UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

NEHEMY ANTOINE and INGRID ALONZO,
on behalf of themselves and
all others similarly situated,
Plaintiffs,

Civil Case No. 2:16-cv-379-FtM-DNF

v.

THE SCHOOL BOARD OF COLLIER
COUNTY, FLORIDA, and KAMELA PATTON,
Superintendent of Collier County Public Schools,
in her official capacity,

Defendants.
_____

ORDER GRANTING MOTION FOR APPROVAL OF CLASS ACTION SETTLEMENT AND DISMISSING THE ACTION

Before the Court is the Plaintiffs' Unopposed Motion for Approval of Class Action Settlement. (ECF No. 271.) In that motion, Plaintiffs seek approval of the proposed class action settlement of Count IV of the Fourth Amended Complaint (Due Process). The settlement provides relief for the class in the form of an administrative procedure that has been implemented by the School Board of Collier County for students subject to Board Policy 5112.01. For the reasons set forth below, the Court approves the settlement and dismisses the Action.

BACKGROUND

Plaintiff filed this case in May 2016, alleging that Defendants' practice of excluding foreign-born ELLs from public school pursuant to School Board Policy 5112.01 violates the Equal Educational Opportunities Act ("EEOA"), 20 U.S.C. § 1703(a), (f); Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, ("Title VI"); the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the U.S. Constitution, U.S. Const., amend XIV, § 1; and

the Florida Educational Equity Act, Fla. Stat. § 1000.05. *See* ECF No. 1 (Cmplt.). The Court certified the Due Process claim (Count IV) as a Rule 23(b)(2) class while denying certification on the other claims. *See* ECF No. 198, *amended by* ECF No. 202 (October 17, 2018), *Id.* The class definition is as follows:

> All foreign-born, English Language Learner (ELL) children ages fifteen to twenty-one whose last completed schooling (not including adult education courses) was at a non-U.S. school, and who, after August 1, 2013, while residing in Collier County, sought or will seek to enroll in the Collier County public school system serving grades K-12, and were or will be denied enrollment by the Defendants.

Id. at 4.

During the over three years that this lawsuit has been pending, the parties represented that they have engaged in extensive discovery, with approximately 25 depositions (including three expert witness depositions), exchange of significant written discovery, and extensive motions practice. On May 7, 2019, the parties signed, and the School Board approved, a settlement agreement resolving Counts I, II, III, and V of the Fourth Amended Complaint (Plaintiffs' individual claims) but reserving Count IV (Due Process). In negotiations overseen by the Undersigned, the parties subsequently agreed to—and the School Board approved—a new administrative procedure relating to Board Policy 5112.01 that, if approved by the Court, would settle the sole remaining claim, Count IV (Due Process). That administrative procedure will allow class members the opportunity to appeal denials of enrollment in the regular high school program. (ECF No. 271-1.) On July 23, 2019, Plaintiffs filed an unopposed Motion for Approval of Class Action Settlement. (ECF No. 271.) On July 31, 2019, the Court held a hearing to discuss the settlement of Count IV. The Court has preliminarily approved the terms and conditions of the settlement of Count IV upon finding that these terms appear fair, reasonable and adequate. (ECF No. 283.)

DISCUSSION

The Court finds that the settlement of Count IV is fair, adequate and reasonable, pursuant to Federal Rule of Civil Procedure 23(e) and the factors set forth in *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984), for the reasons stated in Plaintiffs' motion. (ECF No. 271 at 6–7.) Consideration of the complexity, expense and duration of the litigation heavily favors approval. This case has been pending for over three years, and the parties have expended significant attorney time and resources on this case, including engaging in extensive discovery and motions practice. When settlement was reached, both parties had enough information to determine the strength of their respective positions, but resources had not yet been expended on summary judgment briefing and trial preparation. Settlement avoids the uncertainties and risks of trial while providing meaningful relief to the certified class. Thus, pursuant to the *Bennett* factors, the settlement is fair, adequate and reasonable. *See Bennett*, 737 F.2d at 986. The factors listed in Rule 23(e) point to the same conclusion. The class representatives and class counsel have adequately represented the class during arm's-length negotiations that were overseen by the Undersigned during a settlement conference on May 13, 2019, and in subsequent discussions. Fed. R. Civ. P. 23(e)(2)(A), (B). The relief provided for the class is adequate, and the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2)(C), (D).

Individualized notice to the class of the proposed settlement is not required because the class was certified under Rule 23(b)(2) for injunctive relief and not under Rule 23(b)(3) for damages. *See Stathakos v. Columbia Sportswear Co.*, No. 4:15-cv-04543-YGR, 2018 WL 582564, at *3 (N.D. Cal. Jan. 25, 2018) (collecting cases). However, the parties have represented that on June 11, 2019, in accordance with the terms of the settlement agreement, Defendants posted the administrative procedure at Lorenzo Walker Technical College and at Immokalee Technical

College in multiple languages. (ECF Nos. 270 at 2, 271 at 8.) The parties have further represented that the administrative procedure was posted to the website of the Collier County Public Schools (https://www.collierschools.com), and now appears in the Administrative Procedures Manual of the District (https://go.boarddocs.com/fl/collier/pl/Board.nsf/vpublic?open#). Moreover, all prospective class members will receive notice of their appeal rights under the new administrative procedure when they are denied enrollment under Policy 5112.01. The notice given to the class satisfies the requirements of due process and Rule 23(e). Pursuant to the requirements of the Class Action Fairness Act (CAFA), 28 U.S.C. § 1715, Defendants also served notice with the appropriate officials—the United States and Florida attorneys general—on June 20, 2019. (ECF Nos. 269, 271 at 9.)

In compliance with the Court's order on May 24, 2019 (ECF No. 267), the parties filed a joint status update informing the Court that these and other terms of the settlement agreement had been executed. (ECF No. 270). The parties have also represented that they have not received any objections to the settlement. Because more than 90 days have elapsed since notice was served pursuant to the CAFA, the Court may finally approve the settlement. 28 U.S.C. § 1715(d).

The approval of the settlement of Count IV resolves all pending issues in this case, as the parties previously settled Counts I, II, III, and V of the Fourth Amended Complaint (Plaintiffs' individual claims). (ECF No. 271 at 3.) The Court also previously dismissed Defendants' counterclaims. (ECF No. 122.) The parties' agreement to settle Count IV provides that upon Court approval of the settlement, the action shall be dismissed with prejudice. (ECF No. 271-1.) Therefore the Court shall enter an order dismissing the case with prejudice pursuant to Fed. R. Civ. P. 41(a)(2).

Accordingly, it is now **ORDERED**:

(1) Plaintiffs' Unopposed Motion for Approval of Class Action Settlement is **GRANTED**. (ECF No. 271.) The Court hereby **APPROVES** the class action settlement proposed by the parties at ECF No. 271-1.

(2) This action is **DISMISSED with prejudice** pursuant to Fed. R. Civ. P. 41(a)(2).

DONE and **ORDERED** in Fort Myers, Florida on October 8, 2019.

DOUGLAS N. FRAZIER
UNITED STATES MAGISTRATE JUDGE