

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

COMMUNITY LEGAL AID SOCIETY, INC.,

Plaintiff,

v.

ADULT AND PRISON EDUCATION
RESOURCES WORKGROUP, et al.,

Defendants.

Civil Action No. 24-cv-615-UNA

[PROPOSED] PRELIMINARY INJUNCTION

Upon consideration of Plaintiff’s Motion for a Preliminary Injunction, all further briefing, and the entire record herein, it is this ____ day of _____ 2024, hereby:

ORDERED that Plaintiff’s motion is **GRANTED**; it is further

ORDERED that, Defendants Adult and Prison Education Resources Workgroup (APER), Director Maureen Forde-Whelan in her official capacity, Delaware Department of Education (DDOE), and Secretary of Education Mark A. Holodick in his official capacity, shall, no later than 60 days from the date of this Order, develop and implement policies and procedures consistent with the Individuals with Disabilities Education Act, the Rehabilitation Act, the Americans with Disabilities Act, Delaware law, and corresponding regulations, to carry out the following at Howard R. Young Correctional Institution (“Young”) and in the Security Housing Unit (SHU) at James T. Vaughn Correctional Center (“SHU at Vaughn”):

1. When an individual with an Individualized Education Program (IEP), who is under age 22, or who entered before August 31 in the school year in which the individual turned 22 (*see* 14 Del. Admin. C. § 923.1.2) (a “student”), enters Young or the SHU at Vaughn, APER shall provide the student with education and services comparable to those in the student’s existing IEP,

which shall commence no later than ten calendar days after the student's entry to Young or the SHU at Vaughn.

2. With respect to every student who is at Young or in the SHU at Vaughn, and entered Young or the SHU at Vaughn with an IEP, APER shall, on a rolling basis to be completed within 90 days of the date of this Order:

(a) timely evaluate the student in all areas of suspected disability (or determine that, due to recent evaluations, no new evaluations are necessary); and

(b) timely develop and adopt an IEP designed to provide the student with a free appropriate public education (FAPE), or, where appropriate, on an individualized basis, adopt the student's IEP developed at his prior educational placement.

3. The IEPs developed by APER pursuant to this Order must include the amount of education, related services, and supplemental aids and supports, that the student needs and provide for education and services in the least restrictive environment, which shall be based on an individualized determination for the student.

4. APER shall provide all students at Young or the SHU at Vaughn with all of the education and services required under federal and Delaware law, including those specified in the student's IEP, in their least restrictive environment.

5. APER shall make manifestation determinations and take required follow-up action (including, as appropriate, conducting a functional behavioral assessment, developing a behavioral support or intervention plan, or adopting an existing behavioral support or intervention plan) when required by 20 U.S.C. § 1415(k)(1)(E) and (F), by 34 C.F.R. § 300.530(e) and (f), and 14 Del. Admin. C. § 926.30.0.

6. In developing, adopting, and revising the IEPs, APER shall comply with all procedural requirements of the IDEA, including the timely provision of notices to students and parents, guardians, or other educational representatives or decisionmakers (together, “parents”) with regard to legal protections, evaluations, IEP meetings, and changes of placements; conducting IEP Team meetings prior to changing the educational plan identified in students’ IEPs, related services, supplemental services and supports, or placements; holding IEP Team meetings to revise IEPs when needed; involving students and their parents in decision-making about the students’ education; and timely providing educational records to students, parents, and counsel for the students upon request.

7. DDOE shall monitor APER to ensure that it complies with all of these requirements.

And it is further,

ORDERED that APER and DDOE shall, within 30 days of the date of this Order, file a detailed plan setting forth how they will come into compliance with the obligations described herein; it is further,

ORDERED that, on the 15th day of each month, APER and DDOE shall file with the Court a report certifying, as to the prior month, (1) the status of their compliance with each of the provisions of this Order; (2) their progress on evaluating and developing, for all students with IEPs at Young and the SHU at Vaughn, updated IEPs that comply with the requirements of federal and Delaware law and this Order; and (3) the extent to which APER is providing all students with IEPs the education and services in their IEPs, including general education, special education, related services, and supplemental aids and supports in the least restrictive environment; it is further,

ORDERED that the reports due on the 15th of each month shall be accompanied by (1) all current IEPs for students who were at Young and the SHU at Vaughn in the prior month, (2) a

table (that is provided to Plaintiff in PDF and Excel formats) that lists each such student by name and provides, based on the individual's current IEP, (a) the number of hours of general education that the student is required to receive each week; (b) the number of those general education hours each week for which the student is also required to receive specialized instruction; (c) the number of hours of special education that the student is required to receive outside of general education each week and the environment(s) where the student should be receiving such services (e.g., small group setting); (d) the total number of hours of general education that the student received for each week of the prior month; (e) the total number of those general education hours each week for which the student also received specialized instruction; (f) the total number of hours of special education that the student received outside of general education for each week of the prior month; (g) the number of hours of behavioral support services that the student is required to receive each week; (h) the total number of such hours that the student received for each week of the prior month; (i) the number of hours of other related services that the student is required to receive each week; and (j) the total number of such hours that the student received for each week of the prior month; it is further,

ORDERED that the portions of the reports due on the 15th of each month that contain confidential student information shall be filed under seal.

U.S. DISTRICT COURT JUDGE