assignments**” or “**TCAs**”).

In 2001, several Custodian Engineers who did not receive benefits under the 1999 Settlement Agreement intervened in *US v. NYBOE*. Also, they and other employees filed a separate class lawsuit against the United States and the DOE alleging that the retroactive seniority provided to the Offerees under the 1999 Settlement Agreement discriminated against them, and others, in violation of federal law, including the Equal Protection Clause of the U.S. Constitution and Title VII. That second lawsuit is known as *Brennan v. Holder*.

Various Offerees intervened to defend the seniority and other benefits that they received under the 1999 Settlement Agreement. For over two years, counsel for the various parties in these two lawsuits have had extensive settlement discussions, many with the assistance of the Court through United States Magistrate Judge Robert Levy. The Parties decided, in light of the unsettled nature of the law, the complex legal issues at stake, as well as the likelihood of years of burdensome and expensive litigation with highly uncertain outcomes, to enter into a Settlement Agreement (the “2013 Settlement Agreement”).

The 2013 Settlement Agreement is a proposed compromise of disputed claims. It is not a concession or admission of the truth of any claim or allegation by any party. This Notice is not an expression of any opinion by the Court about the merits of any part of these lawsuits.

### Why did I get this Notice?

The DOE’s records indicate that you may be a member of at least one of three groups who may be affected by the 2013 Settlement Agreement in this litigation:

- **Offerees Not Already Parties to the 2013 Settlement Agreement.** 59 individuals who were provisional or permanent Custodian Engineers in 1999 received a permanent appointment and/or retroactive seniority under the 1999 Settlement Agreement. As of [Execution Date], 35 of these Offerees are still employed by the DOE. Two groups of Offerees are not receiving this Notice because they are represented by counsel and, through their counsel, are Parties to the 2013 Settlement Agreement: the 10 “Arroyo Intervenors” and the 24 “Caldero Intervenors” as listed in footnotes 2 and 3 respectively of the 2013 Settlement Agreement. The remaining Offerees listed in footnote 5 of the 2013 Settlement Agreement, who are still working for the DOE as of [Execution Date], are receiving this Notice because they are not already Parties to the 2013 Settlement Agreement, although they will have an opportunity to become Parties, if they so choose, as discussed further below.
- **Injunctive Relief Class.** All Custodian Engineers whose seniority for purposes of School Transfers, Temporary Care Assignments, and Layoff Protection was adversely affected by the grant of seniority benefits to the Offerees. You may be a member of the Injunctive Relief Class if you are a non-Offeree Custodian Engineer with a seniority date on or after January 23, 1989.
- **Future Damages Class.** All Custodian Engineers, other than Offerees, with seniority dates for School Transfers purposes between January 23, 1989 and January 1, 2002, inclusive. All members of the Future Damages Class are members of the Injunctive Relief Class, but some members of the Injunctive Relief Class may not be members of the Future Damages Class.

If you are a member of any of these groups, you have a right to know about the 2013 Settlement Agreement and about all your options before the Court decides whether to approve it.

**Does the 2013 Settlement Agreement affect Layoff Protection?**

Yes. The 2013 Settlement Agreement adjusts the seniority dates of certain Offerees for purposes of Layoff Protection. In most cases, the adjusted seniority dates for purposes of Layoff Protection are later than the seniority dates that the Offerees received under the 1999 Settlement Agreement. The adjusted seniority dates for Layoff Protection purposes are listed in a chart included as Attachment A to the 2013 Settlement Agreement.

**Does the 2013 Settlement Agreement affect Temporary Care Assignments?**

No. Temporary Care Assignments will not be affected by the 2013 Settlement Agreement. The Offerees will continue to have the retroactive seniority provided by the 1999 Settlement Agreement for purposes of TCAs.

**Does the 2013 Settlement Agreement affect School Transfers?**

Yes. Offerees will receive all School Transfers that they are entitled to receive because of the job benefits they received under the 1999 Settlement Agreement or because of job qualifications that they otherwise obtained. For Custodian Engineers who are members of the Future Damages Class, the 2013 Settlement Agreement establishes a claims process (“the School Transfer Claims Process”) to provide compensation if they lose a School Transfer to an Offeree any time after the [Execution Date] and satisfy certain other requirements summarized below.

**Who is eligible for compensation through the School Transfer Claims Process?**

Custodian Engineers eligible for compensation through the School Transfer Claims Process are members of the Future Damages Class. The Future Damages Class includes all Custodian Engineers, other than Offerees, with seniority dates for School Transfer purposes between January 23, 1989 and January 1, 2002, inclusive.

If you are a member of the Future Damages Class and you lose a School Transfer to an Offeree after [Execution Date], you will be eligible for compensation from the DOE if you would have received that School Transfer under any of the following hypothetical circumstances:

- Offerees who were permanent Custodian Engineers before the 1999 Settlement Agreement had not received any retroactive seniority in the 1999 Settlement Agreement;
- Offerees who received a permanent appointment under the 1999 Settlement Agreement, and who have not changed from Level 1 to Level 2 had a seniority date of January 1, 2002; and
- Offeree Celestino Fernandez’s list number for his Custodian Engineer Level 2 seniority date reflected his actual permanent hiring date of March 6, 2000.

As explained below, members of the Future Damages Class may exclude themselves from, or “opt out” of, the Future Damages Class. If you opt out, going forward, you will not be able to receive compensation through the School Transfer Claims Process established by the 2013 Settlement Agreement. Instead, if you believe you have suffered a future loss attributable to the benefits provided to the Offerees pursuant to the 1999 Settlement Agreement, you may pursue a claim for compensation, for example by filing a lawsuit, at your own expense and with or without an attorney you choose.

**What compensation will be available through the School Transfer Claims Process?**

The DOE will compensate a member of the Future Damages Class who meets the criteria set forth above for up to three years. It will provide 85% of the difference between the salary for the school lost to the Offeree and (under most circumstances) the salary that the Custodian Engineer otherwise receives.

If, while still receiving this additional compensation, you receive a School Transfer that increases your compensation, then the amount paid will change to 85% of the difference between the compensation for the school that you lost to the Offeree and the new salary that you receive.

You will continue to receive compensation only if you reduce or “mitigate” any lost salary by applying to schools that are geographically close to the lost school and that pay more than your current school. Additional details about the School Transfer Claims Process are set forth in paragraphs 25 through 35 of the 2013 Settlement Agreement. If you believe you may be a member of the Future Damages Class, you should review those provisions carefully.

**I lost a school transfer to an Offeree a few years ago. Can I get compensation through the School Transfer Process?**

No. The School Transfer Claims Process provides only a process for compensation for losses of school transfers that occur after [Execution Date]. If you lost a transfer to an Offeree before then, and have not yet filed a claim of some kind for compensation, you can, if you wish, consult an attorney regarding your rights. The 2013 Settlement Agreement does not itself eliminate your right to sue on such claims, but it does not provide any compensation for them.

**What if I lose a School Transfer to someone who is not an Offeree, but I would have received the school I lost had the winner not been beaten by an Offeree for a different school? Can I get compensation under the School Transfer Claims Process?**

No. The School Transfer Claims Process compensates only those who lose a school transfer directly to an Offeree.

**How will the School Transfer Claims Process work?**

If a member of the Future Damages Class believes that (s)he has met the criteria for compensation set forth above, (s)he must make a claim in writing to the Division of School Facilities of the DOE within 90 days of the transfer date for the School Transfer allegedly lost to

an Offeree. The DOE will respond in writing if it concludes that the individual is not entitled to compensation. The member of the Future Damages Class may then ask the Court to resolve the dispute.

**If I am a member of the Future Damages Class, do I have to participate in the School Transfer Claims Process?**

No. Members of the Future Damages Class may request to exclude themselves, or “opt out,” and the Court will exclude them from the Future Damages Class. If you choose to opt out, you will have no right to receive any compensation under the 2013 Settlement Agreement if you lose a School Transfer to an Offeree. Additionally, if you opt out, then you may not object to the provisions of the 2013 Settlement Agreement related to the School Transfer Claims Process. However, as discussed above, all members of the Future Damages Class are also members of the Injunctive Relief Class, so you may still object to any other terms of the 2013 Settlement Agreement as set forth below, even if you have chosen to opt out of the Future Damages Class.

If you choose not to opt out of the Future Damages Class, the School Transfer Claims Process will be your sole option for seeking compensation for money damages that you may claim in the future as a result of the benefits provided to the Offerees under the 1999 Settlement Agreement. You will give up the right to bring your own lawsuit for money damages in such circumstances going forward. If you opt out, you will not give up that right, but if you bring your own lawsuit, it will be at your own expense and with or without an attorney that you choose.

To opt out of the Future Damages Class, please carefully review the enclosed Instructions (which are Attachment E to the 2013 Settlement Agreement) and then complete and send (via U.S. Mail or electronic mail) by [date 45 days prior to the Fairness Hearing] the attached Opt-Out Form (which is Attachment G to the 2013 Settlement Agreement) to Class Counsel at the address listed below.

**Can I opt out of any other provisions of the 2013 Settlement Agreement?**

No. If you are a member of the Injunctive Relief Class, you may not “opt out” of the Injunctive Relief Class, although you may object to the terms of the 2013 Settlement Agreement using the process described below. That means that, if the 2013 Settlement Agreement is approved by the Court, and goes into effect, it will fully resolve all claims for injunctive and declaratory relief that were raised or could be raised in the future by members of the Injunctive Relief Class. As a result, members of the Injunctive Relief Class will not be able to bring a separate lawsuit or otherwise challenge or seek to deprive the Offerees of any job benefits that result from the grant of permanent positions and/or retroactive seniority under the 1999 Settlement Agreement—although members of the Injunctive Relief Class who are also members of the Future Damages Class and do not “opt out” may utilize the School Transfer Claims Process to receive compensation for School Transfers lost to Offerees.

**How can I tell the Court that I don’t like the 2013 Settlement Agreement?**

If you do not like the 2013 Settlement Agreement, you can object — that is, you can give

reasons why you think the Court should not approve the 2013 Settlement Agreement. Members of the Future Damages Class who choose to opt out of the Future Damages Class cannot object to those provisions related to the School Transfer Claims Process, but they can object to any of the other terms of the 2013 Settlement Agreement.

To object to any of the terms of the 2013 Settlement Agreement, please carefully review the enclosed Instructions (which are Attachment E to the 2013 Settlement Agreement) and then complete and send (via U.S. Mail or electronic mail) by [date 45 days prior to the Fairness Hearing] the enclosed Objection Form (which is Attachment F to the 2013 Settlement Agreement) to Class Counsel at the address listed below. Only written objections will be considered. If you mail your written objection on time, the Court can consider it when deciding whether to approve the 2013 Settlement Agreement. You do not have to come to Court to talk about it in order to object.

**Who are counsel and the class representatives of the Injunctive Relief Class and the Future Damages Class?**

The contact information for Class Counsel in this litigation is as follows:

Michael Rosman  
General Counsel  
Center for Individual Rights  
1233 20<sup>th</sup> Street N.W., Suite 300  
Washington D.C. 20036  
rosman@cir-usa.org

Any member of the Injunctive Relief Class or Future Damages Class who wishes to be represented by his or her own lawyer may hire one at his or her own expense and may enter an appearance through that attorney if he or she desires.

The class representatives of the Injunctive Relief Class are John Brennan, James Ahearn, Scott Spring, Dennis Mortensen, John Mitchell, and Eric Schauer. The class representatives of the Future Damages Class are John Brennan, John Mitchell, Eric Schauer, and Scott Spring.

**What are the Offerees' views of the 2013 Settlement Agreement?**

The 10 Offerees who are Arroyo Intervenors and the 24 Offerees who are Caldero Intervenors are represented by counsel in this litigation and, through their respective counsel, they have signed on as Parties to the 2013 Settlement Agreement and agreed to be bound by its terms. The remaining Offerees not already Parties to the 2013 Settlement Agreement may choose to sign the 2013 Settlement Agreement on or before the date of the Fairness Hearing on [DATE] and thereby become a Party to it. They may do so by notifying Counsel for any of the Parties, who are listed on page 28 of the 2013 Settlement Agreement. Those who do not choose to sign the 2013 Settlement Agreement may object to it, using the procedures discussed further below.

Except for purposes of Layoff Protection as described above, the pensions, current and future salaries, current and future positions, permanent appointments, and other job benefits and conditions of the Offerees, including those who have retired or are otherwise separated from the DOE, will not be adversely affected by the 2013 Settlement Agreement. Although members of the Future Damages Class may receive compensation under the School Transfer Claims Process established by the 2013 Settlement Agreement, all Parties, as well as Local 891, will be prohibited from attacking the Offerees' pensions, current and future salaries, current and future positions, permanent appointments, and other job benefits and conditions, based on any allegations regarding the lawfulness of the 1999 Settlement Agreement.

#### **How will the attorneys be compensated for their involvement in the litigation?**

The United States and the DOE have agreed to pay counsel for the Injunctive Relief Class and the Future Damages Class a total of \$875,000 for attorneys' fees and costs incurred in *US v. NYBOE*, *Brennan v. Holder*, and three other related lawsuits in which claims for past damages have been asserted. All Parties have agreed to waive any other attorneys' fees or costs with one exception. As just noted, certain Custodian Engineers filed individual damages claims for past School Transfers that they allegedly lost to Offerees in *Brennan v. Holder* and the three related lawsuits. The 2013 Settlement Agreement does not resolve those individual damages claims (although some have been separately settled).

In addition, under the 2013 Settlement Agreement, each of the six individuals who are class representatives for the Injunctive Relief Class will receive \$2,000 from the DOE.

#### **What happens next?**

U.S. District Court Judge Frederic Block will hold a hearing to determine whether, as recommended by the lawyers representing all the Parties, the 2013 Settlement Agreement should be approved. If there are objections filed on time, the Court will consider them. The hearing before Judge Block has been scheduled for [Fairness Hearing date], beginning at [time], at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, NY 11201, in Courtroom 10C S. If the hearing is not concluded on [Fairness Hearing date], the hearing will continue on a later date.

Any interested person may attend the hearing.

#### **Do I have to attend the hearing?**

No. The attorneys will answer any questions that Judge Block may have. But you are welcome to come at your own expense. If you send an objection or opt out, you do not have to come to the Court to talk about it. As long as you submit your written Objection Form or Opt-Out Form on time, the Court can consider it when deciding whether to approve the 2013 Settlement Agreement. You also may have your own lawyer, retained at your own expense, attend the hearing.

**May I speak at the hearing?**

If you are a member of the Injunctive Relief Class or the Future Damages Class or if you are an Offeree who is not a Party to the 2013 Settlement Agreement, you may ask the Court for permission to speak at the hearing by submitting an Objection Form on time and checking the box requesting an opportunity to be heard at the hearing. The Court will, taking into account the number of requests to speak and time available, determine whether your request to speak can be granted, the order of speakers, and the time allocated for each speaker.

**What happens if I do nothing at all in response to this Notice?**

The 2013 Settlement Agreement, if it goes into effect after approval by the Court, will bind all Parties, as well as all other Offerees, with respect to the injunctive relief and the School Transfer Claims Process. You will waive your right to bring an independent lawsuit seeking injunctive or declaratory relief. If you are a member of the Future Damages Class, you will also lose your right to bring a lawsuit for any damages as a result of any lost school transfer occurring after the execution of the 2013 Settlement Agreement and that you claim was caused by the benefits to the Offerees in the 1999 Settlement Agreement. The Court will retain oversight to review disputes related to the implementation of the 2013 Settlement Agreement.

Specifically, the provisions governing the release of claims in Paragraphs 58-60 of the 2013 Settlement Agreement state:

58. Upon the Effective Date of this Agreement, as consideration for agreeing to the terms of this Agreement and to the entry of the Final Judgment attached hereto as Exhibit C, except as set forth in Paragraphs 59 and 60, all Parties hereby waive, release, and discharge any and all claims, causes of action, motions, or requests for equitable or monetary relief (including, without limitation, as to attorneys' fees, costs, indemnification, and contribution), whether known or unknown, against any and all of the other Parties, that: (i) accrued on or before the Execution Date; (ii) have been or could have been raised in any case listed in Paragraph 56 or any administrative proceeding related to any of those cases; and (iii) arose out of, or are related to, the facts or circumstances at issue in any case listed in Paragraph 56 or any administrative proceeding related to any of those cases. Any Offeree not Party to this Agreement who is still working for the DOE as of the Execution Date shall also be bound by the provisions of this Paragraph in accordance with 42 U.S.C. § 2000e-2(n).
59. This Agreement shall not be construed as a waiver or release by the Brennan Class Members of any claim for non-class, individual damages against DOE based upon events prior to the Execution Date, including the pending claims against the DOE for individual damages in the cases listed in Paragraph 56 [of the 2013 Settlement Agreement].
60. This Agreement shall not be construed as a waiver or release by the Brennan Class Members of their right or ability to pursue and/or receive reimbursement from the DOE for attorneys' fees or other costs incurred or expended on or after January 1,

2013 in connection with any claim for individual damages in any of the cases listed in Paragraph 56.

**Can the 2013 Settlement Agreement be voided?**

The 2013 Settlement Agreement may be voided on several grounds, including if the Court does not approve it. In addition, if more than 5% of the Future Damages Class members opt out of the Future Damages Class, the DOE may choose to void the 2013 Settlement Agreement. If the 2013 Settlement Agreement is voided, the litigation will proceed as if the 2013 Settlement Agreement had not been reached.

**How do I learn more about the 2013 Settlement Agreement?**

Additional information regarding the 2013 Settlement Agreement, including the full document and all its attachments, is available at the following websites: [\[URLs\]](#).

Members of the Injunctive Relief Class and the Future Damages Class may obtain further information by contacting Class Counsel Michael Rosman at 1-202-833-8400 or 1-877-426-2665, extension 104, or [rosman@cir-usa.org](mailto:rosman@cir-usa.org). You may, instead, seek the advice and guidance of your own attorney if you desire.

For Offerees seeking further information, if you are one of the 10 “Arroyo Intervenors” listed in footnote 2 of the 2013 Settlement Agreement, please contact your counsel at the NAACP Legal Defense and Educational Fund, Inc. If you are one of the 24 “Caldero Intervenors” listed in footnote 3 of the 2013 Settlement Agreement please contact your counsel at the ACLU Women’s Rights Project. If you are an unrepresented Offeree, you may obtain further information from counsel for the DOE or counsel for the United States. Contact information is listed on page 28 of the 2013 Settlement Agreement. You may, instead, seek the advice and guidance of your own attorney if you desire.

**Should I contact the Court prior to the hearing to get answers to my questions?**

No. Please do not contact the Court or its Clerk. Neither can respond to any questions regarding this Notice or the 2013 Settlement Agreement.

ISSUED THIS \_\_ DAY OF \_\_, 2013.

\_\_\_\_\_  
Judge Frederic Block  
United States District Court

# **ATTACHMENT I**

[Date]

[Name]  
[Address]  
[Address]

Dear Mr./Ms. [Last Name]:

We are sending you this letter and the enclosed attachments because you may be a member of one of three groups of Custodian Engineers of the New York City Department of Education affected by a proposed Settlement Agreement in the litigation *United States v. New York City Board of Education, et al.* and *John Brennan, et al. v. Eric Holder, et al.* The three groups of Custodian Engineers are:

- **Offerees who are not already Parties to the proposed Settlement Agreement:** There are 59 individuals who were provisional or permanent Custodians or Custodian Engineers in 1999 and who were afforded retroactive, competitive seniority pursuant to the 1999 Settlement Agreement in *United States v. New York City Board of Education, et al.* Two groups of these Offerees are not receiving this letter because they are represented by counsel and, through their counsel, are Parties to the proposed Settlement Agreement: the 10 “Arroyo Intervenors” and the 24 “Caldero Intervenors” as listed in footnotes 2 and 3 respectively of the proposed Settlement Agreement. The remaining Offerees who were still working for the DOE as of [Execution Date] are receiving this letter because they are not already Parties to the proposed Settlement Agreement.
- **Brennan Future Damages Class:** all Custodian Engineers with seniority dates (for school transfer purposes) on or after January 23, 1989, and on or before January 1, 2002, except for the Offerees.
- **Brennan Injunctive Relief Class:** all Custodian Engineers whose seniority for purposes of school transfers, temporary care assignments, and layoff protection was adversely affected by the grant of seniority benefits to the Offerees. You may be a member of the Brennan Injunctive Relief class if you are a Custodian Engineer with a seniority date on or after January 23, 1989.

**If you believe that you are a member of one of the three groups of Custodian Engineers described above, please read the enclosed Notice carefully. Your rights, including rights related to layoffs and school transfers, may be affected. Information about how to object to the proposed settlement is enclosed. The deadline to object to the proposed settlement is [date 45 days prior to the Fairness Hearing]. On [DATE], the Court will have a hearing to consider the proposed settlement’s terms and objections to the proposed settlement. You may attend that hearing, but your attendance is not required. More information about the hearing is enclosed.**

Sincerely,

Lawrence J. Profeta  
Labor and Employment Division  
New York City Law Department  
100 Church Street  
New York, NY 10007

Enclosures:

- 1) Notice
- 2) Instructions for Filing an Objection and Opting Out Prior to the Fairness Hearing
- 3) Objection to the Entry of the Settlement Agreement Form
- 4) Opt-Out Form