

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re Flint Water Cases.

Judith E. Levy
United States District Judge

_____ /

This Order Relates To:

ALL CASES

_____ /

**ORDER GRANTING STIPULATION REGARDING ACCESS TO
AND USE OF EDUCATIONAL RECORDS FOR LIMITED
PURPOSES [2388]**

On January 21, 2021, the Court issued its Opinion and Order Granting Plaintiffs’ Motion to Establish Settlement Claims Procedures and Allocation and for Preliminary Approval of Class Settlement Components and Granting Plaintiffs’ Motion for an Order Adopting the Proposed Motion for Approval of Wrongful Death Settlement (“Order”).¹ (ECF No. 1399). On November 10, 2021, the Court issued its Opinion and Order Granting Final Approval Of A Partial Settlement, Granting

¹ All capitalized terms herein have the same meaning set forth in the Amended Settlement Agreement unless otherwise defined.

Certification Of A Settlement Class, Granting Appointment Of Settlement Class Counsel [1794], Denying Objections, And Adopting The Report And Recommendation [2006] (“Final Approval Order”), 571 F. Supp. 3d 746 (E.D. Mich. 2021) (ECF No. 2008, PageID.69537-69714). The Final Approval Order approved the settlement reached between Plaintiffs and the Settling Defendants in the Amended Settlement Agreement (“Amended Settlement Agreement”), ECF No. 1394-2, PageID.54120-54211 (dated January 15, 2021).

Pursuant to the stipulation of the Settling Parties and in furtherance of the implementation of the terms of the Amended Settlement Agreement, the Court hereby finds and orders as follows:

A. The Amended Settlement Agreement provides for the distribution of settlement funds based on “claim categories” that are defined in Exhibit 8 to the Settlement Agreement—Flint Water Cases (FWC) Qualified Settlement Fund Categories, Monetary Awards, and Required Proofs Grid (Compensation Grid). (See ECF No. 1319-2). Certain categories in the Compensation Grid are defined by the Claimant’s exposure to Flint Water, which can be shown by establishing

that the Claimant attended school in Flint for at least 21 days during any 30-day period during the relevant time frames.

B. The State of Michigan—specifically the Center for Educational Performance and Information (“CEPI”)—has possession of information that may assist in identifying Claimants that meet the exposure requirement through school attendance. Specifically, CEPI is in possession of information, including the name of the Claimants, the name of the school attended in Flint, and the dates of the Claimants’ attendance.

C. The disclosure of this school-related data is needed to facilitate the claims submission process and to ensure more efficient claims review and processing.

D. Because the school attendance data in CEPI’s possession may constitute education records subject to protection under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and associated federal regulations, 34 C.F.R. Part 99, it is necessary to enter this Order to permit and to direct CEPI and other relevant parties identified herein to disclose, transmit, and receive such information.

E. Accordingly, in conformance with 99 C.F.R. § 99.31(a)(9)(i), CEPI is ordered to and shall provide the Claimants' names, Flint school attended, and approximate dates attended for the period of time between April 25, 2014 and November 16, 2020, for persons that have registered to participate in the Settlement Program to the Special Master appointed by United States District Court Judge Judith Levy or the claims administrators² to assist in the claims review and evaluation process under the Amended Settlement Agreement as directed by the Special Master. The Special Master and/or claims administrators shall be authorized to provide the disclosed records to the following as relevant: lawyers retained by Claimants (as documented in submissions to the Special Master under court order or through settlement claim submissions as confirmed by the Special Master); confirmed Next Friends representing the interests of Minors as Claimants in the settlement

² As used herein, claims administrators shall mean those entities appointed and approved by the Court to provide administration services in connection with the Amended Settlement Agreement. *See* Final Approval Order (ECF No. 2008, PageID.69553); Order Authorizing Engagement of Wolf Garretson LLC and Alvarez & Marsal Disputes and Investigations, LLC Under the Supervision of the Special Master to Provide Certain Defined Services in Connection the Administration of Claims in the Partial Settlement (ECF No. 2344).

process; Co-lead Class Counsel with respect to Claimants who are Settlement Class Members; and all Court appointed persons participating in implementing the claims process including the Master GAL, the Panel GALs, the Special Master, and the probate court personnel (collectively, “Authorized Individuals”).

F. Authorized Individuals shall be authorized to use the disclosed records for the purpose of documenting claims submitted for the Amended Settlement Agreement. Counsel shall be authorized to share disclosed records with Claimants and Next Friends that they represent and with other Authorized Individuals solely in connection with the submission and resolution of Claims under the Settlement Agreement. Authorized Individuals shall be prohibited from using or disclosing such information for any purpose other than the submission and resolution of Claims under the Amended Settlement Agreement. The documents produced by CEPI and provided by the Special Master and/or claims administrators shall be designated as “Confidential” as set forth in the December 19, 2017 Confidentiality Order (ECF No. 299), and be subject to the restrictions set forth in that Confidentiality Order provided that the information shall be submitted to the Special Master, the claims

administrators, and the Authorized Individuals as provided herein. Authorized Individuals may provide access to the information and documents to technical personnel and other attorneys engaged by the Authorized Individuals for the purpose of carrying out the terms of this Order and those individuals are also prohibited from using or disclosing such information for any purpose other than the submission and resolution of Claims under the Amended Settlement Agreement.

G. Within three days after entry of this Order, the Special Master and/or claims administrators shall post a copy of this Order on the Flint Water Official Settlement Website, www.officialflintwatersettlement.com. Within seven days after entry of this Order, or as soon as practicable thereafter, the Special Master and/or claims administrators shall also take reasonable efforts to provide a copy of this Order to every minor Claimant via their representative using the electronic mail address, if provided, or by regular mail using the address if provided, that it has on record and to every claimant who is now an adult but who is making a claim for exposure while a minor. These required actions shall constitute a reasonable effort to notify the parents or eligible students whose educational records may be the subject of this

Order in advance of disclosure, as required by 34 C.F.R. § 99.31(a)(9)(ii). CEPI shall not disclose the school records described in this Order until at least fourteen days after entry of this Order and at least seven days after the above notices are issued.

H. As soon as practicable after entry of this Order, the Special Master and/or claims administrators shall provide to CEPI a list of the relevant Claimants (first and last name; middle name if available; and date of birth). CEPI shall use that information to locate the school-related data identifying Claimants who attended school during the relevant time periods identified in the Amended Settlement Agreement. CEPI will make reasonable efforts to use the information provided by the Special Master and/or claims administrators to provide this information. CEPI shall not make any determination regarding the status or categorization of any Claimant and the provision of the data by CEPI shall not be construed as a guarantee of accuracy of the results. CEPI, its employees, and the State of Michigan have no role in the evaluation of any claim and shall have no liability arising out of their efforts to provide this school-related data or efforts to comply with this Order

IT IS SO ORDERED.

Dated: March 7, 2023
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or first-class U.S. mail addresses disclosed on the Notice of Electronic Filing on March 7, 2023.

s/William Barkholz
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