

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ADAM X., BRIAN Y., CASEY Z., on behalf of
themselves and all others similarly situated, the
AMERICAN CIVIL LIBERTIES UNION OF
NEW JERSEY, and the ARC OF NEW
JERSEY,

Plaintiffs,

v.

NEW JERSEY DEPARTMENT OF
CORRECTIONS, VICTORIA KUHN, in her
official capacity as Acting Commissioner of the
New Jersey Department of Corrections, NEW
JERSEY DEPARTMENT OF EDUCATION,
and ANGELICA ALLEN-McMILLAN, in her
official capacity as Acting Commissioner of the
New Jersey Department of Education,

Defendants.

**SETTLEMENT AGREEMENT AND
ORDER**

Hon. Freda L. Wolfson, U.S.D.J.

Civil Action No. 3:17-cv-00188-FLW-LHG

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into by Plaintiffs the American Civil Liberties Union of New Jersey; the Arc of New Jersey; Adam X.; Brian Y.; and Casey Z. (collectively, “Named Plaintiffs”) individually and on behalf of themselves and a class of persons similarly situated (the “Class” and collectively with Named Plaintiffs, “Plaintiffs”), represented by the American Civil Liberties Union of New Jersey Foundation, Disability Rights Advocates, and Proskauer Rose LLP (“Plaintiffs’ Counsel”), as well as by Defendants New Jersey Department of Corrections (“DOC”), New Jersey Department of Education (“DOE”), Victoria Kuhn, and Angelica Allen-McMillan (collectively, “Defendants”). Plaintiffs and Defendants shall be referred to individually as a “Party” and jointly as the “Parties.”

WITNESSETH THAT:

WHEREAS, on January 11, 2017, Named Plaintiffs filed a class action lawsuit in the United States District Court for the District of New Jersey (“the Court”) against Defendants, *Adam X., et al. v. N.J. Dep’t of Corr., et al.*, Docket No. 17-cv-0188-FLW-LHG (the “Lawsuit”), alleging violations of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* (“IDEA”); Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (“ADA”); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.* (“Section 504”); New Jersey Civil Rights Act, N.J.S.A. 10:6-1 *et seq.*; and New Jersey Law Against Discrimination N.J.S.A., 10:5-1 *et seq.* and

seeking wide-ranging declaratory and injunctive relief as well as the recovery of attorney's fees and costs;

WHEREAS, this Settlement Agreement concerns special education and related services for student-inmates ("students") currently or formerly in DOC Prisons, as described by the Class Definition and laid out in detail below;

WHEREAS, on April 7, 2017, Plaintiffs filed the First Amended Complaint;

WHEREAS, on May 19, 2017, the Court appointed Dr. Joseph Gagnon as an independent expert to conduct an evaluation of Defendants' policies, practices, and procedures;

WHEREAS, the DOC provided necessary access and information to Dr. Gagnon for him to conduct his evaluation, including access to five DOC Prisons for site visits and the production of relevant documents;

WHEREAS, on March 7, 2018, the Parties received Dr. Gagnon's report and subsequently provided such to the Court;

WHEREAS, since March 2018, the Parties have exchanged written settlement proposals and counter-proposals and have engaged in in-person settlement conferences to negotiate the terms of this Settlement Agreement;

WHEREAS, through these settlement negotiations, the Parties have negotiated and agreed to, *inter alia*, specific details of an Initial Monitoring Period, including a Monitoring Tool, by the DOE; the selection and role of an External Monitor; and the development and revision of DOC policies, practices, and procedures related to the provision of education;

WHEREAS, Plaintiffs and Defendants acknowledge that, to the extent possible, it is in their best interests to resolve the issues raised in this Settlement Agreement by means other than litigation and, to this end, have on this day agreed to enter into this federally enforceable Settlement Agreement, consistent with the requirements of the Prison Litigation Reform Act, 18 U.S.C. § 3626;

WHEREAS, the Settlement Agreement incorporates the following documents: DOE Monitoring Tool (Exhibit A); DOE Monitoring/Verification Cycle chart (Exhibit B); Compensatory Education Form (Exhibit C); the External Monitor's Rubrics (Exhibit D); the May 20, 2019 Consent Order (Exhibit E); and Proposed Class Notice (Exhibit F).

WHEREAS, this Settlement Agreement shall be applicable to, and binding upon, all Parties, their officers, agents, employees, assigns and their successors in office;

NOW THEREFORE, Plaintiffs and Defendants do hereby set forth the understanding reached between them:

I. DEFINITIONS

- a. Cell Study is instruction and/or worksheet completion that occurs while the student is located within their cell, regardless of the student's housing assignment.

- b. Corrective Action Plans (“CAP”) are the plans developed by the DOE following the monitoring activities conducted by the DOE. The CAP details the required actions to be completed by the DOC to address all areas of noncompliance identified in the monitoring report. CAP activities include, but are not limited to, revision of Individualized Education Programs (“IEPs”), staff training, provision of any compensatory education ordered by the DOE, and development or revision of policies, procedures and practices. All CAP activities will be developed in accordance with N.J.A.C. 6A:14-9.1(e).
- c. DOC Prison means any of the DOC major institutions. As of the Effective Date, the DOC has 11 major institutions.
- d. DOC Staff are correctional and civilian employees of the DOC, including but not limited to facility administration, correctional police officers, director of education, administrative education staff, teachers, paraprofessionals, teaching aides, school psychologists, child study team (“CST”) members, and other support staff including substitute and/or temporary staff or volunteers for any of these positions.
- e. Effective Date is the date of the Court’s final approval of this Agreement.
- f. External Monitor is the expert, jointly selected by the Parties and approved by the Court, who participated in the Preliminary Monitoring Period as outlined in the May 20, 2019 Consent Order (Exhibit E) and will participate in additional monitoring under the terms of this Agreement.
- g. External Monitoring Term is the period after the Effective Date, during which the External Monitor will monitor the implementation of this Agreement.
- h. Implementation Period is the period following the finalization of the CAPs, in which its terms are to be implemented. All CAPs developed by DOE after the Initial Monitoring Period will have a one-year implementation period.
- i. Preliminary Monitoring Activities are the actions undertaken by the DOE and the External Monitor during the Preliminary Monitoring Period, as defined in the Monitoring Tool.
- j. Preliminary Monitoring Period is the period from September 1, 2019 through October 31, 2019 during which the DOE conducted and completed monitoring activities at DOC Prisons to develop the CAP, accompanied by the External Monitor as described in the Consent Order attached hereto as Exhibit E.
- k. Instructional Personnel are any DOC employees who provide instruction to students, including but not limited to teachers, paraprofessionals, and learning disabilities teacher consultants.
- l. Monitoring Tool is a written tool, attached hereto as Exhibit A, which was developed by the DOE, with input from the External Monitor, and agreed to by all parties.

- m. School Day is defined as thirty minutes before the start of any class period through thirty minutes after the end of any class period, including make-up classes.
- n. School Year is defined as beginning on July 1 and ending on June 30 of each year pursuant to N.J.A.C. 18A:36-1.
- o. Transition Services means “a coordinated set of activities for a child with a disability that— (A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (B) is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and (C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.” IDEA, 20 USC § 1401(34).

II. DEFENDANTS’ POLICY OBLIGATIONS

- a. **Development and Implementation of the Department of Education’s Preliminary Corrective Action Plan**
 - i. The DOE conducted its Preliminary Monitoring Activities during the Initial Monitoring Period from September 1, 2019 through October 31, 2019.
 - ii. The DOE produced its findings as a result of the Preliminary Monitoring Activities (“the Framework”) by November 15, 2019 to the Parties and External Monitor.
 - iii. The External Monitor reviewed and submitted written comments on the Framework by December 2, 2019.
 - iv. The Parties met and conferred with the External Monitor to discuss the Framework during the week of December 9, 2019 and the week of January 13, 2020.
 - v. The DOE produced final CAPs to the Parties and the External Monitor on January 31, 2020 and February 12, 2020. The final CAPs are public documents and are publicly available on the DOE website.
 - vi. The DOC agreed to comply with the DOE’s recommendations in the CAPs, including revising all non-compliant IEPs, and to implement the CAPs from the Preliminary Monitoring Period within six months of its issuance.
 - vii. The CAPs identified non-compliance consistent with the Monitoring Tool and areas where corrective action by DOC is needed (Exhibit A).

b. **Implementation of Department of Corrections' Revised Policies, Practices, and Procedures**

- i. The DOC has adopted and agrees to maintain policies and procedures that ensure the following substantive terms are accomplished:
 1. Upon a student's entry into DOC custody, the DOC will conduct appropriate intake procedures to assess each student's educational attainment levels and need for special education, which will typically include requests for records from the student's last school district of attendance.
 2. All students eligible under the State Facilities Education Act ("SFEA") are subject to the DOC's policy for evaluating whether students are entitled to special education services ("Child Find").
 3. The DOC will develop and implement IEPs and Section 504 Plans according to the individual needs of the student, regardless of facility placement or resources.
 4. All students with disabilities will be provided with transition planning and services as defined under IDEA until June 30 of the School Year in which the student turns twenty-one years old, regardless of their release date.
 5. Interpretation and translation services will be provided to English Learner ("EL") students with disabilities to ensure meaningful access to the special education process, which shall include interpretation services at IEP and Section 504 meetings and translated Section 504 plans and IEPs, assessments conducted by or at the request of the DOC or its medical service providers as part of an initial evaluation or reevaluation to determine eligibility for special education and related services, and due process rights notices.
 6. Students with disabilities will be provided a minimum of four hours of instruction per day in the regular classroom setting. This requirement is not applicable in cases including, but not limited to: (a) students who deny or refuse education in the classroom setting (for example, if a student refuses to leave the cell); (b) students who are unable to attend classroom education due to medical concerns (for example, due to risk of infection to other students); and (c) students whose classes are interrupted due to bona fide security interests (for example, if a fight or other disruption delays movement to the classroom). To the extent these exceptions occur, the identity of the student, reason, and date will be tracked by the DOC. To the extent exceptions in (c) above result in class

cancellations, make-up instruction will be provided per Section II(b)(8).

7. The DOC will use appropriately certified teachers to provide special education services in accordance with the mandates listed in students' IEPs.
8. Students with disabilities will be provided with make-up instructional time when correctional needs require the cancellation of the entire morning (AM session) or the entire afternoon (PM session) class. Make-up instruction will cover the relevant subject and content of the cancelled class.
9. Instructional personnel will use research-based instructional practices, which may include the use of worksheets as reinforcement exercises. The Parties agree worksheets are an instructional aide and not an instructional technique. Worksheets will be used as a supplement and not to the exclusion of other educational methods or techniques.
10. Students' credits, educational levels, and receipt of general education classroom instructional hours will be tracked by the DOC to assist in placing students in appropriate classes and provision of the appropriate level and hours of education.
11. Behavioral assessments and plans, including Functional Behavioral Assessments and Behavioral Intervention Plans, will be developed and implemented for students with disabilities in appropriate circumstances.
12. Manifestation determinations will be conducted for students listed on the DOC's special education roster for disciplinary incidents that occur during the School Day that result in a disciplinary charge. If the manifestation determination finds that the behavior is a result of the student's disability, the student will not be placed in the Restorative Housing Unit or other close custody unit for more than ten days without a finding of bona fide security or compelling penological interest justifying a change in educational placement (*see* 20 U.S.C. 1414(d)(7)), unless either an exception applies (*see* 34 C.F.R. 300.530(g)) or if the sentence extends a pre-existing placement in the Restorative Housing Unit or other close custody unit. An adjudication of guilt for a violation of N.J.A.C. 10A:4-4.1 will not be sufficient, without more, for a finding of a bona fide security or other compelling penological interest. An individualized finding by the facility Administrator or their designee as to that interest will be required in each case.

13. For students eligible to receive special education and related services in the Restorative Housing Unit or other close custody unit, the DOC will ensure that the conditions of this educational environment reflect classrooms in the general population by modifying the classroom setting: The DOC will take steps to reduce outside noise and improve privacy with noise-reducing fabric or blankets, while ensuring correctional police officers can observe education staff and inmates to address penological concerns.

- a. As of the Effective Date, the following modifications will be made at the module for the Garden State Youth Correctional Facility (formerly used as the module for Wagner Youth Correctional Facility) and Northern State Prison. The educational module will be modified with an approximately eight-foot long noise reduction wall-curtain blocking off two-and-a-half walls that will be attached near the top of the educational module and remain open approximately two feet from the floor for visibility.
- b. As of the Effective Date, Section II(b)(i)(13) does not apply to New Jersey State Prison and South Woods State Prison. If the DOC learns that more than three students classified as being entitled to special education are housed in the Restorative Housing Unit or other close custody unit in either of those DOC Prisons, the DOC will notify Plaintiffs' Counsel to discuss the implications of this provision. The DOC will check the number of such students at least monthly.

14. Any use of Cell Study must comply with the following:

- a. Cell Study will only be used to deliver education services to students in the following situations: (a) students who deny or refuse education in the classroom setting (for example, if a student refuses to leave the cell); (b) students who are unable to attend classroom education due to medical concerns (for example, due to risk of infection to other students); (c) or students whose classes are interrupted due to bona fide security interests (for example, if a fight or other disruption delays movement to the classroom).
- b. The DOC will continue to document the identity of the student, reason, and date for the use of Cell Study; and
- c. During Cell Study, a certified teacher will attempt to engage each student in face-to-face instruction. Subject to the teacher's professional discretion, if the first engagement was

unsuccessful, the teacher will attempt to reengage the student in face-to-face instruction that day.

- d. Cell Study may not consist solely of the student completing a worksheet without simultaneous feedback or active participation by the teacher.
 - ii. Plaintiffs' Counsel have reviewed final policies of the DOC that address the terms in Section II(b)(i). Publicly accessible versions of these policies may be available to requestors under the Open Public Records Act, N.J.S.A. 47-1A1 et seq., and will be provided to Plaintiffs' Counsel and the Court. Within six months of the Effective Date, the DOC will confirm in writing to the Court, the DOE, Plaintiffs' Counsel, and the External Monitor that it has implemented policies addressing the terms in Section II(b)(i).
 - iii. During the term of this Agreement, if the DOC amends policies addressing the substantive terms in Section II(b)(i), it will provide notice and proposed changes to Plaintiffs' Counsel and the External Monitor with a reasonable opportunity for feedback. This paragraph is not intended to constrain DOC's ability to amend, modify, and/or revoke its policies in any way, so long as the policies continue to accomplish the terms of this Agreement.
 - iv. During the term of this Agreement, Plaintiffs' Counsel or the External Monitor may recommend that the DOC amends policies addressing the substantive terms in Section II(b)(i). The DOC shall respond in writing as to whether it will make such amendments or otherwise resolve the issues raised and provide an explanation if recommendations are not accepted. The DOC is not bound to adopt these recommendations on changes in policy.
- c. **Department of Corrections Staff Training**
- i. DOC Staff will be trained periodically on all changes in policies, procedures, and/or practices addressed in this Agreement. Initial training will be provided within the first sixty days of the adoption of the policies, procedures, and/or practices. These policies, procedures, and/or practices will be reviewed on a yearly basis during the term of this Agreement. Changes will be incorporated into ongoing training and onboarding of DOC Staff.
 - ii. Written confirmation of initial and subsequent trainings will be provided to the External Monitor, including details as to the dates and times of the training, the content of the training, and the DOC Staff in attendance. Plaintiffs' Counsel will be provided the content and/or curriculum of each training for review upon request.

d. **Department of Education's Ongoing Monitoring Obligations**

- i. Following the conclusion of the term of this Settlement Agreement, the DOE intends to place the DOC on the DOE's regular rotation for monitoring special education services. Each monitoring period will include:
 1. Monitoring activities that cover those areas outlined in the monitoring tool in use by the DOE for all Local Education Agencies ("LEAs") at the time of the monitoring, subject to adaptation and alteration to fit the specific circumstances of the DOC Prisons at the DOE's professional discretion; and
 2. The issuance of a report with required actions to be taken by the DOC after each monitoring period.

III. RELIEF FOR THE INDIVIDUAL NAMED PLAINTIFFS

- a. The individual Named Plaintiffs will be provided with the following compensatory education:
 - i. Adam X. will receive \$16,000.
 - ii. Brian Y. will receive \$32,000.
 - iii. Casey Z. will receive \$16,000.
- b. The compensatory education funds for the Named Plaintiffs shall be made available within 90 days of the Effective Date in the manner agreed to by the Parties and as appropriate for each Named Plaintiff, for example through the establishment of special needs trust accounts. The individual Named Plaintiffs' receipt of compensatory education is in lieu of their participation in the compensatory education program established for class members in Section IV.
- c. Adam X., Brian Y. and Casey Z. will each receive an incentive award of \$5,000. This award is subject to any child support and/or State liens against the individual Named Plaintiffs. Payment will be made upon receipt of completed child support certifications for each Named Plaintiff and W-9(s) for Plaintiffs' Counsel and/or the Named Plaintiff, or otherwise in the manner agreed to by the Parties. Although Defendants make no guarantee, payment may be made within 60 days of such receipt or the Effective Date, whichever is later. Should payment not be made within 90 days, the Parties may seek the assistance of the Court. Following the deduction of liens, the remaining money to be paid to any Named Plaintiff(s) in DOC custody on the Effective Date shall be made to that individual(s) and the remaining money to be paid to any Named Plaintiff(s) out of custody shall be made payable via check to: "American Civil Liberties Union of New Jersey Attorney Trust Account."

IV. COMPENSATORY EDUCATION FOR CLASS MEMBERS

- a. The DOE will recommend compensatory education, in appropriate circumstances, for class members starting with IEPs dated on or after November 1, 2020 through the Term of the Agreement. Sections IV(b), IV(c), IV(d), and IV(e) below do not relate to DOE-recommended compensatory education.
- b. The External Monitor will review class members' eligibility for compensatory education for applying class members for the period of January 11, 2015 through October 31, 2020 and based upon her findings, determine the compensatory education that each eligible class member is entitled to receive. These determinations by the External Monitor will not duplicate any compensatory education for claims that have already been released through other litigation.
 - i. To the extent the DOE makes a determination as to a class member's entitlement for compensatory education in a given period, the External Monitor may not award compensatory education in those periods as explained by the non-duplicated date ranges in Section IV(a) and (b).
 - ii. To determine whether and to what extent class members are entitled to compensatory education, the External Monitor will holistically review the students' educational records and, if possible, conduct an interview with the student in-person, telephonically, or by paper correspondence. The External Monitor will then consider various factors including, but not limited to, academic level at the time of incarceration, length of sentence, prior IEP(s), prior transition planning, services received and not received, and the students' perspectives of their own educational needs.
 - iii. The DOC will establish a compensatory education fund to provide all eligible class members who apply for compensatory education with compensatory education, with a maximum of \$8,000 available to an eligible student for each year of denied services.
 - iv. As laid out in Exhibit C, compensatory education funds can be used only for educational, vocational, or reentry programs.
 - v. Class members may apply for compensatory education using Exhibit C for the period of January 11, 2015 through October 31, 2020 for up to two years after the Effective Date.
 - vi. The External Monitor will make any compensatory education determinations within one year after a class member submits Exhibit C.
- c. For students who are in DOC custody, the External Monitor will craft the compensatory education awards to include any of the following, after consultation

with the individual student and consideration of the student's individual preferences to the extent the External Monitor deems appropriate:

- i. Services provided by the DOC, including vocational and educational courses and related services such as individual counseling and one-on-one tutoring;
 - ii. Services provided by a list of approved third-party educational, vocational, and reentry service providers (the "Approved List"); the list will be developed through consultation between the External Monitor, the DOE, and in consultation with the parties, including but not limited to The Arc of New Jersey, with services to be paid for with the funds described in Section IV(b)(iii) and provided while the student is in DOC custody; or
 - iii. Funds to pay for correspondence courses, college, technical school or any other educational, vocation, or reentry program beyond the Approved List. Any award of funds must be used before the end of the Settlement Term, whether or not the student remains in DOC custody during that time.
- d. For students who have been released from DOC custody as of the date of execution of the Settlement Agreement, the compensatory education award will be limited to funds in Section IV(c)(iii). The External Monitor will craft the compensatory education awards after consultation with the individual student and consideration of the student's individual preferences to the extent the External Monitor deems appropriate. Any award of funds must be used before the end of the Settlement Term.

V. DATA COLLECTION

- a. The DOC will continue to collect data on the following:
 - i. The DOC's intake practices and procedures, including students for whom records requests have been sent to previous school districts and the timelines for requests, responses, and follow-up requests;
 - ii. The implementation of Child Find policies, practices, and procedures, including:
 1. Students referred to Intervention & Referral Services;
 2. Students referred to the CST;
 3. Students identified as having a disability for the purposes of the IDEA; and
 4. Timelines reflecting the actions described in items 1 through 3 above.

- iii. Functional Behavior Assessments conducted and Behavior Intervention Plans developed;
- iv. Manifestation determinations and the outcomes thereof;
- v. Modifications of students' educational placements as a result of disciplinary charges, with a record of the finding of bona fide security or other compelling penological interest;
- vi. Use of Cell Study, including documentation of the refusals and/or justifications based upon medical or security emergency; and
- vii. Graduation rates and other high school equivalency diplomas.

VI. MONITORING OF THIS AGREEMENT

a. The Department of Education's Monitoring of this Agreement

- i. *Monitoring and Verification Cycle*: The DOE will monitor the implementation of the CAPs according to the Monitoring/Verification Cycle Attachment over the course of three site visits, occurring approximately once every 18 months (Exhibit B).
- ii. *Full and Reasonable Access to DOC Prisons and Necessary Information*: The DOE will be given full and reasonable access to any and all information it deems necessary to assist in monitoring the implementation of the CAPs, including, but not limited to, at least the following:
 - 1. Full access to all relevant areas of each DOC Prison, including Restorative Housing Units, other close custody units, and other secure units;
 - 2. Full access to observe classes in session, movement to and from classes, and other activities conducted by DOC Staff;
 - 3. The ability to talk with, consult with, and interview DOC Staff in a confidential setting;
 - 4. The ability to observe students in the classroom setting, attend IEP meetings with the consent of the educational rights holder, and observe students during other special education related services, except for individual counseling services;
 - 5. Access to DOC records with the consent of the educational rights holder, including, but not limited to, students' attendance logs, schedules, students' intake assessments, student assessments, student performance assessments and reviews, student class schedules, classroom logs, students' disciplinary reports, records reflecting teacher participation in IEP meetings, students' behavior

management plans, records reflecting the creation and implementation of students' behavior management plans, and any complaints received by the DOC from students regarding the subject matter of this Agreement; and

6. The ability to conduct in-person interviews of students in DOC custody as needed, outside of the presence of DOC Staff, whether in-person or virtually.
- iii. *Implementation of DOE's Recommendations:* The DOC will implement all of DOE's recommendations described in the initial CAPs according to the schedule laid out by DOE, and as subsequently required by the DOE during Period I verification.

b. **The External Monitor's Role with Respect to the Department of Education**

- i. *Term:* The External Monitor will monitor the Defendants' continued compliance with this Agreement, as set out below, for a period of five years. ("External Monitoring Term").
- ii. *Appointment of the External Monitor:* With agreement by the Parties, the Court has appointed Dr. Susan Roberts as the External Monitor for the period of this Agreement, subject to the terms of Section VI(b).
- iii. *Development and Implementation of the DOE's CAPs:* For each period of DOE Monitoring, the DOE will issue a Framework outlining each CAP to Plaintiffs and the External Monitor. Following each Monitoring Period, the DOE will issue a CAP for each facility DOE visited. Throughout the External Monitoring Term, the External Monitor, in conjunction with the DOE, will offer support to the DOC regarding their implementation of the CAP(s). Throughout the External Monitoring Term, Plaintiffs and the External Monitor will continue to be able to offer input into each CAP in the same manner as with the Period I Monitoring.
- iv. *Length of Each Monitoring and Verification Period:* Each of the Periods I, II, and III described below will last approximately 18 months, with several months between Periods I and II and Periods II and III.
- v. *Issues Monitored by External Monitor:* The External Monitor will assess the DOE's compliance with the Monitoring Tool, attached as Exhibit A, during the Monitoring Periods and verification of each CAP, to be issued following each monitoring period.
- vi. *Access to Records and Facilities:* The External Monitor will be provided with access to all records provided to the DOE. The External Monitor will also be able to submit proposals to the Defendants seeking access to additional records she deems necessary for monitoring purposes, whether or not in connection with a planned site visit. The Defendants are able to deny or grant the External Monitor's proposal within two weeks of her

submission, with a written statement of reasons if the proposal is denied. The Defendants' determination is subject to the dispute resolution provision of any Settlement Agreement, and if the External Monitor continues to have concerns, she will notify the parties, who may apply to the Court directly regarding her proposal.

- vii. *Monitoring Reports:* The External Monitor will prepare Monitoring Reports at the conclusion of Periods I, II, and III. The Monitoring Reports will contain findings as to substantial compliance by the DOE, and separately by the DOC, and will detail the actions taken to implement each CAP, the revised policies, and additional terms of this Agreement. The External Monitor will provide the Parties a copy of each Monitoring Report, along with a summary listing any and all materials relied upon by the External Monitor in drafting the Monitoring Report, with any confidential information removed in compliance with state law. The Monitoring Reports will be public documents.
 1. The Monitoring Reports will be reviewed by the Parties prior to being made public in order to determine whether any changes need to be made to comply with state law.
- viii. *Substantial Compliance:* The External Monitor will make a finding as to substantial compliance by the DOE in each Monitoring Report.
 1. For the DOE, substantial compliance during the monitoring periods shall be defined as conducting 90 percent or greater of the monitoring activities outlined in the Monitoring Tool. Disagreement between the Parties regarding the outcome of the monitoring shall not constitute failure to comply with the Monitoring Tool.
 - a. To determine whether the DOE is in substantial compliance, the External Monitor will follow a checklist consisting of all of the separate elements of the Monitoring Tool to verify that the DOE is following the Monitoring Tool that has been developed by the DOE and approved by the External Monitor.
 - b. The Parties recognize that each facility and student has different needs such that there may be some elements of the Monitoring Tool that are inapplicable for different facilities. Any elements that are not applicable shall not be monitored and will not be used in the calculation to determine whether the DOE is substantially complying during the Monitoring Periods. If any element of the Monitoring Tool is found inapplicable at a particular site, the DOE will, in its report at the end of each Period: (1) note the element that is inapplicable; (2) note why the element is inapplicable; and

- (3) confirm that the DOE requested any records and/or updated policies regarding that element.
2. For the DOE, failure to substantially comply during Verification Periods shall be defined as failure by the DOE to adequately follow up with the DOC on all terms of each CAP. Adequate follow up requires that the DOE contact the DOC within two weeks of any missed deadline set forth in the CAP to request verification of compliance. Substantial compliance by the DOE may be shown by production of evidence showing DOE's adequate follow up with the DOC on all terms of each CAP. The DOC may request a reasonable extension of any deadlines set forth in the CAP, approval of which will be at the discretion of the DOE, with notification to Plaintiffs. Plaintiffs can object to any extensions granted by the DOE, subject to the dispute resolution mechanism of the Settlement Agreement.
 - a. The External Monitor will follow a checklist consisting of all of the separate elements of each CAP to verify that the DOE is in substantial compliance.

ix. *Period I Monitoring:*

1. During Period I Monitoring, the External Monitor will conduct the following activities:
 - a. Review and provide feedback on the DOE's Monitoring Tool;
 - b. Review and provide feedback on the DOC's policies and procedures;
 - c. Participate in site visits with the DOE and address concerns, if any, regarding the DOE's implementation of its Monitoring Tool with fidelity and consistency; and
 - d. Review and provide feedback on the Framework.
2. The External Monitor will participate in all DOC site visits occurring between November 1, 2021 and December 31, 2021, in coordination with the DOE, the DOC, and counsel for Plaintiffs. For the purposes of this section of the Agreement, a site visit is defined as a single-day visit to one facility, whether virtual or in person. The External Monitor had available to her the following protocol if she observed or believed that the DOE was not complying with its Monitoring Tool:
 - a. If the External Monitor chooses to formally express her belief that DOE is not implementing its Monitoring Tool with fidelity and consistency, the External Monitor shall

email the DOE, with a copy to counsel for Plaintiffs and Defendants, within 24 hours of her observation, stating the basis for her belief and proposed solution. The DOE shall respond within 72 hours of receipt of the External Monitor's email. If the DOE agrees with the External Monitor's observation and proposed solution, such solution shall be implemented. If the DOE disagrees with the External Monitor's email observation and proposed solution, it shall state the basis for the disagreement and a conference call with all counsel shall be conducted within 72 hours.

- b. If the External Monitor chooses to informally express her belief that DOE is not implementing the tool with fidelity and consistency, she shall engage with the DOE monitors directly during the site visit. If she believes the results of this process are inadequate, she can express her belief formally as outlined in Section VI(b)(ix)(2)(a).
3. The DOE will produce the Framework for the Period I CAP by February 15, 2022 to the Parties and the External Monitor.
 4. The External Monitor will review and submit written comments to the Parties on the Framework by February 22, 2022.
 5. The Parties and the External Monitor will telephonically meet and confer to discuss the Framework on or before February 28, 2022, and again during the week of March 14, 2022.
 6. The DOE will produce the final Period I CAPs to the Parties, the External Monitor, and the Court by no later than March 31, 2022 and will make them publicly available on the DOE website. The Period I CAPs will be jointly filed by the Parties on the public docket.

x. *Period I Verification:*

1. Period I Verification will cover the time period during which the DOE will be verifying the DOC's implementation of the Period I CAPs that were produced by DOE by March 31, 2022;
 - a. Period I Verification will be completed by February 1, 2023;
 - b. The External Monitor will participate in the initial site visit for each facility with the DOE, to the extent she deems necessary, during Period I Verification. Site visit shall be defined as a single-day visit to one facility.
 - c. The External Monitor will be able to submit proposals to the Defendants explaining any potential need for her to

participate in additional site visits with the DOE.

- d. The Defendants are able to deny or grant the External Monitor's proposal within two weeks of her submission. The Defendants' determination is subject to the dispute resolution provision of any Settlement Agreement.
2. The External Monitor will issue a report to the Court within 30 days of completion of Period I Verification ("Period I Monitoring Report"), which includes separate assessments of substantial compliance for the DOE and the DOC, as defined in Section VI(b)(viii).
3. The External Monitor will be able to submit proposals to the DOE during Period I Verification for additional remedial measures to be taken by DOC consistent with each Period I CAP, but may make no additional findings of non-compliance beyond those already in the CAP(s). The Defendants are able to deny or grant the External Monitor's proposal within 30 days after submission. The Defendants' determination is subject to the dispute resolution provision of any Settlement Agreement.
4. *Parties' Submissions after Period I Verification:* After the External Monitor's Period I Monitoring Report to the Court, the Parties will have 30 days, or until a date agreed to by the Parties, to make submissions to the Court about whether the External Monitor's role should remain unchanged, increase, or decrease with respect to the DOE. Replies will be due 15 days later. Upon review of the External Monitor's report and recommendations following Period I Verification and the Parties' submissions, if applicable, the Court will determine whether the External Monitor's role should remain unchanged, decrease, or increase with respect to the DOE based upon findings as to the DOE's substantial compliance.
5. Period II Monitoring will be scheduled to take place between July 1, 2023 and December 1, 2023. The dates for the site visits may be scheduled prior to the Court's determination regarding the role of the External Monitor, subject to revision based on that determination. The site visits will commence no fewer than 10 days after the Court's determination. The CAP(s) for Period II monitoring will be due to the Parties no later than December 1, 2023.

xi. *Period II Monitoring:*

1. If the External Monitor's role remains unchanged with respect to the DOE following Period I, the External Monitor and the DOE will resume monitoring according to the terms of Period I Monitoring above to develop the Period II CAP(s).

2. If the External Monitor's role decreases with respect to the DOE, as ordered by the Court following Period I, the following terms will apply for the duration of Period II Monitoring:
 - a. The External Monitor will participate in the initial monitoring site visit, to the extent she deems necessary, with the DOE, for the three (3) DOC facilities that house the highest number of SFEA-eligible students at that time.
 - i. The External Monitor will be able to submit proposals to Defendants explaining any potential need for her to participate in additional site visits with the DOE.
 - ii. Defendants are able to deny or grant the External Monitor's proposal within two weeks of submission, with a written statement of reasons. Defendants' determination is subject to the dispute resolution provision of this Agreement, and if the External Monitor continues to have concerns, she will notify the Parties, who may apply to the Court directly regarding her proposal.
3. If the External Monitor's role increases with respect to the DOE as ordered by the Court following Period I, the following terms will apply for the duration of Period II Monitoring:
 - a. The External Monitor will conduct the number of site visits, with the DOE, that she deems necessary. This will include, at a minimum, an initial site visit for each facility that houses SFEA-eligible students at that time, unless the External Monitor determines that her site visits should be concentrated at particular DOC Prisons.
 - b. The External Monitor will:
 - i. Actively participate in developing the agenda for each site visit;
 - ii. Collaborate with the DOE in determining which records should be reviewed and have the option to participate in any record review she deems necessary; and
 - iii. Provide training and technical assistance to the DOE as she deems necessary in her professional discretion including, but not limited to, written guidance, best practices, and in-person or telephonic trainings.

xii. *Period II Verification:*

1. If the External Monitor's role remained unchanged in Period II with respect to the DOE, she and the DOE will continue verifying the DOC's implementation of the Period II CAP(s), according to the terms of Period I Verification.
2. If the External Monitor's role decreased with respect to the DOE as ordered by the Court following Period I, the terms of her role will follow the decreased role as set forth in Period II Monitoring for the duration of Period II Verification, including participation in the initial verification site visit, to the extent she deems necessary, with the DOE for the three (3) facilities that house the highest number of SFEA-eligible students at that time.
 - a. As in Period II Monitoring, the External Monitor will be able to submit proposals to Defendants explaining any potential need for her to participate in additional site visits with the DOE.
 - b. As in Period II Monitoring, Defendants are able to deny or grant the External Monitor's proposal within two weeks of submission, with a written statement of reasons. Defendants' determination is subject to the dispute resolution provision of this Agreement, and if the External Monitor continues to have concerns, she will notify the Parties, who may apply to the Court directly regarding her proposal.
3. If the External Monitor's role with respect to DOE increased in Period II monitoring as ordered by the Court following Period I, the terms of her role will follow the increased role as set forth in Period II Monitoring for the duration of Period II Verification.
4. Throughout Period II Verification, the External Monitor will be able to submit proposals to the DOE for additional remedial measures to be taken by the DOC consistent with the Period II CAP, but may make no additional findings of non-compliance beyond those already in the CAP(s). Defendants are able to deny or grant the External Monitor's proposal within two weeks after submission, with a written statement of reasons. Defendants' determination is subject to the dispute resolution provision of any Settlement Agreement, and if the External Monitor continues to have concerns, she will notify the parties, who may apply to the Court directly regarding her proposal.
5. The External Monitor will issue a report to the Court within 30 days of completion of Period II Verification ("Period II Monitoring Report"), which includes separate assessments of substantial

compliance for the DOE and the DOC as defined within the terms of the Settlement Agreement.

6. *Parties' Submissions after Period II Verification:* After the External Monitor's Period II Monitoring Report to the Court, the Parties will have 30 days, or until a date agreed to by the Parties, to make submissions to the Court about whether the External Monitor's role should remain unchanged, increase, or decrease with respect to the DOE. Upon review of the External Monitor's report and recommendations following Period II Verification and the Parties' submissions, if applicable, the Court will determine whether the External Monitor's role should remain unchanged, decrease, or increase with respect to the DOE based upon findings as to the DOE's substantial compliance. Replies will be due 15 days later.
7. Period III Monitoring will be scheduled to take place between March 1, 2025 and August 1, 2025. The dates for the site visits may be scheduled prior to the Court's determination regarding the role of the External Monitor, subject to revision based on that determination. The site visits will commence no fewer than 10 days after the Court's determination. The CAP(s) for Period III Monitoring will be due to the Parties no later than the end date of Period III Monitoring.

xiii. *Period III Monitoring:*

1. If the External Monitor's role remains unchanged with respect to the DOE, the External Monitor and the DOE will resume monitoring according to the terms of Period II Monitoring above to develop the Period III CAP(s).
2. If the External Monitor's role decreases with respect to the DOE, as ordered by the Court, the following terms will apply for the duration of Period III Monitoring:
 - a. The External Monitor will participate in monitoring the site visit, with the DOE, for the one (1) DOC facility with the most SFEA students.
 - i. The External Monitor will be able to submit proposals to the Defendants explaining any potential need for her to participate in additional site visits with the DOE.
 - ii. The Defendants are able to deny or grant the External Monitor's proposal within two weeks of submission, with a written statement of reasons. Defendants' determination is subject to the dispute resolution provision of this Agreement, and if the External

Monitor continues to have concerns, she will notify the Parties, who may apply to the Court directly regarding her proposal.

3. If the External Monitor's role increases with respect to the DOE as ordered by the Court following Period II, the following terms will apply for the duration of Period III Monitoring:
 - a. The External Monitor will conduct the number of site visits, with the DOE, that she deems necessary. This will include, at a minimum, an initial site visit for each facility that houses SFEA-eligible students at that time, unless the External Monitor determines that her site visits should be concentrated at particular DOC Prisons.
 - b. The External Monitor will:
 - i. Actively participate in developing the agenda for each site visit;
 - ii. Participate in any student and staff interview that she deems necessary; and
 - iii. Provide training and technical assistance to the DOE as she deems necessary in her professional discretion including, but not limited to, written guidance, best practices, in-person or telephonic trainings.

xiv. *Period III Verification:*

1. If the External Monitor's role remained unchanged with respect to the DOE following Period II, she and the DOE will continue verifying DOC's implementation of the Period III CAP(s), according to the terms of Period II Verification.
2. If the External Monitor's role decreases with respect to the DOE, as ordered by the Court at the end of Period II, the terms of her role will follow the decreased role as set forth in Period III Monitoring for the duration of Period III Verification, including participation with the DOE in the verification site visits for the one (1) DOC facility with the most SFEA students.
 - a. As in Period III Monitoring, the External Monitor will be able to submit proposals to Defendants explaining any potential need for her to participate in additional site visits with the DOE.
 - b. As in Period III Monitoring, Defendants are able to deny or grant the External Monitor's proposal within two weeks of

submission, with a written statement of reasons. Defendants' determination is subject to the dispute resolution provision of this Agreement, and if the External Monitor continues to have concerns, she will notify the Parties, who may apply to the Court directly regarding her proposal.

3. If the External Monitor's role increases as ordered by the Court following Period II, the terms of her role will follow the increased role as set forth in Period III Monitoring for the duration of Period III Verification, including conducting the number of site visits she deems necessary, which will include at a minimum an initial site visit for each facility that houses SFEA-eligible students at that time, unless the External Monitor determines that her site visits should be concentrated at particular DOC Prisons.
 4. Throughout Period III Verification, the External Monitor will be able to submit proposals to the DOE for additional remedial measures to be taken by the DOC consistent with the Period III CAP(s), but may make no additional findings of non-compliance beyond those already listed in the CAP(s). Defendants are able to deny or grant the External Monitor's proposal within two weeks after submission, with a written statement of reasons. Defendants' determination is subject to the dispute resolution provision of any Settlement Agreement, and if the External Monitor continues to have concerns, she will notify the Parties, who may apply to the Court directly regarding her proposal.
 5. The External Monitor will issue a report to the Court within 30 days of completion of Period III Verification ("Period III Monitoring Report"), which includes separate assessments of substantial compliance for the DOE and the DOC, as defined within the terms of the settlement agreement.
- xv. *Conference Calls or Meetings with the External Monitor:* The External Monitor and counsel for the Parties will conduct a conference call or meeting on a quarterly basis. Separately, or as one of those quarterly calls or meetings, the Parties will conduct an informal exit call following the conclusion of site visits as well as a call or meeting two weeks after the issuance of each of the External Monitor's Monitoring Reports, which the Court may join at its discretion.
- xvi. *Confidentiality of Records:* In order to serve as the External Monitor, the External Monitor has entered into an agreement with the Parties to abide by the Confidentiality Order in this case.
- xvii. *Replacing the External Monitor:* In the event the External Monitor becomes permanently unavailable for any reason, the Parties will meet and confer to determine whether a mutually acceptable replacement expert can be

recommended to the Court for appointment. If there is no mutually agreed upon candidate, the Parties may make separate recommendations to the Court.

xviii. *Monitoring Fees and Costs:* Defendants shall bear all costs of the External Monitor. The costs of Dr. Susan Roberts' performance of the External Monitor role shall be:

1. A flat fee of \$1500 for each day of on-site monitoring at a DOC facility that lasts longer than 5 hours.
2. On-site monitoring at a DOC facility that lasts 5 hours or less shall be charged at a rate of \$200/hour;
3. Consultant fee for reviewing policies, written reports, and the monitoring tool and participation in conferences, whether telephonic or in person, shall be charged at a rate of \$200/hour;
4. A fee of \$1500 per round trip to New Jersey from Indiana for on-site monitoring;
5. Travel expenses for airfare, lodging, parking, mileage, and car rental will be reimbursed based on the New Jersey state policy related to state employee travel expenses found at <https://222/state.nj.us/infobank/circular/cir1611.pdf>.
6. In the event that the External Monitor becomes permanently unavailable and needs to be replaced, Defendants shall bear all costs of the replacement External Monitor and may negotiate in good faith for new terms of cost with a replacement External Monitor.

c. **The External Monitor's Role with Respect to the Department of Corrections**

- i. *Term:* The External Monitor will monitor the DOC's continued compliance with this Agreement, as set out below, for a period of five years ("External Monitoring Term").
- ii. *Appointment of the External Monitor:* With agreement by the Parties, the Court has appointed Dr. Susan Roberts as the External Monitor for the period of this Agreement, subject to the terms of Section VI(c).
- iii. *Substantial Compliance:* The External Monitor, in consultation with the Parties, has developed Rubrics, attached as Exhibit D, with quantifiable indicators to determine substantial compliance for the DOC with each provision of Section II(b) of the Settlement Agreement, related to Substantive Relief through DOC policies. These Rubrics do not address the External Monitor's verification of the DOC's training of DOC Staff as detailed in Section II(c)(ii) or the External Monitor's administration of compensatory education as detailed in Section IV(b) of this Agreement.

- iv. *Issues Monitored by External Monitor:* The External Monitor will assess the DOC's level(s) of compliance with the substantive issue areas in the Rubrics. The External Monitor will formally communicate those findings in the Monitoring Reports described in Section VI(b) above, although the External Monitor is not limited to those periods of reporting to work collaboratively with the DOC on its implementation of any remedial measures, as set out in Section VI(c)(vi) below.
- v. *External Monitor's Access to DOC Records and Site Visits:* The DOC will work with the External Monitor to ensure the External Monitor has sufficient access to DOC records, sites, and staff and students to make accurate findings as to DOC's level(s) of compliance.
 - 1. The Parties agree that the access provided to the External Monitor alongside the DOE during Period I Monitoring and Verification, described in Section VI(b) above, will be sufficient for this purpose. At any point during the Term of the Agreement, should the External Monitor believe she requires additional record review and/or site visits, she will be able to submit proposals to the DOC explaining that need. The DOC is able to grant or deny the External Monitor's proposal within two weeks of her submission. The DOC's determination is subject to the dispute resolution provision of any Settlement Agreement.
 - 2. Any site visits conducted by the External Monitor will be conducted simultaneously or as close in time as possible with site visits conducted by the DOE in accordance with the DOE's monitoring role, unless exigency necessitates otherwise. The External Monitor will be able to perform the record review and site visits necessary to effectuate the Rubrics. The External Monitor may request additional record review and site visits. The DOC is able to grant or deny the External Monitor's request within two weeks of her submission.
- vi. *Effect of a Finding of DOC Non-Compliance:* For any areas of DOC non-compliance the External Monitor identifies, as defined in the Rubrics, the External Monitor will develop targeted remedial measures in consultation with the DOC.
 - 1. To the extent the External Monitor develops written remedial measures, those measures will be provided to Plaintiffs' Counsel and the External Monitor may incorporate those measures in the External Monitor's Monitoring Reports.
 - 2. The External Monitor may consult with the DOC on remedial measures outside the reporting periods.
 - 3. To the extent the External Monitor develops remedial measures in consultation with the DOC, the External Monitor will work with the

DOC to ensure implementation of those measures on a timeline that is reasonable. To the extent applicable, the External Monitor will report on the DOC's progress in implementing remedial measures in subsequent Monitoring Reports.

- vii. *Other Terms*: The provisions of Section VI(c) apply alongside those of Section VI(b) above, which are hereby incorporated by reference as appropriate, including provisions as to the External Monitor's Monitoring Reports; the timeframes for DOE Periods I, II, and III Monitoring and Verification; Conference Calls or Meetings with the External Monitor; Confidentiality of Records; Replacing the External Monitor; and Monitoring Fees and Costs.

d. **Plaintiffs' Counsel's Access to Information**

- i. Plaintiffs' Counsel can make a written request for any documents referenced in the CAPs or External Monitor's Monitoring Reports. Defendants will grant Plaintiffs' Counsel request unless it is overbroad or not relevant to a specific issue or concern. Any denial must be accompanied by a written statement of reasons. Plaintiffs' Counsel can challenge that denial through the dispute resolution provision.
- ii. Plaintiffs' Counsel can additionally make a written request for data collected pursuant to Section V(a) or for any documents responsive to a specific issue or concern addressed in this Agreement, including but not limited to education, disciplinary, and medical and mental health records of individual class members, in accordance with the terms of the Confidentiality Order and the terms of this Agreement. Plaintiffs' Counsel must provide a written request including an explanation of the issue of concern and identify the documents or type of documents sought. Defendants will grant these additional requests unless they are overbroad or not relevant to the items in Section V(a) or a specific issue or concern. Any denial must be accompanied by a written statement of reasons. Plaintiffs' Counsel can challenge that denial through the dispute resolution provision.
- iii. Defendants will produce records to Plaintiffs' Counsel within thirty days should the request be granted or otherwise ordered by the Court, except that when Plaintiffs' Counsel identify their request as emergent because of a serious risk of harm to one or more class members, Defendants will produce those records within 14 days.

VII. PROCEDURE FOR CLASS SETTLEMENT

a. Definition of the Class

- i. The Parties hereby stipulate to certification of a Settlement Class as follows: All individuals who are or were housed at any DOC Prison at any point between January 11, 2015 through the Effective Date and who: (1) were identified as being entitled to special education services and reasonable educational accommodations, or (2) were not identified but had a verified IEP during or prior to their period of incarceration with DOC, or (3) were not identified but had been diagnosed with an educational disability and for whom IEP development began but did not conclude prior to their period of incarceration with the DOC, or (4) were under age 18 when they entered DOC custody, were born after January 11, 1993, and did not have a high school diploma when they entered DOC custody.
- ii. Plaintiffs will move for the certification of the Settlement Class as part of Plaintiffs' Unopposed Motion for Preliminary Approval of the Settlement Agreement. Defendants will not oppose certification of the Settlement Class.
- iii. The Parties hereby stipulate to the following: As class representatives, Named Plaintiffs can adequately represent the interests of the class. Individual Named Plaintiffs' release from custody would not interfere with their ability to serve as class representatives. Plaintiffs may replace class representatives from time to time as needed upon notice to Defendants and approval of the Court.

b. Preliminary Approval by the Court of the Settlement Agreement

- i. Counsel for the Parties agree that they will take all reasonable steps to ensure that this Agreement is approved by the Court and becomes effective. Specifically, within thirty days of execution of this Agreement, Plaintiffs' Counsel will, through unopposed motion (1) file the Agreement, including the attached Exhibits, with the Court, (2) move for Preliminary Approval of this Agreement in the Court, and (3) request entry by the Court, on the earliest date acceptable to the Court, of the Proposed Order Granting Motion for Preliminary Approval of Class Settlement, Certifying Settlement Class, Directing Issuance of Settlement Notice, and Scheduling Hearing on Final Approval.

c. Notice to Plaintiff Settlement Class Members

- i. The Parties will jointly request that the Court approve the Full Notice Package which includes the following and is attached as Exhibit F: Notice of Proposed Settlement of Class Action Lawsuit ("Notice"), one-page flyer regarding the Notice ("One-Page Flyer"), and Compensatory Education Form.

- ii. The Notice includes, in plain language: (1) A summary of the substantive relief included in this Agreement; (2) the date of the hearing on the Final Approval of the Agreement with a clear statement that the date may change without further notice to the Class; (3) the deadline for submitting objections to the Agreement; (4) contact information for Plaintiffs' Counsel to answer questions; (5) the address for Plaintiffs' Counsel's websites with links to relevant documents in the case; and (6) instructions on how to access the case docket via PACER or in person at the Court's locations. The DOC will provide a translation of the Notice into Spanish. Upon the Court's approval of the Full Notice Package, the DOC will provide the Full Notice Package in paper form along with a return envelope, as well as the One-Page Flyer by electronic communication through JPay, to every SFEA student currently in DOC custody or, if different, to each of those students' educational rights holders.
- iii. Upon the Court's approval of the Full Notice Package, the DOC will post the Full Notice Package at every DOC Prison in the law library and classrooms or any other spaces where students receive general educational services.
- iv. Upon the Court's approval of the Full Notice Package, Plaintiffs' Counsel will be provided reasonable access to meet or communicate with the following people in DOC custody to explain the terms of the Proposed Settlement: (1) all students eligible for special education and (2) all people who were under 18 and did not have a high school diploma when they entered DOC custody and who were born after January 11, 1993.
- v. Upon the Court's approval of the Full Notice Package, the DOC will mail:
 1. The Full Notice Package to the following people who were in DOC custody on or after January 11, 2015 and are no longer in DOC custody: (a) all students who were eligible for special education and related services at that time, and (b) all people who were under 18 and did not have a high school diploma when they entered DOC custody and who were born after January 11, 1993.
 2. The One-Page Flyer to all other SFEA-eligible students who were in DOC custody on or after January 11, 2015 and are no longer in DOC custody.
- vi. Defendants will bear all costs for publication and mailing of the foregoing items.
- vii. Upon the Court's approval of the Full Notice Package, the DOC, DOE, the American Civil Liberties Union of New Jersey, and Disability Rights Advocates will each post the Agreement, One-Page Flyer and links to the Full Notice Package on their respective agency and organization websites.

- viii. At least 14 days before the Fairness Hearing, counsel for Defendants and Plaintiffs' Counsel will each provide a declaration to the Court attesting to the manner in which they disseminated the Full Notice Package and components thereof consistent with the Agreement.
- ix. Upon the Court's Final Approval of this Agreement and for the duration of the Term of the Agreement:
 - 1. Defendants will post two laminated copies of the Agreement and a plain language summary of the Agreement, agreed upon by the Parties, in English and Spanish at every DOC Prison in the law library and classrooms or any other spaces where students receive general educational services.
 - 2. The DOC will include the plain language summary of this Agreement as a subsection of each newly-issued DOC Prison's Inmate Handbook.

d. **Fairness Hearing**

- i. The Parties will jointly request that the Court schedule and conduct a Fairness Hearing to address the fairness of this Agreement settling Plaintiffs' claims against Defendants and to decide whether there will be Final Approval of the settlement embodied in this Agreement. At the Fairness Hearing, the Parties will jointly move for Final Approval of this Agreement. The Fairness Hearing will take place at dates allowing for such period of Notice to the Class as the Court may direct, and in accordance with 28 U.S.C. § 1715.

VIII. DISPUTE RESOLUTION

- a. *Dispute Resolution Process*: All disputes concerning the interpretation, implementation, modification pursuant to Section XII(b)(i), monitoring, and compliance with this Agreement, will be resolved as follows:
 - i. *Notification in Writing*: Counsel for a Party will notify counsel for the other Parties in writing of any perceived non-compliance with the terms of this Agreement by any Party.
 - ii. *Meet and Confer*: Unless otherwise agreed to by the Parties, with respect to any particular dispute, the Parties agree to meet and confer in good faith, within ten (10) business days after receipt of a written notification of a dispute pursuant to the previous paragraph.
 - iii. *Application for Further Relief*: If the meet-and-confer does not lead to a resolution of the dispute, then, no sooner than 15 business days after providing the other Parties with written notice of an intent to terminate the meet and confer process, any Party may apply to the Court for further relief with respect to the dispute to the extent it involves compliance with this

Agreement. The Parties acknowledge the Court retains jurisdiction over relief as appropriate.

- b. *Immediate Judicial Relief*: Notwithstanding the dispute resolution described above, in the event of an emergency threatening to cause immediate or irreparable harm to any of the Parties, class or any portion thereof, any Party may seek immediate judicial relief.
- c. *Notice of Exigent Circumstances*: Should exigent circumstances exist that require a Party to take action that makes them non-compliant with this Agreement, that Party shall notify the other Parties of the exigent circumstances, the action taken, the expected duration of such circumstances, and the steps taken to limit the duration of such circumstances. Receipt by a Party of such notification does not preclude them from seeking judicial relief. Either Party may notify the External Monitor of exigent circumstances if they arise.
- d. *Attorney's Fees*: The Court, in its discretion, may award fees for disputes under this section to the prevailing party in accordance with the standard set forth in *Christiansburg Garment Co. v. E.E.O.C.*, 434 U.S. 412 (1978).

IX. TERM OF AGREEMENT

- a. This Agreement will remain in effect for five years from the Effective Date.

X. STIPULATION PURSUANT TO 18 U.S.C. § 3626 AND RETENTION OF DISTRICT COURT JURISDICTION

- a. For purposes of this Lawsuit only and in order to settle this matter, Defendants stipulate, and this Court finds, that the education services provided at DOC Prisons necessitate the remedial measures contained in this Agreement. The Parties stipulate that this Agreement complies in all respects with the Prison Litigation Reform Act, 18 U.S.C. § 3626(a). The Parties further stipulate and the Court finds that the prospective relief in this Agreement is narrowly drawn, extends no further than necessary to correct the violations of federal rights as alleged by Plaintiffs in their Complaint, is the least intrusive means necessary to correct these violations, and will not have an adverse impact on public safety or the operation of a criminal justice system. Accordingly, the Parties represent, and this Court finds, that the Agreement complies in all respects with 18 U.S.C. § 3626(a).
- b. The terms agreed upon in this Agreement are being entered by the Court in an enforceable order, based upon the consent and acquiescence of the Parties. 18 U.S.C. § 3626(g)(1).
- c. This Agreement is subject to judicial enforcement, 18 U.S.C. § 3626(g)(6), and the Parties hereby agree that the United States District Court for the District of New Jersey shall retain jurisdiction over this action until the Agreement ends.

- d. Five years after the Effective Date, this Agreement will terminate. Defendants will not file any motion asserting that this Agreement should be terminated under the Prison Litigation Reform Act before the conclusion of those five years.

XI. RELEASE OF CLAIMS

- a. Effective upon the entry of judgment by the Court, in consideration of the relief set forth herein, the sufficiency of which is expressly acknowledged, the following claims against Defendants are released:
 - i. The Class Members and Named Plaintiffs, including the organizational Plaintiffs, The Arc of New Jersey, and the American Civil Liberties Union of New Jersey, release any claims for systemic injunctive relief under IDEA or Section 504 regarding the special education system in DOC Prisons at issue in the Lawsuit which arose on or before the Effective Date of this Agreement;
 - ii. The individual Named Plaintiffs, Adam X., Brian Y., and Casey Z., release any claims for compensatory education in DOC Prisons under the IDEA or Section 504 which arose on or before the Effective Date of this Agreement; and
 - iii. The Class Members release any claims for compensatory education in DOC Prisons under IDEA or Section 504 which arose on or between the dates January 11, 2015 through October 31, 2020, unless Class Members opt out of the compensatory education relief in Section IV within two years of the Effective Date using Exhibit C.
- b. Except as set forth in Section XI(a), nothing in this Agreement shall be construed to release any additional claims by any of the Named Plaintiffs, class members, or any other person for: any claims arising under the IDEA, Section 504, or the ADA, such as claims for compensatory education, individual due process claims, reasonable accommodations or modifications related to physical access, communication access, behavioral policies, and/or accommodations otherwise relating to hearing, vision, and/or mobility, mental health, and/or developmental disabilities; any claims regarding conditions of confinement arising under the United States Constitution or New Jersey law; or any monetary claims that may exist under any relevant laws. Nothing in this Agreement shall be construed to release any claims to enforce the terms of this Agreement. The organizational Plaintiffs, The Arc of New Jersey, and the American Civil Liberties Union of New Jersey, do not release any claims of their individual members or constituents, although those individual members or constituents do release certain claims if they are members of the class pursuant to Section XI(a).

XII. PLAINTIFFS' ATTORNEY'S FEES AND COSTS

- a. Plaintiffs, as prevailing parties, agree to accept and Defendants agree to pay Plaintiffs' Counsel the sum of \$975,000 in attorney's fees and costs for work through the Effective Date of this Agreement, as well as anticipated reasonable fees and costs for Plaintiff Counsel's work performed through the submission of the Agreement to the Court for preliminary and final approval, and also for work performed in conjunction with monitoring Defendants' compliance with this Agreement. This amount also includes the anticipated fees and costs for Plaintiffs' Counsel to provide notice to the class, notwithstanding Defendants' obligation to bear the costs of publication and mailing in Section VII(c)(vi). As set forth in Section VII, Plaintiffs may also seek future attorney's fees by motion to the Court in connection with the dispute resolution process.
- b. Pursuant to Federal Rule of Civil Procedure 23(h), Plaintiffs will file an unopposed motion for attorneys' fees prior to final approval by the Court.
- c. Payment of attorney's fees and costs will be made after Defendants' Counsel receives necessary paperwork for processing, which may include, but is not limited to:
 - i. Completed State of New Jersey W-9(s);
 - ii. State of New Jersey Vendor Invoices and/or signed vouchers from Plaintiffs' Counsel;
 - iii. Registration through the New Jersey Treasury to the extent necessary for the Treasury to process payment.
- d. Defendants will make payment of attorney's fees and costs as soon as practicable after the Effective Date, following receipt of the necessary paperwork. Payment will be made by check a lump sum to American Civil Liberties Union of New Jersey Attorney Trust Account. A 1099 shall be issued to the American Civil Liberties Union of New Jersey. Although Defendants make no guarantee, payment may be made within 60 days of such receipt. Should payment not be made within 90 days, the Parties may seek the assistance of the Court.

XIII. NO RETALIATION

- a. Defendants and their employees, agents, successors, etc. will not retaliate against any person who lodges a complaint; provides information or assistance to the DOE or the DOC, the External Monitor, and/or Plaintiffs' Counsel; testifies in any proceedings related to this action; and/or participates in any manner in any investigation or proceeding related to the Agreement.

XIV. OTHER MATTERS

a. Entire Agreement

- i. This Agreement, including exhibits, contains all the agreements, conditions, promises, and covenants between Plaintiffs and Defendants regarding matters set forth in it, and supersedes all prior or contemporaneous agreements, drafts, representations, or understandings, either written or oral, with respect to the subject matter of the present Agreement.

b. Modification

- i. The terms and conditions of this Agreement can be amended, changed, or altered only by written agreement of the Parties through their respective counsel or by order of the Court upon motion.

c. Drafting of this Agreement

- i. This Agreement is deemed to have been drafted by all Parties hereto, as a result of arm's length negotiations among the Parties. Whereas all Parties have contributed to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.

d. Execution by Facsimile and in Counterparts

- i. This Agreement may be executed by the Parties hereto by facsimile and in separate counterparts, and all such counterparts taken together will be deemed to constitute one and the same agreement.

e. Interpretation

- i. The language of this Agreement will be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties. The headings in this Agreement are solely for convenience and will not be considered in its interpretation. Where required by context, the plural includes the singular and the singular includes the plural, and the terms "and" and "or" will mean "and/or." This Agreement is the product of negotiations and joint drafting so that any ambiguity will not be construed against any Party. If any provision or provisions of this Agreement are found to be contrary to law, the Parties agree that the remaining provisions will not be affected and will remain in full force and effect.

f. Computation of Time

- i. Computation of time or periods of time referenced in any document related to this Settlement Agreement shall be computed pursuant to Federal Rule of Civil Procedure 6.

g. Additional Documents

- i. To the extent any documents are required to be executed by any of the Parties to effectuate this Agreement, each Party hereto agrees to execute and deliver such and further documents as may be required to carry out the terms of this Agreement.

h. **Authority to Bind**

- i. The undersigned each represent and warrant that they are authorized to sign on behalf of, and to bind, the respective Parties of this Agreement.

[THIS SPACE INTENTIONALLY LEFT BLANK]

Defendants:

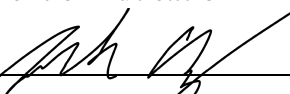
NEW JERSEY DEPARTMENT OF CORRECTIONS, and VICTORIA KUHN in her Official Capacity as Acting Commissioner of the New Jersey Department of Corrections

By: 

Michael Vomacka, Esq.
Deputy Attorney General
New Jersey Office of the Attorney General

Date: July 15, 2021

NEW JERSEY DEPARTMENT OF EDUCATION, and ANGELICA ALLEN-McMILLAN, in her official capacity as Acting Commissioner of the New Jersey Department of Education

By: 

Michal Czarnecki, Esq.
Deputy Attorney General
New Jersey Office of the Attorney General

Date: July 15, 2021

Plaintiff Adam X

s/ Adam X.
Adam X.*

Date: July 13, 2021

* A version of this Agreement signed with Named Plaintiffs' legal names will be maintained in the files of counsel for the parties, subject to the Confidentiality Order entered in this case.

Plaintiff Brian Y

s/ Brian Y.
Brian Y.†

Date: July 13, 2021

† A version of this Agreement signed with Named Plaintiffs' legal names will be maintained in the files of counsel for the parties, subject to the Confidentiality Order entered in this case.

Plaintiff Casey Z

s/ Casey Z.
Casey Z.‡

Date: July 13, 2021

‡ A version of this Agreement signed with Named Plaintiffs' legal names will be maintained in the files of counsel for the parties, subject to the Confidentiality Order entered in this case.

Plaintiff American Civil Liberties Union of New Jersey

By: Jeanne LoCicero, Legal Director

Signed: *Jeanne LoCicero*

Date: July 15, 2021

Plaintiff Arc of New Jersey

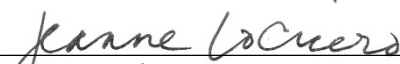
By: Thomas Baffuto


Signed: Thomas Baffuto


Date: July 14, 2021


APPROVED AS TO FORM AND CONTENT:

Attorneys for Plaintiffs:

By: 
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Legal Director
ACLU of New Jersey Foundation

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Tess Borden
Staff Attorney
ACLU of New Jersey Foundation

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Andrea Kozak-Oxnard*
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