

Exhibit 1

**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: 

Date: July 14, 2021

APPROVED AS TO FORM AND CONTENT:

Attorneys for Plaintiffs:

By: 
Jeanne LoCicero
Legal Director
ACLU of New Jersey Foundation

By: 
Tess Borden
Staff Attorney
ACLU of New Jersey Foundation

By: 
Andrea Kozak-Oxnard*
Staff Attorney
Disability Rights Advocates

By: 
William Silverman*
Partner
Proskauer Rose LLP

*Admitted *pro hac vice*

Attorneys for Defendants:

New Jersey Department of Corrections

By: 
Michael Vomacka, Deputy Attorney General

New Jersey Department of Education

By: 
Michal Czarnecki, Deputy Attorney General

Exhibit A

Monitoring Documents

Document Title	Areas Addressed
General Compliance Requirements Checklist	<ul style="list-style-type: none"> • SFEA requirements • Class registers • Length of school day • Length of school year • Records access and review • Staffing
DCF 1: Pre-referral Interventions	<ul style="list-style-type: none"> • Provision of interventions in general education to students exhibiting academic and behavioral difficulties • Evidence of functioning Intervention and Referral Services (I&RS) team • Evidence of provision of interventions, data collection on their effectiveness and follow-up meetings
DCF 2: Initial Evaluation of Students Referred for Special Education and Related Services	<ul style="list-style-type: none"> • Identification meeting requirements (notice, participants, written notice) • Development of initial evaluation plan • Obtain student consent • Components of initial evaluation (multi-disciplinary, functional assessment) • Eligibility meeting requirements (notice, participants, written notice)
DCF 3: Individualized Education Program (IEP)	<ul style="list-style-type: none"> • IEP meeting requirements (notice, participants, written notice) • Required considerations and components • Required statements • Accommodations and modifications • Related services • Annual review timelines
DCF 4: Reevaluation of Students Eligible for Special Education and Related Services	<ul style="list-style-type: none"> • Reevaluation planning meeting requirements (notice, participants, written notice) • Documentation of consent when reevaluation is waived • Obtain student consent when assessments will be conducted • Reevaluation timelines • Eligibility meeting requirements (notice, participants, written notice)
DCF 5: Age 14 and 16 Transition Requirements	<ul style="list-style-type: none"> • Student invitations to meetings • Identification of a post-secondary liaison • Measurable post-secondary goals(s) • Evidence of age-appropriate transition assessments

	<ul style="list-style-type: none"> • Transition services included in the IEP • Involvement of outside agencies, as appropriate
DCF 6: Graduation Notice and Summary of Performance	<ul style="list-style-type: none"> • Student is provided with written notice of graduation • Student is provided with summary of academic achievement and functional performance
DCF 7 – Classroom Observation	<ul style="list-style-type: none"> • Provision of special education • Provision of accommodations and modifications • Provision of related services • Teacher access to IEPs
DCF 8 – Discipline Procedures	<ul style="list-style-type: none"> • IEP development • FBAs and BIPs • Manifestation determination meetings
Walkthrough Form	<ul style="list-style-type: none"> • Instructional techniques • Materials • Classroom arrangement • Student engagement • Classroom management
Interview Forms	<ul style="list-style-type: none"> • Questions for teachers, supervisors, child study team members and adult students.

Monitoring Areas¹

Section I: Identification of Students with Disabilities

Area	Suggested Action ²	Monitoring	Monitoring Activities
Special Education Evaluations	Conduct special education evaluations for all students aged twenty-one and under who do not have a high school diploma	Note: 1. This is not permitted under state or federal special education regulations	<ul style="list-style-type: none"> None

Section II: Special Education Services

Area	Suggested Action ²	Monitoring	Monitoring Activities
Development of Individualized Education Programs (IEPs)	Enforce “Guidance with Respect to Goals and Objectives in Individualized Education Programs (IEPs)” issued by the NJDOE on December 20, 2010, DOC 224-225	<ul style="list-style-type: none"> DCFs 2, 3, 5, 6 & 7 Classroom Observation Classroom Walkthrough Interview Questions 	<ul style="list-style-type: none"> Record review Teacher interviews CST interviews Classroom observations
Development of IEPs: Individualization	Revise all current IEPs to ensure that they are individualized and provide the level of special education service needed for each student, including appropriate related services, any positive behavioral interventions necessary to prevent the student’s behavior from impeding their learning	Note: 1. Those IEPs identified as noncompliant will be revised by DOC 2. Training and technical assistance will be provided on IEP development	<ul style="list-style-type: none"> Record review Teacher interviews CST interviews Classroom observations
Development of IEPs: Prior Education History	Ensure that all IEPs created in the future include individualized special education services that reflect the	Note:	<ul style="list-style-type: none"> Record review

¹ Items selected for monitoring are issues in Adam X Settlement Status Chart and are required actions under state and federal special education law.

² Plaintiff’s Request

Area	Suggested Action ²	Monitoring	Monitoring Activities
	needs of the student and consider the student’s previous level of special education services, including appropriate related services, any positive behavioral interventions necessary to prevent the student’s behavior from impeding their learning	<ol style="list-style-type: none"> 1. Training and technical assistance will be provided on IEP development 2. Activities to verify correction of noncompliance will include IEP development 	
Development of IEPs: Annual Review	Ensure IEP meeting are held to reevaluate IEPs periodically, but not less than annually, and revise students’ IEPs as appropriate to address any lack of expected progress toward the annual goals designed for the student as well as in the general education curriculum.	<ul style="list-style-type: none"> • DCF 3: Individualized Education Program <p>Note:</p> <ol style="list-style-type: none"> 1. State and federal special education regulations require IEP meetings to be held annually to review and revise the IEP. 2. Those IEPs that are identified as noncompliant will be revised by DOC 3. Training and technical assistance will be provided on annual review timelines 4. Activities to verify correction will include review of IEP annual review timelines 	<ul style="list-style-type: none"> • Record review • Teacher interviews • CST interviews • Classroom observations
Transition Services	Develop and implement individualized transition plans for all student with disabilities per DOC Policy Number SUP.003.009 that all facilities “address the transition of both students with	<ul style="list-style-type: none"> • DCF 5 	<ul style="list-style-type: none"> • Record review • CST interviews

Area	Suggested Action ²	Monitoring	Monitoring Activities
	disabilities and non-disabled students.”		

Office of Special Education Policy and Dispute Resolution
Procedures for Monitoring Department of Correction Facilities

A. General Requirements

1. Monitoring activities will take place from September 1, 2019 through October 31, 2019.
2. The following facilities will be monitored:
 - a. Garden State
 - b. Wagner
 - c. Mountainview
 - d. New Jersey State Prison
 - e. Northern State Prison
 - f. Edna Mahan
3. Teams will be assigned to each facility. A team leader will be designated.
4. Team of three monitors will conduct monitoring visits.
5. Monitoring visits will consist of:
 - a. File review; and
 - b. Interviews with school staff.
 - c. Classroom observations
 - d. Interviews with a sample of students.
 - i. 10 students at each facility will be interviewed
 - ii. All students will be interviewed at facilities housing less than 10 students
 - e. Review of Student Work Samples
 - i. Work samples from the prior 4 weeks of instruction will be reviewed
 - ii. Work samples will be collected from each teacher whose classroom is observed
 - iii. Work samples from 5 students at each facility will be reviewed
 - iv. The purpose of the review of the work samples is to connect the content and instructional level of the work to the goals and objectives and Present Levels of Academic Achievement and Functional Performance (PLAAFP) statement in selected student IEPs.
6. The following programs will be observed:
 - a. Classroom
 - b. Pod facilities
 - c. Cell side Instruction
7. Each monitoring visit will consist of two days.

B. Responsibilities of the Team Leader

1. Schedule monitoring visits within the designated window.
2. Communicate with facility leadership.
3. Organize and maintain all documentation.
4. Send a copy of the monitoring report to Kim Murray no later than 5 business days after the monitoring visit.

C. Monitoring Timelines

Office of Special Education Policy and Dispute Resolution
Procedures for Monitoring Department of Correction Facilities

4-6 Weeks Prior to the Monitoring Visit

1. The team leader will communicate, via email and phone, with facility leadership to schedule the monitoring visit.
 - a. Review the monitoring process;
 - b. Answer questions; and
 - c. Provide contact information.
2. Documentation verifying this contact will be maintained in the monitoring binder.

5 Days Prior to Onsite Monitoring

1. Contact facility no more than 5 business days prior to onsite visit and provide list of students whose files must be available and staff members needed for interview during onsite visit.
2. Ensure that all required documentation will be included in student files when you arrive at the facility.

Onsite Monitoring

1. Conduct file review using the approved data collection forms.
 - o Make copies of IEP documentation demonstrating noncompliance.
2. Staff interviews using the approved interview questions.
3. Conduct classroom observations.
4. Student interviews using the approved interview questions.
5. Review of student work samples.
6. Complete the *General Education Requirements Compliance Checklist*.

E. Determining Noncompliance

1. Compliance will be determined for each of the requirements data collection forms.
 - o A requirement will be considered noncompliant if noncompliance is identified in one or more files. Findings of noncompliance will be informed by the DOE's file review, staff interviews and classroom observations.

F. Monitoring Report

1. Monitoring reports must be developed using the approved template.
2. Monitoring report must be submitted to the Kim Murray not more than 5 business days after the site visit.

G. Verifying Correction of Noncompliance

1. As agreed by DOC, all noncompliance must be corrected within six months of date of monitoring report.
2. Follow existing procedures for verification of noncompliance.

Office of Special Education Policy and Dispute Resolution
Procedures for Monitoring Department of Correction Facilities

H. File Maintenance and Retention

1. The DCFs, documentation of noncompliance, and summary of interview questions must be scanned and saved on the s drive in the folder for each district. O:\SPED\ProgAcc\Adam X\DOC Monitoring Reports

New Jersey Department of Education
 Office of Special Education Policy and Dispute Resolution
 General Education Requirements Compliance Checklist

Facility _____ Date of Visit _____ Team Leader _____

I. General Requirements	Evidence	Determination
1. A register is maintained for each class program.		
2. The educational programs operate a minimum of 220 days per year		
3. Education programs are available four hours per day, five days a week, 220 days per year.		
4. Home instruction is provided in accordance with N.J.A.C. 6A: 16-10.1 and 10.2.		
II. Staffing	Evidence	Determination
5. Educational personnel are employed to ensure the provision of program and services.		
6. Educational personnel possess appropriate certification endorsement.		
7. Copies of educational staff certifications are maintained at the agency office of education and the appropriate program site.		
8. The agency has submitted a plan for the required professional development for all teachers and education services personnel.		
III. Student Records	Evidence	Determination
9. The State facility notifies the responsible district Board of Education immediately upon a student's admission.		
10. The responsible district provides requested information to the State facility within 10 days of notification of admission.		

New Jersey Department of Education
 Office of Special Education Policy and Dispute Resolution
 General Education Requirements Compliance Checklist

Facility _____ Date of Visit _____ Team Leader _____

III. Provision of Services	Evidence	Determination
11. Intake questions are included to ascertain the student’s current educational level.		
12. Education personnel do not teach subjects outside of their certification.		

NJDOE Office of Special Education Policy and Dispute Resolution

Data Collection Form – Department of Corrections

Facility _____ Date of Visit _____ Monitor _____

DCF 1: Pre-referral Interventions

General education staff maintain documentation of intervention(s) provided in the general education setting prior to referring a student for evaluation. N.J.A.C. 6A:14-3.3(b) and(c)	Student Initials	Student Initials	Student Initials	Student Initials
Type				
Frequency				
Duration				
Effectiveness				

Number of Compliant Files	
Number of Files Reviewed	

NJDOE Office of Special Education Policy and Dispute Resolution

Data Collection Form – Department of Corrections

Facility _____ Date of Visit _____ Monitor _____

DCF 2: Initial Evaluation				
Identification Meeting Requirements N.J.A.C. 6A:14-2.3(f) and 2.3(g) and 2.3(k) N.J.A.C. 6A:14-3.3(e) 20 U.S.C. §1414(b)(1); and 34 CFR §300.304(a) 20 U.S.C. §1414(b)(1)(c)(4)(A); 34 CFR §300.304(a)(4); and 34 CFR §300.305(a)	Student Initials	Student Initials	Student Initials	Student Initials
Notice of meeting provided early enough to ensure student has opportunity to attend				
Conducted within 20 days of receipt of referral				
Written notice provided within 15 days of meeting				
Required Participants at Identification Meeting N.J.A.C. 6A:14-2.3(f) and 2.3(g) N.J.A.C. 6A:14-2.4(a)1 20 U.S.C. §1414(d)(1)(B); and 34 CFR §300.321(a) 34 CFR §300.503(c) and §300.504(d)	Student Initials	Student Initials	Student Initials	Student Initials
Student (indicate "did not attend" if student didn't attend)				
DOC documents attempts to obtain student participation if student fails to attend the meeting				
General education teacher				
Full student study team				
Speech-language Specialist (Language concerns)				
Interpreter when necessary				
Evaluation N.J.A.C. 6A:14-2.3(a)6 N.J.A.C. 6A:14-2.5(b)6 and 3.6(b) 20 U.S.C. §1414(a)(1)(D); 34 CFR §300.300(a)	Student Initials	Student Initials	Student Initials	Student Initials
Multi-disciplinary evaluations: ESERS (minimum of 2 assessments by 2 team members)				
DOC maintains record of informed consent to evaluate				

NJDOE Office of Special Education Policy and Dispute Resolution

Data Collection Form – Department of Corrections

Facility _____ Date of Visit _____ Monitor _____

Functional Assessment N.J.A.C. 6A:14-3.4(f)4(i-vi) 20 U.S.C. §1414(b)(4) and (5); and 34 CFR §300.306(c)(i)	Student Initials	Student Initials	Student Initials	Student Initials
Structured observation <input type="checkbox"/> If SLD— in classroom				
Student interview				
Teacher interview				
Review of developmental/educational history				
Review of interventions				
Other informal measures				
Eligibility Meeting N.J.A.C. 6A:14-2.3(k)3,5 and 2.3(f) and 2.3(g)1-7 20 U.S.C. §1414(b)(1); and 34 CFR §300.304(a) 20 U.S.C. §1414(b)(1)(c)(4)(A); 34 CFR §300.304(a)(4); and 34 CFR §300.305(a)	Student Initials	Student Initials	Student Initials	Student Initials
Notice of meeting provided early enough to ensure student has opportunity to attend				
Written notice provided within 15 days of meeting				
Required Participants at Eligibility or Eligibility IEP Meeting N.J.A.C. 6A:14-2.3(f) and 2.3(g)1-7 20 U.S.C. §1414(b)(1)(c)(4)(A); 34 CFR §300.304(a)(4); and 34 CFR §300.305(a)	Student Initials	Student Initials	Student Initials	Student Initials
Student				
General education teacher				
Case manager/DOC representative (and at least one CST member who conducted an assessment)				
Interpreter when necessary: N.J.A.C. 6A:14-2.4(a)1 and 34 CFR §300.503(c) and §300.504(d)				
If continuing with IEP meeting, special education teacher or service provider is present for development of IEP				

NJDOE Office of Special Education Policy and Dispute Resolution

Data Collection Form – Department of Corrections

Facility _____ Date of Visit _____ Monitor _____

Eligibility Criteria	Student Initials	Student Initials	Student Initials	Student Initials
N.J.A.C.6A:14-3.5 N.J.A.C. 6A:14-3.3(e)1(i-iv) 20 U.S.C. §1414(c); 34 CFR §300.306(c) 20 U.S.C. §1414(d)(1)(D); and 34 CFR §300.321(f)				
Established criteria applied in determining eligibility				

Number of Compliant Files	
Number of Files Reviewed	

NJDOE Office of Special Education Policy and Dispute Resolution

Data Collection Form – Department of Corrections

Facility _____ Date of Visit _____ Monitor _____

DCF 3: Individualized Education Program (IEP)				
IEP Meeting Requirements N.J.A.C. 6A:14-2.3(k)3-5 N.J.A.C. 6A:14-2.3(f) and 2.3(g)1-7 20 U.S.C. §1414(b)(1)(c)(4)(A); 34 CFR §300.304(a)(4); and 34 CFR §300.305(a) 20 U.S.C. §1414(b)(1); and 34 CFR §300.304(a)	Student Initials	Student Initials	Student Initials	Student Initials
Notice of a meeting is provided early enough to ensure the student has an opportunity to attend				
Written notice is provided within 15 days following the meeting				
Annual Review Timelines N.J.A.C. 6A:14- 3.7a(1)	Student Initials	Student Initials	Student Initials	Student Initials
Annual reviews are conducted at least once per year				
IEP Meeting Participants N.J.A.C. 6A:14-2.3(k)2(i-x)1 N.J.A.C. 6A:14-2.4(a)1 20 U.S.C. §1414(d)(1)(B); and 34 CFR §300.321(a) 34 CFR §300.503(c) and §300.504(d)	Student Initials	Student Initials	Student Initials	Student Initials
Adult student or parent/guardian for students under 18				
General education teacher				
Special education teacher				
Case manager (may also function as district rep)				
Interpreters at meetings when required				

NJDOE Office of Special Education Policy and Dispute Resolution

Data Collection Form – Department of Corrections

Facility _____ Date of Visit _____ Monitor _____

IEP Required Considerations and Components N.J.A.C. 6A:14-3.7(c)1-11 and (e) 1-17 20 U.S.C. §1414(d)(3)(A)(B); and 34 CFR §300.324(a)(1)(2)	Student Initials	Student Initials	Student Initials	Student Initials
Present Levels of academic achievement and functional performance (PLAAFP)				
Statement of how the student’s disability affects his/her involvement and progress in the general curriculum				
Strengths of the student				
Results of initial or most recent evaluations (relevant data)				
Positive behavioral interventions and supports for students whose behavior impedes learning				
Language needs—LEP students				
Blind/visually impaired- instruction in Braille				
Communication needs				
Deaf/Hard of hearing – opportunities for direct communication with peers and personnel				
Need for assistive technology in accordance with				
Required Statements				
Measurable annual goal(s) and objective(s)				
Statement how progress towards annual goals will be measured				
Statement of how adult students will be informed of student progress towards annual goals and how often progress reports are provided to students				
Statements of supports for personnel				
Projected starting dates of related services and frequency, location and duration of services				
Related Services				
Program				
In-class resource-amount of time teacher is present in the class				

Number of Compliant Files	
Number of Files Reviewed	

Data Collection Form – Department of Corrections

Facility _____ Date of Visit _____ Monitor _____

DCF 4: Reevaluation of Students Eligible for Special Education and Related Services				
Timelines N.J.A.C. 6A:14-3.8(a) 20 U.S.C. §1414(a)(2)(B)(ii)	Student Initials	Student Initials	Student Initials	Student Initials
Reevaluation conducted within 3 years of previous date of eligibility				
Reevaluation Meeting Requirements N.J.A.C. 6A:14-2.3(k)3-5 N.J.A.C. 6A:14-2.3(f) and 2.3(g)1-7 20 U.S.C. §1414(b)(1)(c)(4)(A); 34 CFR §300.304(a)(4); and 34 CFR §300.305(a) 20 U.S.C. §1414(b)(1); and 34 CFR §300.304(a)	Student Initials	Student Initials	Student Initials	Student Initials
Notice of the meeting is provided early enough to ensure adult student has opportunity to attend				
Written notice is provided within 15 days following the meeting				
Required Participants at Reevaluation Planning Meeting N.J.A.C. 6A:14-2.3(k)2(i-x) N.J.A.C. 6A:14-2.3(k)7 N.J.A.C. 6A:14-2.4(a)1 20 U.S.C. §1414(c)(1)(A)(i); and 34 CFR §300.305(a) 34 CFR §300.503(c) and §300.504(d)	Student Initials	Student Initials	Student Initials	Student Initials
Case manager				
Adult student or parent/guardian for students under 18				
DOC documents attempts to obtain adult student participation				
General education teacher				
Special education teacher				
Interpreters at meetings when required				

NJDOE Office of Special Education Policy and Dispute Resolution

Data Collection Form – Department of Corrections

Facility _____ Date of Visit _____ Monitor _____

Waiving of Reevaluation N.J.A.C. 6A:14-2.3(a)1 N.J.A.C. 6A:14-2.3(a)1 20 U.S.C. §1414(c); 34 CFR §300.300(c)(1) and(2)	Student Initials	Student Initials	Student Initials	Student Initials
Notice is provided to obtain consent if DOC proposes waiving the reevaluation				
If adult student consents to waive re-evaluation, the DOC maintains record of student consent and a new timeline is set 3 years from date of consent				
Determination of Continued Eligibility Meeting Requirements N.J.A.C. 6A:14-2.3(k)3,5 N.J.A.C. 6A:14-2.3(f) and 2.3(g)1-7 20 U.S.C. §1414(b)(1); and 34 CFR §300.304(a) 20 U.S.C. §1414(b)(1)(c)(4)(A); 34 CFR §300.304(a)(4); and 34 CFR §300.305(a)	Student Initials	Student Initials	Student Initials	Student Initials
Notice of the meeting is provided early enough to ensure the adult student has opportunity to attend				
Prior to conducting any assessments consent from the adult student will be obtained				
Written notice is provided within 15 days following the meeting				
Required Participants at Meetings to Determine Continued Eligibility N.J.A.C. 6A:14-2.3(k)2(i-x) N.J.A.C. 6A:14-2.4(a)1 20 U.S.C. §1414(c)(1)(A)(i); and 34 CFR §300.305(a) 34 CFR §300.503(c) and §300.504(d)	Student Initials	Student Initials	Student Initials	Student Initials
Case manager				
Adult student or parent/guardian for students under 18				
General education teacher				
Interpreters when necessary				

Number of Compliant Files	
Number of Files Reviewed	

NJDOE Office of Special Education Policy and Dispute Resolution

Data Collection Form – Department of Corrections

Facility _____ Date of Visit _____ Monitor _____

DCF 5: Age 14 and 16 Transition Requirements NOTE: This section is completed ONLY when the student will be released prior to turning 21.				
Student Invitations N.J.A.C. 6A:14-2.3(k)2x and 3.7(e)13, 3.7(h) 20 U.S.C. §1414 (d)(1)(A)(i)(1)(VIII); and 34 CFR §300.322(b)(2)	Student Initials	Student Initials	Student Initials	Student Initials
Adult student is invited to attend his/her own IEP meeting				
Age 14 IEP Requirements N.J.A.C. 6A:14-3.7(e)11	Student Initials	Student Initials	Student Initials	Student Initials
The IEP includes a statement of the adult student’s strengths, interests and preferences				
The IEP include a description of the need for consultation with other agencies				
The IEP includes the name or position of a staff person responsible to serve as liaison to post-secondary resources				
The IEP includes a statement of needed interagency linkages and responsibilities				
Age 16 IEP Requirements N.J.A.C. 6A:14-3.7(e)11	Student Initials	Student Initials	Student Initials	Student Initials
The IEP includes an appropriate postsecondary measurable goal or goals that covers education or training, or employment, and, as needed, independent living				
The post secondary goal(s) are updated annually				
There is evidence that the measurable postsecondary goal(s) were based on age appropriate transition assessment				
The IEP includes transition services that will reasonably enable the student to meet his or her postsecondary goal(s) <i>Is a type of instruction, related service, community experience, development of employment and other post-school adult living objectives, and if appropriate,</i>				

NJDOE Office of Special Education Policy and Dispute Resolution

Data Collection Form – Department of Corrections

Facility _____ Date of Visit _____ Monitor _____

<p><i>acquisition of daily living skills, and provision of a functional vocational evaluation listed in association with meeting the post-secondary goal(s)?</i></p>				
<p>The transition services include courses of study that will reasonably enable the student to meet his or her postsecondary goal(s) <i>Does the IEP list specific course titles that student will take during the time period covered by the IEP?</i></p>				
<p>The IEP includes annual goal(s) related to the student’s transition services needs <i>Is (are) an annual goal(s) included in the IEP that is(are) related to the student’s transition services needs?</i></p>				
<p>If appropriate, there is evidence that a representative of any participating agency was invited to the IEP team meeting with the prior consent of the student or student who has reached the age of majority</p>				
<p><i>For the current year, is there evidence in the IEP that representatives of any of the following agencies/services were invited to participate in the IEP development including but not limited to: postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation for this postsecondary goal? Was consent obtained from the student (or student, for a student the age of majority)?</i> <i>If yes to both, then circle Y</i> <i>If no invitation is evident and a participating agency is likely to be responsible for providing or paying for transition services and there was consent to invite them to the IEP meeting, then circle N.</i> <i>If there is no evidence with which to determine if the student will need outside agency involvement or no agency is likely to provide or pay for transition services, circle NA.</i> <i>If student or individual student consent (when appropriate) was not provided, circle N.</i></p>				

<p>Number of Compliant Files</p>	
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NJDOE Office of Special Education Policy and Dispute Resolution

Data Collection Form – Department of Corrections

Facility _____ Date of Visit _____ Monitor _____

Number of Files Reviewed	
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DCF 6: Graduation Notice and Summary of Performance				
Written Notice of Graduation N.J.A.C. 6A:14-4.11(b)2	Student Initials	Student Initials	Student Initials	Student Initials
Provided when required - prior to graduation				
Summary of academic achievement and functional performance N.J.A.C. 6A:14-4.11(b)4 20 U.S.C. §1414(c)(5)(B); and 34 CFR §300.305(e)(3)	Student Initials	Student Initials	Student Initials	Student Initials
Includes date of graduation/exit				
Provided prior to graduation or the conclusion of the school year in which he/she exceeds the age of eligibility (exits program)				

Number of Compliant Files	
Number of Files Reviewed	

NJDOE Office of Special Education Policy and Dispute Resolution

Data Collection Form – Department of Corrections

Facility _____ Date of Visit _____ Monitor _____

DCF 7: Classroom Observation/Compliance Requirements				
Implementation of IEPs	Student Initials	Student Initials	Student Initials	Student Initials
Provision of special education programs (speech for ESLS)				
Provision of related services				
Implementation of accommodations and modifications				
Teachers have access to IEPs	<i>Interviews indicate teachers have access to IEPs</i>			YES NO
DOC maintains documentation that teachers have been informed of their responsibilities	<i>Evidence demonstrates teacher have been informed of IEP responsibilities</i>			YES NO
Review of Programs/Code Requirements: Class and Group Size				
Inclusion Programs				
Speech-language therapy groups				

Number of Compliant Files	
Number of Files Reviewed	

NJDOE Office of Special Education Policy and Dispute Resolution

Data Collection Form – Department of Corrections

Facility _____ Date of Visit _____ Monitor _____

DCF 8: Discipline Procedures				
IEP Development and Implementation 34 C.F.R. §300.304(b) 34 C.F.R. §300.501(c) 34 C.F.R. §300.530(a)-(h)	Student Initials	Student Initials	Student Initials	Student Initials
The public agency provides services to student with disabilities that have been removed from their current placement for 10 school days in the same school year, during any subsequent days of removal.				
Personnel apply relevant disciplinary procedures to students with disabilities in the same manner and duration as would be applied to students without disabilities when the DOC changes a student’s placement for disciplinary reasons exceeding 10 consecutive school days and determined that the violation was not a manifestation of the student’s disability.				
Students with disabilities who are removed from their current placement are provided services in another setting in order to continue to participate in the general education curriculum and to progress toward meeting IEP goals.				
During suspensions of more than 10 school days in a school year, regardless of the manifestation determination, students with disabilities receive services to enable them to participate in the general curriculum and to progress toward IEP goals.				
Within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the DOC, the student, and relevant members of the IEP team meet to review all relevant information in the student’s file, including the student’s IEP, and any teacher observations.				
In making the manifestation determination, the IEP team reviews all relevant information in the student’s file to determine if the conduct in question was caused by, or had a direct and substantial relationship to the student’s disability				

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An interim alternative educational setting is determined by the IEP team when there is a change of placement.				
Positive Behavioral Supports				
34 C.F.R. §300.324(a) 34 C.F.R. §300.530(d)-(h)				
In the case of a student whose behavior impedes the student’s learning or that of others, the IEP Team considers the use of positive behavioral interventions and supports and other strategies to address that behavior.				
At least one general education teacher participates in the determination of appropriate positive behavioral interventions and supports and other strategies for the student.				
As appropriate, a functional behavioral assessment and behavioral intervention services and modifications are designed to address the behavior violation so that it does not recur for a student with a disability who is removed from the student’s current placement.				
Functional behavioral assessments are based on multiple sources of data, including but not limited to, information obtained from direct observation of the student, information from the student, the student’s teacher(s) and/or related service provider(s), a review of available data and information from the student’s record.				
When a student has been removed for more than 10 days and the student’s conduct is a manifestation of the student’s disability, the IEP Team conducts a functional behavioral assessment and implements a behavioral intervention plan.				
If the student already has a behavioral intervention plan, the IEP Team meets to review the plan and its implementation and modifies the plan and its implementation, as necessary, to address the behavior that resulted in the disciplinary change of placement.				
Procedural Safeguards				
34 C.F.R. §300.501(c) 34 C.F.R. §300.530(d) and (h)				
If the student cannot participate in a meeting in which a decision is to be made regarding the educational placement of the child, the agency uses				

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Facility _____ Date of Visit _____ Monitor _____

other methods to ensure student participation, including individual or conference calls or video conferencing.				
If a placement decision is made by a group without the involvement of a student, the agency maintains a record of the attempts to ensure their involvement.				
The public agency provides services during periods of removal to a student with a disability who has been removed from his or her current placement.				
The agency notifies the student on the date in which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct and provides the student with the procedural safeguards notice.				

Number of Compliant Files	
Number of Files Reviewed	

NJDOE Office of Special Education Policy and Dispute Resolution

Classroom Walkthrough – Department of Corrections

Facility _____ Date of Visit _____ Monitor _____
 Teacher _____ Class Type: Classroom POD Cell side

<p>Classroom Arrangement:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Location is accessible <input type="checkbox"/> Allows for access to all areas <input type="checkbox"/> Allows all students to see and hear instruction <input type="checkbox"/> Allows for teacher to see and monitor all students <input type="checkbox"/> Allows students to work without distraction <input type="checkbox"/> Noise level does not interfere with learning <input type="checkbox"/> Lighting does not interfere with learning <input type="checkbox"/> Students with disabilities are seated within the same seating structure as the other students in the classroom. 	<p>Lesson Design:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Alternating whole & small group activities <input type="checkbox"/> Efficient transitions <input type="checkbox"/> Equitable student participation <input type="checkbox"/> Evidence of differentiation <input type="checkbox"/> Evidence of direct instruction <input type="checkbox"/> Classroom discussions <input type="checkbox"/> The students' IEP goals and objectives are integrated as part of the lesson design and instructional delivery, as applicable <input type="checkbox"/> Materials match students' needs and are age-appropriate <input type="checkbox"/> Instruction is adjusted as needed <input type="checkbox"/> Evidence that data was used to design lessons and deliver instruction 	<p>Lesson Presentation Methods</p> <ul style="list-style-type: none"> <input type="checkbox"/> Chalk/White board <input type="checkbox"/> Smart Board <input type="checkbox"/> Overhead <input type="checkbox"/> Lecture <input type="checkbox"/> Printed notes/handouts <input type="checkbox"/> Videos/movies <input type="checkbox"/> Graphic organizers <input type="checkbox"/> Visual supports <input type="checkbox"/> Objects/manipulatives <input type="checkbox"/> Supplementary aids and services, accommodations, and modifications are applied as appropriate to the curricular activity. <input type="checkbox"/> Other _____ 	<p>Staff in Classroom</p> <ul style="list-style-type: none"> <input type="checkbox"/> General education teacher <input type="checkbox"/> Special Education Teacher <input type="checkbox"/> Classroom aide <input type="checkbox"/> One-to-one aide
<p>Classroom Appearance</p> <ul style="list-style-type: none"> <input type="checkbox"/> organized, neat and uncluttered <input type="checkbox"/> learning goals/data is displayed <input type="checkbox"/> student work is displayed <input type="checkbox"/> visual supports are used (e.g. word wall and other materials on walls) <input type="checkbox"/> centers are utilized 	<p>Check for Learning/Understanding</p> <ul style="list-style-type: none"> <input type="checkbox"/> Verbal questioning <input type="checkbox"/> Monitoring student practice <input type="checkbox"/> Total group response <input type="checkbox"/> Formative assessments <input type="checkbox"/> The general education teacher or the general education-special education co-teachers check that the students with disabilities are understanding the instruction (rather than the paraprofessional) 	<p>Instructional Format</p> <ul style="list-style-type: none"> <input type="checkbox"/> Small-group discussion <input type="checkbox"/> Large-group discussion <input type="checkbox"/> Lecture <input type="checkbox"/> Independent reading <input type="checkbox"/> Individual seatwork <input type="checkbox"/> Dyads/partners <input type="checkbox"/> 1:1 instruction <input type="checkbox"/> In-class assignment <input type="checkbox"/> Homework <input type="checkbox"/> Students with disabilities are engaged in the same curricular activity as the other members of the class <input type="checkbox"/> Other _____ 	<p>Co-Teaching Methods</p> <ul style="list-style-type: none"> <input type="checkbox"/> Complementary teaching <input type="checkbox"/> Station Teaching <input type="checkbox"/> Parallel Teaching <input type="checkbox"/> Supportive Teaching <input type="checkbox"/> Shared Teaching <input type="checkbox"/> General education teacher is the primary provider of the instruction or assessment <input type="checkbox"/> Teachers differentiate instruction

NJDOE Office of Special Education Policy and Dispute Resolution

Classroom Walkthrough – Department of Corrections

Facility _____ Date of Visit _____ Monitor _____
 Teacher _____ Class Type: Classroom POD Cell side

<p>Classroom Management</p> <ul style="list-style-type: none"> <input type="checkbox"/> Safe and orderly environment <input type="checkbox"/> Routines and procedures are used <input type="checkbox"/> Positive behavior is reinforced <input type="checkbox"/> Teacher moves throughout the classroom <input type="checkbox"/> Teacher manages more than one activity 	<p>Materials Used by Students</p> <ul style="list-style-type: none"> <input type="checkbox"/> Textbook <input type="checkbox"/> Workbook <input type="checkbox"/> Trade Book <input type="checkbox"/> Worksheets <input type="checkbox"/> Newspapers/Magazines <input type="checkbox"/> Other _____ 	<p>Observed Level of Engagement</p> <ul style="list-style-type: none"> <input type="checkbox"/> Authentically and actively on-task <input type="checkbox"/> Passive/Compliant <input type="checkbox"/> Disengagement/Disruptive
<p>Classroom Culture</p> <ul style="list-style-type: none"> <input type="checkbox"/> Student-teacher interactions are positive <input type="checkbox"/> Students are comfortable sharing ideas and asking questions. <input type="checkbox"/> Peer assistance is occurring as appropriate <input type="checkbox"/> Peer interactions occur naturally among all students <input type="checkbox"/> Teachers interact with students with disabilities 	<p>Technology Used by Students</p> <ul style="list-style-type: none"> <input type="checkbox"/> Computers <input type="checkbox"/> Internet <input type="checkbox"/> e-mail <input type="checkbox"/> Instructional software <input type="checkbox"/> Graphics software <input type="checkbox"/> Printer/scanner <input type="checkbox"/> Other _____ 	

NJDOE Office of Special Education Policy and Dispute Resolution

Interview Questions – Department of Corrections

Facility _____ Date of Visit _____ Monitor _____

Staff Member Interviewed _____ Position _____

General Information	
1. What type of special education programs are offered in this facility?	
2. What is your role/responsibilities/caseload?	
3. How long have you been with the DOC?	
Student Involvement	
4. How are students invited to meetings? (How is this documented?)	
5. What are the procedures if the student fails to attend the meeting?	
6. What is the procedure for providing written notice?	
7. How do teachers participate in meetings? How is coverage arranged?	
8. What are your procedures for requesting student consent to excuse an IEP team member?	
9. What are the procedures for providing interpreters for meetings?	
Evaluation/Reevaluation	
10. How are Student Find activities conducted?	
11. Vision/hearing screenings and health summaries are conducted for every student referred to the student study team for evaluation	
12. What is the DOC's I&RS process?	
13. Is there an I&RS committee in each facility? Are procedures for implementation the same in each facility?	
14. How are interventions documented?	
15. What is the procedure for direct referrals?	
16. What are the DOC's procedures for conducting identification meetings?	
17. Who attends identification meetings? (school age/language concerns)	
18. What are procedures for conducting vision/hearing screenings?	
19. What are the DOC's procedures for maintaining hearing aids?	
20. What are the procedures for requesting consent? (initial evaluation /initial IEP implementation/reevaluation/if the student fails to attend/waiving reeval/amending IEP without a meeting)	
21. How many CST assessments are completed for an initial evaluation? (multi-disciplinary)	

NJDOE Office of Special Education Policy and Dispute Resolution

Interview Questions – Department of Corrections

Facility _____ Date of Visit _____ Monitor _____

Staff Member Interviewed _____ Position _____

22. What are the procedures for determining who will conduct the different components of a functional assessment?	
23. What are the procedures for waiving a reevaluation?	
24. Who attends reevaluation planning meetings?	
25. How do you determine eligibility for special education and related services?	
26. How does the DOC document the certification of agreement/disagreement?	
27. What is the procedure for providing evaluation reports to students?	
28. What are the procedures for inviting participants to meetings (students, teachers—barriers to participation)?	
29. What are the procedures for oversight of the IEP process?	
30. What are the procedures for conducting annual reviews?	
31. What procedures do you follow to ensure that students receive the services in their IEPs?	
32. What are your procedures for informing teachers about their specific IEP responsibilities?	
33. Describe your intake process.	
34. What procedures are in place when an IEP cannot be implemented as written?	
35. What is your process for conducting annual reviews?	
36. Are there barriers that prevent the receiving school from having a completed annual review for each student prior to the expiration of their current IEP?	
37. What types of transition assessments are conducted for students turning age 16 and above?	
38. What kinds of transition services are provided at DOC?	
39. How do you ensure that a current IEP is in effect and implemented without unreasonable delay?	
40. Are there any concerns with fully implementing IEPs as written?	

Transition to Adult Life

Interview Questions – Department of Corrections

Facility _____ Date of Visit _____ Monitor _____

Staff Member Interviewed _____ Position _____

41. How do you identify student interests and preferences?	
42. How do you identify courses of study?	
43. How do you connect the courses with student interests and preferences?	
44. How do you identify post-secondary goals?	
45. How do you link IEP goals and objectives with post-secondary goals?	
46. How do you develop activities/ strategies and ensure they are related to post-secondary goals?	
47. If agencies do not attend IEP meetings and they are paying for services, what steps are taken to ensure their participation?	
Curriculum, Instruction and Student Engagement Appropriate for: administrators, teachers	
48. How is curriculum developed and aligned with the New Jersey State Learning Standards (NJSLS)?	
49. What is the process to review and revise curriculum? Has the DOC developed a written procedure for this process?	
50. How is curriculum aligned with grade level instruction?	
Instruction and Student Engagement Appropriate for: all personnel	
51. How does the DOC make IEPs accessible to each individual who is responsible for their implementation?	
52. How are student transcripts assessed to determine course enrollment?	
53. How are students assigned to subsequent courses once they have completed a credit?	
54. Are teachers aware of the grade level of each student? How are they informed?	
55. How are teachers and related service providers informed of responsibilities related to implementing the student’s IEP, including the specific accommodations, needed modifications and supports that must be provided?	

Interview Questions – Department of Corrections

Facility _____ Date of Visit _____ Monitor _____

Staff Member Interviewed _____ Position _____

56. What types of assistive technology are available for students?	
57. How is instruction based on individual student need?	
58. Discuss specific supports and strategies that support the behavioral needs of students provided in the classroom.	
59. How do you meet the diverse needs of students in your classroom?	
60. Give specific examples of how you modify the instructional materials and curricular goals to meet the needs of students.	
61. How are teachers evaluated?	

Assessment and Data Driven Decision Making
 Appropriate for: administrators, teachers, team members

62. What types of formative assessments are used in your classroom?	
63. What summative assessments are used to measure achievement?	
64. How are data collected to determine student progress on IEP goals and objectives?	
65. How are these data used for annual reviews?	
66. Is there a mechanism in place for evaluating program efficacy? If so, please describe.	

Professional Development
 Appropriate for: administrators

67. What is the process to determining professional development topics?	
68. Is there a consideration to review student learning data when creating professional development plans? If so, what student data are reviewed?	
69. How is relevance between professional development topics and the needs of targeted population determined?	

Communication with Administration
 Appropriate for: Teachers, CST

NJDOE Office of Special Education Policy and Dispute Resolution

Interview Questions – Department of Corrections

Facility _____ Date of Visit _____ Monitor _____

Staff Member Interviewed _____ Position _____

70. How are concerns about students shared with administration?	
71. What is the process for follow-up from administration?	
72. Is there a formal process for sharing of information/concerns between the education unit and correction officers?	
73. What is the process when a student refuses to come to class?	
74. What is the process when a student in administrative segregation refuses to come to class?	
75. Are there are any barriers or obstacles that would prevent a student from accessing instruction in the classroom?	
Additional Questions	
Appropriate for: administrators, teachers, child study team members, related services providers	
76. What changes would you like to see that would allow you to do your job better?	
77. Is there anything that we should have asked or discussed that we didn't?	
78. Is there anything else you'd like us to look at or know?	

Exhibit B

Following issuance of the report, NJDOE will meet with DOC staff to review each finding of noncompliance, roots causes that were identified and activities needed to ensure compliance. Correction and verification of noncompliance identified through monitoring activities is a cyclical activity that includes correction of individual student noncompliance, development of policies and procedures that address root causes of noncompliance, provision of training and technical assistance to staff and verification activities to ensure long term compliance.



Exhibit C

YOU MAY BE ELIGIBLE FOR ADDITIONAL EDUCATIONAL AND/OR VOCATIONAL SERVICES

In 2017, a lawsuit called *Adam X. v. New Jersey Department of Corrections* was filed against New Jersey Department of Corrections (DOC) and New Jersey Department of Education (DOE). The case claimed that high school students with disabilities were denied special education in New Jersey prisons.

In 2021, DOC and DOE settled the lawsuit by agreeing to provide special education for eligible students in adult prisons. DOC also agreed to provide educational and vocational services to students to make up for services they should have been given by DOC in the past (this is called "compensatory education"). DOC will give these additional services, or funds to pay for them, to people still in prison and to people released.

You may be eligible for these additional services if you were:

- In a DOC prison at any time after January 11, 2015 **and** age 21 or younger during any of that time in prison; and
- Received special education services before you went to prison **or** have an educational disability **or** think you had an educational disability when you were in school before you went to prison.

If you think you are eligible and want to receive these services, please check "**YES**" on page 2. An independent expert Dr. Susan Roberts, who does not work for the DOC, will review your records and may want to speak with you. Dr. Roberts will decide if you are eligible to receive additional services. You will be informed of Dr. Roberts' decision within one year of submitting this form through the contact information you provide below.

If you check "**YES**" on page 2, you are requesting to be considered for additional services as part of this lawsuit settlement. This also means that you give up—or "waive"—any "compensatory education" claims (for services that should have been given in the past) against DOC and DOE that you could have filed on your own through a complaint with DOE or through a lawsuit.

If you do not want to be considered for additional services as part of this lawsuit settlement, please check "**NO**" on page 2. If you want to keep your rights to file your own complaint for services that should have been given in the past, you must check "NO" and return this completed form. If you do not return this form, you risk giving up or "waiving" your ability to file your own complaint.

IF YOU THINK YOU MIGHT BE ELIGIBLE FOR ADDITIONAL EDUCATIONAL OR VOCATIONAL SERVICES TO MAKE UP FOR WHAT SHOULD HAVE BEEN GIVEN IN THE PAST:

Please fill out this form and send it back to us in the envelope we have provided as soon as possible or by approximately January 2024*

NAME (please print):	
BIRTHDAY:	
SBI NUMBER:	
PHONE NUMBER (for yourself or a loved one who can contact you):	
ADDRESS (if currently in prison, list facility name only):	
OTHER INFO, FOR EXAMPLE EMAIL ADDRESS (for yourself or a loved one who can contact you)	

DO YOU WANT TO BE CONSIDERED FOR ADDITIONAL SERVICES?

- YES:** I agree to Dr. Roberts reviewing my records so that I may receive additional services or funds to pay for services. I agree to waive any "compensatory education" claims against DOC and DOE.
- NO:** I want to retain my rights to "compensatory education" from DOC subject to the applicable statute of limitation (the deadline for filing under law). I understand that I must separately pursue these claims if I want additional services.

**IF YOU ARE STILL IN PRISON:
Preference for Compensatory Education Services**

If you checked **YES and you're currently in prison**, Dr. Roberts will decide what kind of education services you will receive and may consider your preference.

If you know what kind of services you want to receive, please check one or more of these boxes:

- Educational services provided by DOC staff in DOC facilities
- Vocational services provided by DOC staff in DOC facilities
- Funds to use for approved educational, vocational, or reentry services 1) from an approved list of providers while in NJDOC custody, or 2) from an external provider after release from NJDOC custody

**IF YOU HAVE BEEN RELEASED FROM PRISON:
If appropriate, Dr. Roberts will award funds for you to use for approved educational, vocational, or reentry services from an external provider.**

YOUR SIGNATURE

TODAY'S DATE

* The deadline for returning this form is two years from the Court's final approval of the Settlement Agreement (also called "the Effective Date"). The Effective Date will likely be in January or February 2022, so you should submit this form no later than January 2024.

Exhibit D

Adam X. v. New Jersey Department of Corrections
Monitoring & Compliance Rubrics
Dr. Susan Roberts

I. Definitions:

- 1) "Substantial compliance" means that Dr. Roberts' review finds the DOC is 90% or more in compliance with the rubric area.
- 2) "Emerging compliance" means that Dr. Roberts' review finds that the DOC is 70% or more in compliance with the rubric area, but less than 90% in compliance with the rubric area.
- 3) "Noncompliance" means that Dr. Roberts' review finds that the DOC is less than 70% in compliance with the rubric area.

II. Modifications:

If Dr. Roberts is unable to complete a rubric, she will include an explanation for that rubric area. Subject to agreement of all parties, Dr. Roberts may modify the type or amount of information collected in the rubrics.

As one example, if the COVID-19 pandemic prevents Dr. Roberts from conducting the contemplated student interviews, her review will specify that she was unable to complete the student interviews. Dr. Roberts may request additional data, subject to the agreement of all parties, such as interviews with staff members or requests for student data to attempt to address the rubric areas.

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.

There is an up-to-date and approved written policy addressing the procedures for assessing each student's educational level which includes:

- Process for determining if the student previously received special education services
- Process for administering academic assessments (who administers them, within how many days of arrival at the facility, etc.)
- Procedure for requesting previous school records and following-up on records requests
- Procedure for sharing educational records among NJDOC facilities if a student is transferred.

Upon examination of student records, there is evidence the written procedure was followed (Student record reflects date of admission, date of assessments, date of records requests, date of IEP development/implementation, along with assessment results, previous school records, correspondence with the previous school district, etc.).

Measurement:

- A. Measure: Review all available SFEA student-inmate records.
Compliance: Records must reflect that the policy for addressing student's educational level was implemented.
- B. Measure: At least 50% of current special education students must be interviewed.
Compliance: Students must not dispute that they were assessed for special education.

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").

There is an up-to-date and approved written policy and evidence of implementation showing SFEA Individuals are interviewed to determine if special education services were provided in the last public school of record. Previous school records are requested to verify the need for special education services.

Measurement:

- A. Measure: DOC's policy must be reviewed.
Compliance: There must be an up-to-date and approved policy and procedure available for on-site review.
- B. Measure: Review all available SFEA student-inmate records.
Compliance: Records must reflect evidence of student interviews regarding previous special education services.
Compliance: Records must reflect evidence of Records Requests from the last public school of record.
Compliance: Records must reflect evidence of previous school records verifying the provision of special education services in the last public school of record.

- C. Measure: At least 50% of students receiving special education must be interviewed.
Compliance: Students must not dispute that they were interviewed by DOC staff regarding special education in previous school placement.

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.

There is an up-to-date and approved policy and procedure and evidence of implementation of DOC developing and implementing IEPs and Section 504 Plans according to the individual needs of the student, regardless of facility placement or resources. The policy and procedures define how records will be shared between and among DOC facilities to assure services are not interrupted due to a facility transfer.

Measurement:

- A. Measure: DOC's policy must be reviewed.
Compliance: There must be an up-to-date and approved policy and procedure available for on-site review.
- B. Measure: Review all available SFEA student-inmate records.
Compliance: Records must reflect evidence that students receiving special education received continuous services when transferred between and among DOC facilities.
Compliance: Services must remain consistent between and among DOC facilities
- C. Measure: At least 50% of students receiving special education must be interviewed.
Compliance: Students must not dispute that they received continuous services when transferred between and among DOC facilities, and services are consistent with their IEPs.

4. All students with disabilities will be provided with transition planning and services as defined under IDEA until June 30 of the year in which the student turns twenty-one, regardless of their release date.

There is a written policy and procedure and evidence of implementation of the provision of transition planning and services as defined under IDEA until June 30 of the year in which the student turns twenty-one, regardless of his/her release date.

Measurement:

- A. Measure: DOC's policy must be reviewed.
Compliance: There must be an up-to-date and approved policy and procedure available for on-site review.
Compliance: There must be up-to-date evidence to reflect school personnel have been trained on the policy.
- B. Measure: Review all available SFEA student-inmate records.

Compliance: A review of student files reflects up-to-date evidence of transition plans and the provision of transition services.

- C. Measure: At least 50% of students receiving special education must be interviewed.
Compliance: Students must not dispute that they received transition planning and services through June 30 of the year the student turns 21-years-old, regardless of 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.

There is a written policy and procedure and evidence of implementation of the provision of interpretation and translation services for English Learner students with disabilities, to the degree agreed upon by all parties.

Measurement:

- A. Measure: DOC’s policy must be reviewed.
Compliance: There must be an up-to-date and approved policy and procedure available for on-site review.
- B. Measure: Review all available SFEA student-inmate records.
Compliance: A review of student files reflects evidence of an interview, assessment, or screening to determine the need for EL interpretation and translation services.
Compliance: A review of the files of students identified for EL interpretation and translation services reflects evidence of the provision of the services within the scope agreed upon by all parties.
- C. Measure: At least 50% of students receiving special education services who qualify for EL interpretation and translation services must be interviewed.
Compliance: Students must not dispute that they are receiving the services within the scope agreed upon by all parties.

6. Students with disabilities will be provided a minimum of four hours of instruction per day in the regular classroom setting, except where the student refuses to attend class, or other circumstances approved by all parties.

There is a written policy and procedure and evidence of implementation for tracking student attendance to demonstrate a minimum of four hours of instruction per day.

Measurement:

- A. Measure: DOC’s policy must be reviewed.
Compliance: There must be an up-to-date and approved policy and procedure available for review.
- B. Measure: DOC’s student attendance records will be reviewed for at least 70% of classes.

Compliance: Records must reflect that students receiving special education services received a minimum of four hours of instruction per day, unless they refused to attend school or fell within the scope of circumstances agreed upon by all parties.

7. 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.

There is an up-to-date and approved policy and procedure, and evidence of implementation to show that students with disabilities are 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. There is evidence to show the make-up instruction covered the relevant subject and content of the cancelled class.

Measurement:

- A. Measure: DOC's policy must be reviewed.
Compliance: There must be an up-to-date and approved policy and procedure available for review.
- B. Measure: DOC's records for the prior 90 days showing school cancellations will be reviewed.
Compliance: DOC records for the prior 90 days must match cancellations with documented make-up instructional time with coinciding attendance records.
- C. Measure: Lesson plans for days with cancelled school sessions and lesson plans for make-up instructional lessons will be reviewed.
Compliance: Lesson plans from the cancelled school sessions and make-up sessions must match subject and content.
- D. Measure: At least 50% of students receiving special education must be interviewed.
Compliance: Students must not dispute that make-up classes were offered with the relevant subject and content area of cancelled classes.

8. 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.

There is an up-to-date and approved written policy and evidence of implementation that specifies instructional personnel will use research-based instructional practices, which may include the use of worksheets as reinforcement exercises. Worksheets are used as an instructional aide and not an instructional technique.

Measurement:

- A. Measure: On-site classroom observation of at least 70% of teachers teaching SPED/SFEA students.

Compliance: Teachers use research-based instructional practices, which may include the use of worksheets as reinforcement exercises. Worksheets are used as an instructional aide and not an instructional technique.

- B. Measure: At least 50% of students receiving special education must be interviewed.

Compliance: Students must not dispute that teachers use research-based instructional practices, which may include the use of worksheets as reinforcement exercises, but worksheets are not used as an instructional technique.

9. 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.

There is an approved, up-to-date written policy, and evidence of implementation for tracking a student's credits, education level, and receipt of general education classroom instructional hours.

Measurement:

- A. Measure: DOC's policy must be reviewed.

Compliance: There must be an up-to-date and approved policy and procedure available for on-site review.

- B. Measure: Review all available SFEA student-inmate records.

Compliance: A review of student files reflects evidence of previous school transcripts or requests for such documents, assessments showing current education levels, and a record of DOC school attendance, along with DOC credit completions and a plan for completing the high school diploma.

- C. Measure: At least 50% of students receiving special education must be interviewed.

Compliance: Students must not dispute the accuracy of their academic and attendance record.

10. Behavioral assessments and plans, including Functional Behavior Assessments and Behavioral Intervention Plans, will be developed and implemented for students with disabilities in appropriate circumstances.

There is an approved, up-to-date, written policy, and evidence of implementation of the development and use of Functional Behavior Assessments and Behavior Intervention Plans for students with disabilities. The policy contains defined and measurable criteria for conducting Functional Behavior Assessments and developing Behavior Intervention Plans.

Measurement:

- A. Measure: DOC's policy must be reviewed.

Compliance: There must be an up-to-date and approved policy and procedure available for on-site review.

Compliance: There must be up-to-date evidence to reflect school personnel have been trained on the policy.

B. Measure: Review all available SFEA student-inmate records.

Compliance: A review of student files reflects compliance with the criteria established in the approved policy.

11. Manifestation Determinations will be conducted for students with disabilities for disciplinary incidents that occur during the School Day that result in a disciplinary charge.

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 serve a disciplinary sanction of administrative segregation lasting 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 sentence of administrative segregation. 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.

Measurement:

A. Measure: DOC's policy must be reviewed.

Compliance: There must be an up-to-date and approved policy and procedure available for on-site review.

B. Measure: Review all available SFEA student-inmate records.

Compliance: A review of student files reflects compliance with the approved policy. Documentation of meeting dates, attendees, and findings must be present.

C. Measure: At least 50% of students receiving special education must be interviewed.

Compliance: Students must not dispute compliance with the DOC's approved policy.

12. The DOC will modify facilities where SFEA students receive education in administrative segregation in locations and in a manner still be negotiated by the parties.

For students classified as being entitled to special education in administrative segregation, 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.

The parties agreed that Wagner Youth Correctional Facility and Northern State Prison, the two DOC Prisons which currently house the most students receiving special education in administrative segregation, will be modified. Specifically, the educational module in these facilities 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.

The parties agree that these modifications presently do not apply to New Jersey State Prison and South Woods State Prison. The DOC will check the number of students entitled to special education in these facilities at least monthly – if the DOC learns that there are more than three such students in either of these prisons, the DOC will notify Plaintiff’s counsel to discuss.

Measurement:

- A. Measure: On-sight visits to modified facilities
Compliance: On-site visits confirm modification of the facilities
Compliance: Observation of instruction in administrative segregation units confirm the facility is being utilized as intended.

- B. Measure: At least 50% of students receiving special education must be interviewed.
Compliance: Students must not dispute modification of the facility.

13. The DOC will take steps to modify and document the use of “cell study.”
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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. Any use of Cell Study must comply with the following:

- 1. Cell Study will only be used to deliver education services to students in the following situations: (a) students 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).

- 2. The DOC will continue to document the identity of the student, reason, and date for the use of cell study; and

- 3. 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.

- 4. Cell Study may not consist solely of the student completing a worksheet without simultaneous feedback or active participation by the teacher.

Measurement:

- A. Measure: DOC’s policy must be reviewed.

Compliance: There must be an up-to-date and approved policy and procedure available for on-site review.

B. Measure: Review all available SFEA student-inmate records.

Compliance: A review of student files contain documentation showing each instance of cell study for each student, along with the date and approximate time of every teacher interaction with a student on cell study. If cell study is used as a disciplinary sanction, documentation will be kept in the student's file, including dates of cell study and record of the date and approximate time of every interaction with the student.

C. Measure: At least 50% of students receiving special education must be interviewed.

Compliance: Students must not dispute compliance with the DOC's policy.

Exhibit E

**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, and
the AMERICAN CIVIL LIBERTIES UNION
OF NEW JERSEY, and THE ARC OF NEW
JERSEY;

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

Plaintiffs,

CONSENT ORDER

v.

NEW JERSEY DEPARTMENT OF
CORRECTIONS, MARCUS HICKS, in his
official capacity as Acting Commissioner of the
New Jersey Department of Corrections, NEW
JERSEY DEPARTMENT OF EDUCATION,
and LAMONT REPOLLET, in his official
capacity as Commissioner of the New Jersey
Department of Education,

Defendants.

The Parties and the Court having conferred on the matter of a court-appointed external monitor (“the External Monitor”) in the anticipation of settlement, and having agreed to the External Monitor’s role,

It is on this 20th day of May, 2019

ORDERED that

1. Dr. Susan Roberts shall be the External Monitor in the above captioned matter for the Initial Monitoring Period and for the External Monitoring Term, as described below.

2. Defendants the Department of Corrections (“DOC”) and the Department of Education (“DOE”) shall bear all costs of the External Monitor, which shall be as follows:

- a. A flat fee of \$1500 for each day of on-site monitoring at a DOC facility that lasts longer than 5 hours;

- b. On-site monitoring at a DOC facility that lasts 5 hours or less shall be charged at a rate of \$200/hour;
- c. 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;
- d. A fee of \$1500 per round trip to New Jersey from Indiana for on-site monitoring;
- e. 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://www.state.nj.us/infobank/circular/cir1611.pdf>.

Definitions

3. Corrective Action Plan (“CAP”) is the plan developed by the DOE following the monitoring activities conducted by DOE. The CAP details the required actions to be completed by 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, 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). In accordance with IDEA Section 300.600(e), the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State’s identification of the noncompliance. As agreed upon by all parties, noncompliance identified as a result of initial monitoring activities will be corrected within 6 months of identification.

4. Framework is a document developed by the DOE following completion of monitoring activities. The framework is an overview of the monitoring findings and will include the areas of noncompliance, barriers to compliance, relevant code references, and proposed CAP activities.

Initial Monitoring Period

5. During the Initial Monitoring Period, 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 that DOE is not implementing its Monitoring Tool with fidelity and consistency as outlined in section 6, below; and
- d. Review and provide feedback on the Framework.

6. The External Monitor shall participate in approximately 10 site visits, or more if required, occurring between September 1, 2019 and October 31, 2019, in coordination with the DOE, the DOC, and counsel for Plaintiffs. The External Monitor shall utilize the following protocol if she observes or believes that the DOE is 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 address 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 6(a).

7. The DOE shall produce the Framework by November 15, 2019 to the Parties and the External Monitor.

8. The External Monitor shall review and submit written comments to all parties on the Framework by December 2, 2019.

9. The Parties and the External Monitor shall meet in person to discuss the Framework on or before December 13, 2019, and again during the week of January 13, 2020.

10. The DOE shall produce a final CAP to the Parties, the External Monitor, and the Court by no later than January 31, 2020. The CAP will be jointly filed by the Parties on the public docket.

External Monitoring Term

11. If the parties do not settle this matter, as anticipated, the External Monitor's role shall cease upon either or both parties determination that settlement negotiations have reached an impasse and she will be paid for all time expended up until that date.

- a. The External Monitor will be notified within 24 hours of this determination in writing, with a copy to all parties.

12. In the event that the Parties resolve this action through a settlement, the External Monitor will perform any additional monitoring duties pursuant to the terms of the settlement agreement.

BY THE COURT:

/s/ Freda L. Wolfson
Hon. Freda L. Wolfson
U.S. Chief Judge

Exhibit F

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT

ATTENTION: If you are or were incarcerated a New Jersey prison at any point after January 11, 2015 and meet any of the following four descriptions, then you may be a member of the proposed settlement class affected by this lawsuit:

(1) you were identified as being entitled to special education services and reasonable educational accommodations, or

(2) you had a verified Individual Education Program (“IEP”) during or before to your time in prison, or

(3) you were diagnosed with an educational disability and an IEP was being developed but was not finished before you were released from prison, or

(4) were born after January 11, 1993 and under 18 years old when you entered prison, and did not have a high school diploma when you entered prison.

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY LEGAL PROCEEDINGS IN THIS LAWSUIT.

WHY AM I RECEIVING THIS NOTICE?

The purpose of this notice is to inform you of the proposed settlement in a pending class action lawsuit brought on behalf of people held in New Jersey prisons who are or were entitled to special education. The lawsuit, *Adam X. v. New Jersey Department of Corrections*, Case No. 3:17-cv-00188-FLW-LHG, filed in the U.S. District Court for the District of New Jersey in 2017, was brought by Named Plaintiffs Adam X., Brian Y. and Casey Z., the American Civil Liberties Union (“ACLU”) of New Jersey, and the Arc of New Jersey. The lawsuit alleges that the New Jersey Department of Corrections (“DOC”) and the New Jersey Department of Education (“DOE”) have discriminated against students with disabilities who are 21 years old or younger in state prisons. The Named Plaintiffs, Department of Corrections and Department of Education have reached an agreement to settle the lawsuit. That settlement must be approved by the Court before it can be finalized. The details of the settlement, described below, are contained in the Settlement Agreement.

AM I PART OF THE SETTLEMENT CLASS?

If you are or were held in any prison in New Jersey after January 11, 2015 and: (1) you were identified as being entitled to special education services and reasonable educational accommodations, or (2) you had a verified Individual Education Program (“IEP”) during or before to your time in prison, or (3) you were diagnosed with an educational disability and an IEP was being developed but was not finished before you were released from prison, or (4) were born after January 11, 1993 and under 18 years old when you entered prison, and did not have a high school diploma when you entered prison, you may be a member of the proposed settlement class affected by this lawsuit and the proposed Settlement Agreement. Please read this notice carefully because your rights may be affected.

WHAT WOULD THE PROPOSED SETTLEMENT AGREEMENT DO?

The Department of Corrections Has Agreed to Revise Policies

As part of the Settlement Agreement, the DOC has agreed to do the following:

- Assess the levels of education students entering prison have attained thus far, and their need for special education by, among other things, requesting records from the student's last school district;
- Develop and implement IEPs and Section 504 Plans according to the individual needs of each student;
- Provide individualized transition services, such as college-prep classes, job training, and/or independent living skills, as defined by federal law (the "Individuals with Disabilities Education Act") to students eligible for special education until June 30 of the School Year in which the student turns twenty-one years old;
- Provide interpretation and translation services to students with disabilities who are not fluent in English;
- Provide at least four hours of instruction per day in a regular classroom setting to students with disabilities, with only limited exceptions;
- Use appropriately certified teachers to provide special education services;
- Provide students with disabilities relevant make-up instruction when an entire morning or afternoon class must be canceled;
- Ensure that instructional personnel use proven instructional practices, and use worksheets only to supplement other educational methods or techniques;
- Track students' credits, educational levels, and instructional hours to ensure appropriate placement;
- Develop and implement behavioral assessments and plans for students with disabilities in appropriate circumstances;
- Determine whether disciplinary incidents that occur during the school day and result in a disciplinary charge are a result of the student's disabilities and, if so, not place students in the Restorative Housing Unit or other close custody unit for more than ten days unless certain limited exceptions apply;
- Take steps to ensure conditions of education for students in the Restorative Housing Unit or close custody units reflect classrooms in the general population;

- Limit the use of “cell study” to certain limited circumstances and provide the opportunity for in-person instruction with a certified teacher even in those circumstances;
- Adopt and maintain policies and procedures that ensure the preceding terms are accomplished;
- Train prison staff on all policies and procedures in the Settlement Agreement; and
- Provide Dr. Susan Roberts, a person appointed by the Court to monitor the implementation of these provisions, access to the people, places and records she needs.

Department of Education’s Obligation to Monitor the Department of Corrections

- As part of the Settlement Agreement, DOE has agreed to monitor DOC’s provision of special education and related services throughout New Jersey prisons, with input and oversight from Dr. Susan Roberts, a person who was appointed by the Court to ensure that the provisions referred to above are implemented properly. The DOE will visit prisons to interview students and teachers, observe classes, and review students’ educational files to determine whether the DOC is complying with special education laws and the settlement agreement. If the DOE finds that certain terms of the settlement are not being followed, it will develop plans with specific steps that the DOC needs to take to correct the problems, and will continue to monitor to verify that those steps are taken. Additionally, DOE may order additional education services if students have not been provided with services that they should have been provided during the past school year. This is called “compensatory education.” Monitoring will occur for a period of five years.
- After the end of the five years, DOE intends to place the DOC on its regular rotation for monitoring special education services, in other words, the same way it monitors other educational providers, like public schools.

Compensatory Education System

The Agreement also establishes a program so students can submit claims for make-up educational and vocational services and resources (called “compensatory education”) for services that were not provided between January 11, 2015 and October 31, 2020. Compensatory education for this period will be available for eligible students who are currently in prison as well as those who already have been released from prison. The award may consist of: services provided by the DOC or from a list of approved third-party educational, vocational, and reentry service providers; and/or funds to pay for correspondence courses, college, technical school or any other educational, vocational, or reentry program. Eligible class members may receive up to \$8,000 in educational, vocational, or reentry funds for each year that they should have received services but did not.

Class members who want to be considered for compensatory education through this program must submit the attached Compensatory Education Form within two years of the Court's final approval of the Settlement Agreement (also called "the Effective Date"). The Effective Date will likely be in January or February 2022, so class members who want to be considered for compensatory education through this program should submit the Compensatory Education Worksheet no later than January 2024. The Court-appointed External Monitor (Dr. Susan Roberts) will evaluate whether students are entitled to compensatory education services and, if so, the appropriate compensatory education award for each person. Class members who choose to be considered for compensatory education through this Settlement Agreement and who submit the Compensatory Education Form agree to **release all claims for compensatory education against the New Jersey Department of Corrections through October 31, 2020**, regardless of the outcome of the External Monitor's evaluation.

Class members who **do not** want to be considered for compensatory education through this Settlement Agreement, and instead wish to pursue their claims for compensatory education separate and apart from this lawsuit (in other words, to "opt out"), must fill out and submit the attached Compensatory Education Form within two years of the Effective Date (by approximately January 2024) to preserve their claims.

If class members do not fill out and submit the Compensatory Education Form within two years of the Effective Date (by approximately January 2024), they will be deemed to have released their claims for compensatory education and will not be able to pursue them.

To submit your completed Compensatory Education Form, please send it to the following address: ACLU of New Jersey, Attn: Class Action, P.O. Box 32159, Newark, NJ 07102.

Please note that the External Monitor will not begin reviewing Compensatory Education Forms or granting compensatory education to eligible class members until after the Effective Date (likely January 2022). However, you may still send in your Worksheet anytime between now and two years from the Effective Date (by approximately January 2024) to claim possible services or funds, or to opt out.

Role of the Court-Appointed External Monitor

For the five-year settlement term, the Court-appointed External Monitor, Dr. Susan Roberts, will monitor the DOE's and DOC's obligations under this agreement. For the first part of the settlement term, Dr. Roberts will also administer the compensatory education system as described above.

WHAT ELSE DO I NEED TO KNOW ABOUT THE SETTLEMENT AGREEMENT?

Resolution & Release of Claims

This Settlement Agreement resolves all claims brought by the Named Plaintiffs on behalf of themselves and the class, meaning once the Settlement Agreement is approved, the Named Plaintiffs and all class members will be deemed to have released the following claims:

- Any claims for systemic injunctive relief under IDEA or Section 504 regarding the special education system in DOC Prisons at issue in the Lawsuit that arose on or before the Effective Date of this Agreement; and
- Any claims for compensatory education in New Jersey prisons under IDEA or Section 504 that arose on or between the dates January 11, 2015 through October 31, 2020, **unless** Class Members opt out of the compensatory education relief by submitting the attached Compensatory Education Form on or before two years after the Effective Date (by approximately January 2024) (the individual Named Plaintiffs also release any claims for compensatory education that arose on or before the Effective Date of the Agreement).

The Settlement Agreement does **not** release any other claims by any of the Named Plaintiffs, class members, or any other person for:

- Any claims arising under the IDEA, Section 504, or the Americans with Disabilities Act, 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 that arose before January 11, 2015 or after the Effective Date (likely January 2022);
- 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.

Additionally, the Settlement Agreement does not release any claims to enforce the terms of the Settlement Agreement, and the organizational plaintiffs, The Arc of New Jersey and the ACLU of New Jersey, do not release any claims of their individual members or constituents, although those individual members or constituents release certain claims if they are members of the class.

The Settlement Agreement does not provide for any monetary relief to be paid to members of the class (except up to \$8,000 per class member for each year that services were not provided in the form of educational, vocational, or reentry funds as described above (“COMPENSATORY EDUCATION PROGRAM”) and to the Named Plaintiffs for bringing this lawsuit as described further below (“Incentive Payments for Individual Named Plaintiffs”)).

Incentive Payments for Individual Named Plaintiffs

As part of the Settlement Agreement, DOC has agreed to pay the three individual Named Plaintiffs a total of \$15,000 as incentive payments for their participation in the lawsuit, as well as a total of \$64,000 as compensatory education payments to be used for educational, vocational, and/or reentry purposes only.

Attorneys' Fees

The class was represented by attorneys employed by the American Civil Liberties Union of New Jersey, Disability Rights Advocates, and Proskauer Rose LLP. The Settlement Agreement provides for the payment of \$975,000 for reasonable attorneys' fees and costs incurred during the course of the lawsuit, plus reasonable attorneys' fees and costs incurred in monitoring the implementation of the Settlement Agreement.

Fairness of Agreement

The class representatives and their attorneys have concluded that the terms and conditions of the proposed Settlement Agreement are fair, reasonable, and in the best interests of the class. In reaching this conclusion, the class representatives and their attorneys have considered the benefits of the settlement, the possible outcomes if they were to continue the lawsuit, and the expense and length of time associated with bringing the lawsuit to trial and any possible appeals.

WHAT IF I WANT TO OBJECT TO THE SETTLEMENT?

The Court has preliminarily approved the Settlement Agreement, and has scheduled a hearing for [insert DATE/TIME ordered by the Court] in the Courtroom of the Honorable Judge Freda Wolfson, 402 E State Street, Courtroom 5E, Trenton, New Jersey 08608, to determine whether the proposed Settlement Agreement is fair and reasonable and should be approved on a final basis.

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to modify the terms of the Settlement Agreement; the Court can only approve or deny the Settlement Agreement. If the Court denies approval, the actions outlined in this notice will not occur and the lawsuit will continue. If that is what you want to happen, you must file an objection.

Although you are not required to attend the final approval hearing, as a Class Member, you may participate in, and be heard at, the hearing if you have filed a timely written objection that includes a statement of your intention to participate in the hearing. You may appear on your own or through an attorney. If you appear through an attorney, you are responsible for paying that attorney. The hearing date may be changed by the Court without further notice to the entire class. If you wish to receive electronic notice of any changes to the schedule, please file a notice of appearance with the Court and include a valid e-mail address at which you can receive notice.

To file an objection, please send it to the ACLU of New Jersey, Attn: Class Action, P.O. Box 32159, Newark, NJ 07102.

IF YOU DO NOT TIMELY SUBMIT AN OBJECTION AS DESCRIBED HEREIN, YOU WILL BE DEEMED TO HAVE WAIVED YOUR OBJECTION AND SHALL BE FORECLOSED FROM MAKING ANY OBJECTION TO THE SETTLEMENT AGREEMENT.

IF YOU DO NOT OPPOSE THE SETTLEMENT AGREEMENT, YOU STILL NEED TO FILL OUT THE COMPENSATORY EDUCATION FORM TO BE CONSIDERED FOR COMPENSATORY EDUCATION OR TO OPT-OUT OF THAT PROGRAM IF YOU WANT TO PURSUE SUCH CLAIMS ON YOUR OWN.

WILL I BE BOUND BY THE SETTLEMENT?

The proposed Settlement Agreement, if given final approval by the Court, will bind all members of the Settlement Class. This will bar any person who is a member of the Settlement Class from seeking different or additional relief regarding all issues resolved in the Settlement Agreement for the term of the Settlement Agreement, except regarding compensatory education claims if you opt-out of the Compensatory Education Program through the Compensatory Education Form.

HOW DO I GET MORE INFORMATION?

This notice summarizes the proposed Settlement Agreement. You can review the actual Settlement Agreement and its precise terms and conditions by visiting www.aclu-nj.org and www.drlegal.org; or by contacting class counsel at the ACLU of New Jersey, Attn: Class Action, P.O. Box 32159, Newark, NJ 07102, prisoneducation@aclu-nj.org, Telephone 973-854-1700 or Disability Rights Advocates, Attn: Rebecca Rodgers, 655 Third Avenue, 14th Floor, New York, NY 10017, prisoneducation@drlegal.org, Telephone or Video Relay (212) 644-8644; or by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov> (Civil Action No. 3:17-cv-00188-FLW-LHG); or by visiting the office of the Clerk of the Court for the United States District Court for the District of New Jersey, 402 E State Street, Room 2020, Trenton, New Jersey 08608, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THE SETTLEMENT AGREEMENT.

This Notice is also available in Spanish. To obtain copies of this Notice in alternative accessible formats, please contact Class Counsel listed above.

Este aviso también está disponible en español. Para obtener copias de este Aviso en formatos accesibles alternativos, comuníquese con los Abogados del caso enumerados anteriormente.

YOU MIGHT BE AFFECTED BY A PROPOSED CLASS ACTION SETTLEMENT ABOUT SPECIAL EDUCATION IN NEW JERSEY PRISONS

You might be a member of a proposed settlement class if you were...

- In a New Jersey prison at any time after January 11, 2015 and age 21 or younger during any of that time in prison; and
- a) Receiving special education services before you went to prison, or b) have an educational disability, or c) think you had an educational disability when you were in school before you went to prison.

In 2017, a lawsuit called *Adam X. v. New Jersey Department of Corrections* was filed against New Jersey Department of Corrections (DOC) and New Jersey Department of Education (DOE). The case claimed that high school students with disabilities were denied special education in New Jersey prisons.

In 2021, DOC and DOE settled the lawsuit by agreeing to provide appropriate special education for eligible students in adult prisons. DOC also agreed to provide educational and/or vocational services to students to make up for educational services that were not provided to the students while in prison.

You might be entitled to receive those educational and/or vocational services.

TO LEARN MORE:

- **VISIT www.aclu-nj.org or www.dralegal.org**
- **WRITE to ACLU of New Jersey, Attn: Class Action, P.O. Box 32159, Newark, NJ 07102**
- **EMAIL prisoneducation@aclu-nj.org**
- **CALL 973-854-1700.**

Este aviso también está disponible en español. Para obtener copias de este Aviso en formatos accesibles alternativos, comuníquese con los Abogados del caso enumerados anteriormente.