

**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-SRF

PROPOSED CONSENT DECREE

WHEREAS, Plaintiff Community Legal Aid Society, Inc. (“CLASI”), Delaware’s protection and advocacy (“P&A”) system, filed this lawsuit against the Delaware Department of Education (“DOE”), Adult and Prison Education Resources Workgroup (“APER”), Delaware Secretary of Education (now Cynthia Marten) and Director of APER (Maureen Forde-Whelan) (together, the “DOE Defendants”), asserting claims under the Individual with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400, *et seq.*, its regulations, the Rehabilitation Act, 29 U.S.C. § 794(a), its regulations, the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132, its regulations, and Delaware statutes and regulations, related to the failure to provide required special education and related services to, and disability discrimination related to, students at Howard R. Young Correctional Institution (“Young”) and James T. Vaughn Correctional Center (“Vaughn”);

WHEREAS, CLASI also named as Defendants the Delaware Department of Correction (“DOC”) and its Commissioner, Terra Taylor (together, “the DOC Defendants”), but did not seek relief against them (they were named as necessary parties under Rule 19 of the Federal Rules of Civil Procedure because their cooperation may be necessary to effectuate relief);

WHEREAS, the DOE Defendants and the DOC Defendants are referred to collectively herein as the “Defendants”; and

WHEREAS, CLASI and Defendants, believing that it is in their shared interest to resolve the issues raised in this lawsuit amicably and without further litigation, agree to the provisions below and have submitted this Consent Decree to the Court for its consideration and approval.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, and DECREED as follows:

A. JURISDICTION, VENUE, AND SCOPE

1. The provisions in this Consent Decree relate to the DOE Defendants' obligations under the IDEA, the Rehabilitation Act, the ADA, Delaware statutes, and their respective regulations.

2. This Court has jurisdiction over the parties and subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1343, 1367(a), and 20 U.S.C. § 1415(i)(2). The venue is proper under 28 U.S.C. § 1391.

3. This Consent Decree is binding upon and inures to the benefit of the successors, assigns, heirs, corporate parents, subsidiaries, and affiliates of each Party. No assignment or delegation of the obligations hereunder releases the assigning Party from its obligations under this Consent Decree.

B. PROGRAMMATIC REQUIREMENTS

4. **Development and Implementation of Revised Policies and Procedures.** The DOE Defendants must, no later than 60 days¹ from the date of entry of this Consent Decree, provide to CLASI a set of draft policies and procedures consistent with the IDEA, the Rehabilitation Act, the ADA, Delaware statutes, and their respective regulations, and that explicitly adopt all of the requirements set forth in paragraphs 10-36 and 41 of this Consent Decree. CLASI will have 20 days to comment on the policies and procedures. Within 30 days of receipt of CLASI's comments, the DOE Defendants must consider CLASI's comments in good faith and finalize such policies and procedures. The DOE Defendants shall have the sole discretion to reject any comment or change proffered by CLASI, provided the policies and procedures comply with the IDEA, the Rehabilitation Act, the ADA, Delaware statutes, and their respective regulations, and this Consent Decree. If a dispute exists, it is subject to the dispute resolution process in paragraph 39 below. Within 14 days of the DOE Defendants finalizing each of the revised policies and procedures, the DOE Defendants must commence compliance with them.

5. "Eligible Students" means all students who, at the time of entry into DOC custody as defined in paragraph 6 below, had an IEP in eighth grade or later, whether or not that IEP is current, and regardless of whether they had previously dropped out of school or declined special education.

6. Unless otherwise stated, the provisions of this Consent Decree apply at each of the four Level V correctional facilities in the state: (i) Young; (ii) Vaughn; (iii) Baylor Women's Correctional Institution ("Baylor"); and (iv) Sussex Correctional Institution ("SCI") (collectively, the "Level V Correctional Facilities"). Those incarcerated at the Level V Correctional Facilities are considered "in DOC custody" for purposes of this Consent Decree, unless otherwise specified.

¹ Unless otherwise specified, any reference to a period of "days" shall be calculated in accordance with Federal Rule of Civil Procedure 6.

7. While CLASI's claims in this action concerned allegations specific to Vaughn and Young, the systematic procedures required under this Consent Decree will be implemented across all Level V Correctional Facilities to ensure consistent and equitable delivery of services statewide.

8. **Extended Eligibility.** Ordinarily, an individual with an Individualized Education Program (IEP) is eligible for special education and related services under the IDEA up to August 31 of the school year in which the individual turns 22, or until they receive a high school diploma, whichever is sooner. However, all Eligible Students who are or have been at Young or Vaughn at any time between May 23, 2024, and 120 days after the entry of this Consent Decree, and are still in DOC custody or return to DOC custody within one (1) year of the entry of this Consent Decree, must be offered three (3) additional years of eligibility for special education and related services under the IDEA within which to obtain their high school diploma. Such Eligible Students who qualify for extended eligibility under this paragraph will have IDEA eligibility up to August 31 of the school year in which they turn 25 or until they receive a high school diploma, whichever comes sooner. The terms of this paragraph only apply to Eligible Students who are or were in DOC custody for more than fifteen (15) school days. If, in the First IE Report referenced below in Section C, the independent evaluator makes a determination that Defendants are not in substantial compliance with the requirements of this Consent Decree, the eligibility period described in this paragraph shall automatically extend to include all Eligible Students who are or have been at Young or Vaughn from May 23, 2024, through the date of any subsequent determination by the IE of Defendants' substantial compliance.² Under no circumstances, however, shall this time period extend beyond the term of this Consent Decree.

9. **Implementation of Extended Services for Students in DOC Custody as of the Date of Entry of this Consent Decree.** Beginning on or before the date of entry of this Consent Decree, APER must, on a rolling basis to be completed within 90 days of the date of entry of this Consent Decree:

(a) Identify all Eligible Students in DOC custody who are eligible for the extended services contemplated by paragraph 8 of this Consent Decree;

(b) Inform all Eligible Students who qualify for extended services of their right to additional years of eligibility for special education and related services under the IDEA within which to obtain their high school diploma;

(c) Upon approval by the Eligible Student, and, if applicable, the educational representative, legal guardian, or, if the meeting will be addressing the capacity of the student, the parent, as that term is defined in the IDEA (34 C.F.R. § 300.30) and Delaware law (14 *Del. C.* §

² Within fifteen (15) days of such determination that APER is not in substantial compliance, APER must inform all then-identifiable Eligible Students who, as a result of that determination, qualify for extended services, of their right to additional years of eligibility for special education and related services under the IDEA within which to obtain their high school diploma. Eligible Students who qualify for extended services as a result of that determination but are identified by APER at a later date must be informed within the period provided in paragraph 10(a) below.

3101(7)), evaluate the Eligible Student in all areas of suspected disability (or determine that, due to recent evaluations, no new evaluations are necessary); and

(d) Develop and adopt an IEP designed to provide the Eligible Student with a free appropriate public education (FAPE), or, where appropriate, on an individualized basis, adopt the Eligible Student's IEP developed at their prior educational placement.

10. Processes For Eligible Students Entering DOC Custody After Entry of This Consent Decree. With respect to every Eligible Student who enters DOC custody after the entry of this Consent Decree:

(a) APER must meet with the Eligible Student within 10 school days of entry to DOC custody. If the Eligible Student qualifies for extended services pursuant to paragraph 8 above, APER shall inform the student of their right to additional years of eligibility for special education and related services under the IDEA within which to obtain their high school diploma.

(b) Within 5 school days of the meeting referenced in subparagraph (a), APER will request information from the prior Local Education Agency (LEA) to ensure that each student's IEP programming is designed with all available information concerning the student.

(c) Within 5 school days of the meeting referenced in subparagraph (a), APER must make available to the student education, including special education and related services comparable to those in the student's existing IEP. These "comparable services" shall be based on the information available to APER and will be made available to the student until the following steps in this paragraph are completed.

(d) Upon approval by the student, and, if appropriate, the other individuals identified in paragraph 9(c) above, APER must, within 60 days of the meeting referenced in subparagraph (a), evaluate the student in all areas of suspected disability (or determine that, due to recent evaluations, no new evaluations are necessary); and develop, adopt, and implement an IEP designed to provide the student with FAPE, or, where appropriate, on an individualized basis, adopt the student's IEP developed at the student's prior educational placement.³

11. APER will provide the DOC with reasonable notice of student evaluations and IEP Team meetings. The DOC will make good faith efforts to make the student available for the scheduled evaluations and IEP Team meetings.

³ While APER will endeavor to complete evaluations and IEPs within 60 days, APER expressly reserves the right to reasonably extend such period as may be reasonably necessary to account for the operational realities of the correctional setting, including but not limited to facility access restrictions, security protocols, and staff availability. The DOE Defendants shall report to CLASI every six (6) months any instances in which this extension is used, the reason for the extension, and the length of the extension. In no event shall this extension result in a period of more than 90 days between the date of the meeting referenced in subparagraph (a) of this paragraph, and the evaluation and the IEP, unless the circumstances resulting in the delay are outside of the control of APER.

12. Every Eligible Student with an IEP in DOC custody must be offered a minimum of four hours of education per school day,⁴ including all special education and related services (including, but not limited to, behavioral health services identified in the IEP) needed by the individual student, consistent with federal and Delaware statutes and their respective regulations. The special education and related services (including, but not limited to, behavioral health services identified in the IEP) must be included in each student's IEP and must be based on a student's needs, not based on APER's resources.

13. IEPs developed by APER for Eligible Students in DOC custody must be individualized based on the student's needs, be designed to ensure that FAPE is provided to the student, include the amount of education, related services, and supplemental aids and supports that the student needs, and identify an appropriate placement in the least restrictive environment ("LRE"), as that term is defined in the IDEA (as contemplated by paragraph 16 below), all of which must be based on the individual needs of the student.

14. APER must provide all Eligible Students in DOC custody with all of the education and related services specified in each student's IEP. APER shall have students sign in and sign out of education and note the date and time of the start and end of each, and APER shall document any instances when the student does not attend education. APER shall also request that all providers of related services note the date and time of the start and end of each service and document any instances when the student does not attend the offered related services. Any education or related services that are missed due to a cause that is not attributable to the student (for example, if a related services provider is unavailable due to illness) must be tracked by APER and made up to the student as soon as practicable, but in no case more than 60 days after the missed education or missed related services.

15. The Level V Correctional Facilities must have a continuum of educational placements (consistent with the requirements in 34 C.F.R. § 300.115) necessary to ensure that all students with disabilities are educated in their LRE.

16. All education must be provided in the student's LRE, meaning that, to the extent that it is reasonably possible, students with disabilities are educated with nondisabled peers and that special classes, separate schooling within DOC, or other removal of students with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a student is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, and is subject to the following terms:

(a) This provision does not prevent DOC from taking action and using protocols consistent with its penological needs;

⁴ If APER raises with CLASI facts regarding the underutilization of general education classes, and it provides CLASI with facts related to that underutilization and why students are not attending such classes, then APER and CLASI will discuss in good faith whether a reduction to the minimum number of hours of general education offered would be appropriate.

(b) The IEP Team for an Eligible Student who is convicted as an adult under State law may temporarily modify the student's IEP or educational placement if the DOC demonstrates a bona fide security or compelling penological interest, and the IEP Team makes an individualized determination that such bona fide security or compelling penological interest was demonstrated and cannot otherwise be accommodated;

(c) The DOE Defendants shall fully implement Eligible Students' IEPs regardless of where they are housed at the Level V Correctional Facilities; and

(d) Any special education or related services that are missed must be tracked and made up to the student consistent with paragraph 14 above.

17. APER must provide Eligible Students with direct teacher-led instruction by teachers who are certified to teach in an appropriate content area.⁵ While the entire session need not be led exclusively by a teacher, direct instruction must be provided to students during the course of the session. If needed, teacher-led instruction could be accomplished through virtual real-time instruction by a teacher on an electronic device with the capacity for real-time questions and answers. Teacher-led instruction will include some common concept group instruction when there is more than one student learning in a broad subject area. For example, when multiple students are studying history, there will be group instruction on a common theme.

18. Special education at the Level V Correctional Facilities must be provided by a teacher certified in Delaware to teach special education, consistent with the requirements in 20 U.S.C. § 1412(a)(14)(C), 34 C.F.R. § 300.156, 14 *Del. C.* § 2402, and 14 *Del. Admin. C.* §§ 923.56.0, 1500, et seq.

19. APER will use its best efforts to ensure that any individual hired after the entry of this Consent Decree to work as an educational diagnostician at the Level V Correctional Facilities possesses prior experience as a certified special education teacher, consistent with the requirements in paragraph 18 above.

20. Related services for Eligible Students at the Level V Correctional Facilities must be provided by a certified provider, consistent with 20 U.S.C. § 1412(a)(14)(B), 34 C.F.R. § 300.156, 14 *Del. C.* § 2402, and 14 *Del. Admin. C.* § 923.56.0. Outside contractors that satisfy this provision must be used if a related service cannot be provided by APER staff.

⁵ APER will endeavor, preferably through the hiring of or use of existing in-person staff, or otherwise through the use of virtual learning, and other available and practical solutions, to provide instruction in the subject matters of English, math, and science by teachers certified in those respective subject areas. The DOE and DOC Defendants shall continue their ongoing efforts to implement virtual instruction in the Correctional Facilities to provide greater flexibility and expanded opportunities to meet these certification goals. For subject matters other than English, math, and science, if APER has staff who are certified as teachers in a particular subject area, those teachers will provide instruction in that subject area where APER determines that it is logistically feasible.

21. APER, in coordination with the DOC Defendants, must, within 90 days of the entry of this Consent Decree, identify and implement means for Eligible Students to access material related to their studies in their cell, including, for example, by using electronic versions of textbooks, by modifying textbooks to remove their hard covers, or by providing a soft covered textbook to keep in a cell. For clarity, for those incarcerated in the Security Housing Unit at Vaughn, students may not transport textbooks or any materials between their class and their cell.

22. APER must provide Eligible Students in DOC Custody with individualized transition planning and ensure that students' IEPs are tailored to meet their long-term independent living, vocational, and educational goals.

23. APER must address behavioral health needs in student IEPs, conduct manifestation determination reviews, 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), 34 C.F.R. § 300.530(e) and (f), and 14 *Del. Admin. C.* § 926.30.0. Manifestation determination meetings must be convened for disciplinary incident(s) that occur in the educational setting (i.e., the classroom) and result in the student missing 10 or more days of school at one time or cumulatively in a school year.

24. APER must hold IEP Team meetings and review the IEP of each Eligible Student in DOC Custody at least annually, and when needed to address lack of progress or to determine whether the annual goals for the student are appropriate.

25. Whenever an Eligible Student moves between any of the Level V Correctional Facilities, APER must hold an IEP Team meeting and review the Eligible Student's IEP.

26. To the extent necessary to provide FAPE, the IEP of an Eligible Student in DOC Custody must be revised as appropriate at or after IEP Team meetings.

27. APER must timely (consistent with 34 C.F.R. § 300.303) reevaluate each Eligible Student in DOC Custody in all areas of suspected need at least every three years and, to the extent necessary, revise the IEP as appropriate.

28. APER must comply with all procedural requirements of the IDEA and the related provisions under Delaware statutes and their respective regulations, including (but not limited to) those described above and the following:

(a) Provide timely notices with regard to legal protections, evaluations, IEP Team meetings, and changes of placements to students and, if appropriate, the other individuals identified in paragraph 9(c) above;

(b) Upon entrance to a Level V Correctional Facility, an individual or individuals designated by APER must identify whether an educational representative holds decision-making authority for the Eligible Student and abide by that authority absent a change of circumstance;

(c) In cases where there is no educational representative with decision-making authority and the capacity of the Eligible Student is uncertain, conduct capacity determinations consistent with 14 *Del. C.* § 3132 and 14 *Del. Admin. C.* § 926.20.0, provide advance notice as to the capacity determinations to students and parents, and invite parents to such meetings;

(d) Ensure that an Eligible Student in DOC Custody has provided informed consent and received at least 10 school days prior written notice before APER takes action on a waiver of services;

(e) APER must provide all Eligible Students in DOC Custody with a copy of Delaware's Procedural Safeguards;

(f) Conduct an IEP Team meeting and issue a prior written notice prior to changing any of the Eligible Student's services, supports, or LRE (this provision does not prevent DOC from taking action and using protocols consistent with its penological needs);

(g) Consistent with 34 C.F.R. §§ 300.321-300.322, invite the Eligible Student in DOC Custody (and, if appropriate, the other individuals identified in paragraph 9(c) above) to participate in decision-making about the student's education, including at all IEP Team meetings, unless participation is waived after receipt of required notice and that waiver is documented by APER;

(h) Upon request, provide educational records to Eligible Students, parents, and counsel for the students as quickly as reasonably practicable and in hard copy or in electronic format, as requested; and

(i) Conduct exit meetings and satisfy related requirements under 20 U.S.C. § 1414(c)(5)(B)(ii) for Eligible Students who are graduating or aging out of eligibility for IDEA services, and issue a prior written notice at least ten (10) days before the end of eligibility under the IDEA to inform the student of the forthcoming end to special education and related services.

29. All accommodations, modifications and supports in an individual's IEP or 504 plan pursuant to the Rehabilitation Act must apply to the Certificate of Education Attainment (CEA3) process if that is being pursued.

30. Within thirty (30) days from the date of entry of this Consent Decree, APER must designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the IDEA, the Rehabilitation Act, the ADA, related provisions under Delaware statutes, their respective regulations, and this Consent Decree, including investigation of any complaint alleging disability discrimination. This individual will also be responsible for recording, reviewing, and resolving requests by students at the Level V Correctional Facilities for reasonable accommodations/modifications and auxiliary aids and services related to education; assisting APER staff regarding the handling of such requests, as needed; and ensuring that, when necessary to avoid discrimination on the basis of disability, any requested reasonable accommodations/modifications or auxiliary aids and services related to education are provided in an appropriate and timely manner in accordance with federal and Delaware statutes and their

respective regulations and this Consent Decree. If an ADA issue arises in connection with this Consent Decree, the designated APER employee shall determine whether such issue is a DOE or DOC issue, and based on such determination, shall direct the student to either the DOC facility ADA coordinator or the DOE ADA Compliance Officer.

31. Within thirty (30) days of the date of entry of this Consent Decree, CLASI must provide to APER a draft written notice informing students with disabilities of their rights not to be subject to discrimination on the basis of their disability, their rights under this Consent Decree and federal and state law related thereto, that certain information protected under the Family Educational Rights and Privacy Act ("FERPA") may be included in reports, records, or other materials prepared or shared pursuant to this Consent Decree (although such reports, records, or other materials would be protected by the Protective Order in this case (D.I. 29)), CLASI's contact information, information on the right to accept or waive services, and the name of APER's coordinator described in paragraph 30 above. Thereafter, APER will have thirty (30) days to revise the notice as needed and finalize it. APER shall have sole discretion to, in good faith, reject any provisions proffered by CLASI, provided the notice complies with the IDEA, the Rehabilitation Act, the ADA, the related provisions under Delaware statutes, and their respective regulations, and this Consent Decree. If a dispute exists, it is subject to the dispute resolution process in paragraph 39 below.

32. Within 30 days of finalizing the written notice described in paragraph 31 above, DOC must provide that notice to all individuals in DOC custody at the Level V Correctional Facilities on their tablets and APER must post it in the educational area at each of those Level V Correctional Facilities. In the event the physical notice is damaged or removed, APER, or if appropriate, DOC, shall replace it as soon as practicable, and in any event within 10 days.

33. Within 120 days from the date of entry of this Consent Decree, and again within 210 days of the date of entry of this Consent Decree, and annually thereafter, APER must provide training to its staff on the requirements of this Consent Decree, as well the requirements of the IDEA, the Rehabilitation Act, the ADA, related provisions of Delaware statutes, and their respective regulations, and preventing disability discrimination, tailored to the circumstances and needs of students at the Level V Facilities.

34. DOE must establish and maintain an APER liaison ("APER Liaison"), who shall be staffed by the DOE Exceptional Children Resources ("ECR") Work Group, to work with APER's designated employee (as referenced in paragraph 30 above), and to monitor and enforce APER's compliance with the IDEA, related provisions of Delaware statutes, and their respective regulations, and the provisions in this Consent Decree. The APER Liaison must have experience with the IDEA, related provisions of Delaware statutes, and their respective regulations, and undergo annual training regarding those laws. The APER Liaison will develop and update training, policies, and procedures to ensure APER's compliance with the Consent Decree and these laws and regulations. Any concerns or issues arising under the ADA or Rehabilitation Act shall be referred to the DOE's ADA Compliance Officer.

35. Beginning after the Second IE Report referenced in Section C, if that report determines that Defendants are in substantial compliance with this Consent Decree, or, if the

Second IE Report determines that Defendants are not in substantial compliance with this Consent Decree, then beginning after the Third IE Report, DOE shall monitor APER to ensure compliance with all requirements set forth in this Consent Decree and shall prepare written reports at least every six (6) months, detailing compliance as to each of the requirements herein, consistent with the following:

(a) Each report shall identify (i) which requirements are in compliance and which are out of compliance; (ii) any corrective measures undertaken to address areas of noncompliance; and (iii) any anticipated or ongoing efforts to achieve or maintain compliance.

(b) Reports shall describe any systemic or programmatic corrections but shall not include personally identifiable information relating to individual students.⁶

(c) Subject to the foregoing requirements of this paragraph, the contents and format of the monitoring reports shall be ultimately determined by DOE.

(d) All monitoring reports prepared pursuant to this paragraph shall be provided to CLASI within five (5) days of completion during the term of this Consent Decree.

(e) If CLASI has a request for additional information related to the reports, CLASI may raise such request with DOE. DOE shall have ten (10) school days from the receipt of such request to provide the requested information. If DOE declines to provide such information, either party may invoke the procedures set forth in paragraph 39 below. Any request for information must be reasonable.

36. The parties disagree as to whether APER is an LEA, but for the purpose of this Consent Decree, DOE must make determinations annually about the performance of APER, provide technical assistance to APER and use other appropriate enforcement mechanisms related to APER, and report annually on APER's compliance with the IDEA and related provisions of Delaware statutes, and their respective regulations, consistent with the standards, metrics, and requirements applicable to an LEA.⁷ In addition, in exercising its monitoring responsibilities, DOE

⁶ If necessary to protect student privacy and identification, DOE may choose to redact such information and/or provide such information to CLASI pursuant to the terms of the Protective Order in this case (D.I. 29). Such redactions must be limited to student names and other individual educational and medical information that is sufficiently unique that it could be used to identify a student, and alternative unique identifiers shall be used consistently to identify the same student across documents. Such redactions shall not interfere with the understanding and analysis of the report.

⁷ The parties acknowledge that while such LEA standards and metrics shall be utilized for purposes of the determinations required by this paragraph, the parties agree for the purposes of reaching resolution that certain standards or metrics applicable to LEAs may not be directly applicable to, or appropriate for, APER. The applicable Compliance Indicators include Transition Planning in the IEP, Timely/Accurate Data, and Relevant Audit Findings. The applicable Results Indicators include Graduation Rate, Drop Out Rate, and Education Environments. DOE will develop

must ensure that, if it identifies noncompliance with the IDEA or related provisions of Delaware statutes, or their respective regulations, by APER, the noncompliance is corrected as soon as possible, and in no case later than one year after DOE's identification of the noncompliance. If DOE determines that APER is unable to establish and maintain programs of FAPE at Level V Correctional Facilities that meet the requirements of the IDEA, then it must provide special education and related services directly to students with disabilities at those facilities. All determinations and reports pursuant to this paragraph must be provided to CLASI during the term of this Consent Decree.

37. As of the date that the Defendants execute this Consent Decree, the Defendants represent that, to the best of their knowledge, no actions or rules of the DOC prevent compliance with any of the provisions of this Consent Decree.

38. If, during the term of this Consent Decree, the DOE Defendants contend that any action or rule by the DOC prevents them from complying with this Consent Decree, the issue shall be promptly addressed in a meeting between APER, DOC, and CLASI. If a dispute exists following this meeting, it can be addressed pursuant to the procedures set forth in paragraph 39 below.

39. Regardless of whether this provision is or is not referenced in any paragraph above, if a dispute arises among the parties concerning compliance with any term of this Consent Decree, the Parties shall first engage in good-faith discussions to resolve the issue for a period of up to thirty (30) days. If the dispute is not resolved within that period, any party may seek relief from the Court. The Court retains jurisdiction to resolve such disputes and order appropriate relief.

40. If additional funding is necessary to ensure compliance with this Consent Decree, DOE and/or APER will promptly use their best efforts with the Delaware Office of Management and Budget, the Delaware General Assembly, and/or the Governor or the Governor's representatives to obtain such funding. If DOE and/or APER are unable to comply with a provision of this Consent Decree on the basis that it lacks necessary funding, CLASI will be entitled to seek further relief from the Court in accordance with paragraph 39.

41. Unless stated otherwise, all terms used herein have any definitions provided in 20 U.S.C. § 1401 and otherwise in the IDEA, Chapter 31 of Title 14 of the Delaware Code, and their implementing regulations.

additional, or adapt existing, compliance and results indicators relevant to the issues and population in this case, and to measure educational progress. Within ninety (90) days of the entry of this Consent Decree, DOE will present CLASI with its proposal for such indicators. CLASI will have twenty (20) days to comment on the indicators. The parties shall meet and confer, and, within thirty (30) days of receipt of CLASI's comments, the DOE Defendants must consider CLASI's comments in good faith and finalize such indicators. The DOE Defendants shall have the sole discretion to reject any comment or change proffered by CLASI, provided the indicators comply with the IDEA, the Rehabilitation Act, the ADA, Delaware statutes, and their respective regulations, and this Consent Decree.

C. INDEPENDENT EVALUATION

42. An independent evaluator (“IE”) shall conduct the evaluations and prepare the reports described below. The evaluator will be an individual or entity mutually agreed upon by the parties, who shall be independent of the parties and possess appropriate expertise to conduct the evaluation. The parties consent that the IE shall be entitled to receive any information protected by the Protective Order in this case (D.I. 29) or Confidential Information⁸ as specified in this Consent Decree, provided that the IE first signs an addendum agreeing to be bound by all terms of the Protective Order.

43. If the parties cannot agree on an independent evaluator within thirty (30) days of the date of entry of this Consent Decree, (a) CLASI will submit a list of three potential independent evaluators and their CVs to Magistrate Judge Laura D. Hatcher, (b) Defendants will collectively submit a list of three potential independent evaluators and their CVs to Magistrate Judge Laura D. Hatcher, and (c) Magistrate Judge Laura D. Hatcher will select the evaluator from the provided names.

44. The IE shall assess Defendants’ compliance with the requirements of the Consent Decree as follows:

(a) The IE shall conduct an evaluation of Defendants’ compliance with the requirements of the Consent Decree covering the first six (6) months following the date of entry of this Consent Decree. Within forty-five (45) days of that period ending, or other reasonable period determined by the IE not to exceed one additional month, the IE shall issue to the parties a written report of its findings and recommendations (the “First IE Report”), which shall include a determination of whether, in the IE’s professional judgment, Defendants are in substantial compliance with the requirements of this Consent Decree and shall identify the areas, if any, that are not in substantial compliance.

(b) The IE shall conduct a second evaluation of Defendants’ compliance with the requirements of the Consent Decree covering the subsequent six (6) month period. Within forty-five (45) days of that period ending, or other reasonable period determined by the IE not to exceed one additional month, the IE shall issue to the parties a written report of its findings and recommendations (the “Second IE Report”), which shall include a determination of whether, in the IE’s professional judgment, Defendants are in substantial compliance with the requirements of this Consent Decree and shall identify the areas, if any, that are not in substantial compliance.

⁸ “Confidential Information” is defined herein as any sensitive, private, or confidential documents or information relating to and identifying students with disabilities, including, but not limited to, educational records, medical records, psychological evaluations, and any other information that identifies a student or where a student’s disability, services, or accommodations are sufficiently unique that they could be used to identify a student.

(c) If the IE makes a determination in the Second IE Report that the Defendants are not in substantial compliance with the requirements of this Consent Decree, then the IE shall conduct a third evaluation to assess Defendants' compliance with the requirements of the Consent Decree covering the six (6) month period following the period covered by the Second IE Report. Within forty-five (45) days of the close of that period, or within a reasonable time thereafter not to exceed one additional month, the IE shall issue to the Parties a written report of findings and recommendations (the "Third IE Report"), which shall include a determination of whether, in the IE's professional judgment, Defendants are in substantial compliance with the requirements of this Consent Decree and shall identify the areas, if any, that are not in substantial compliance.

(d) The timeframes contemplated above are intended to be firm deadlines; however, after consultation with the Parties, the IE may adjust these timeframes in the exercise of the IE's reasonable discretion and professional judgment if needed.

45. The Defendants shall provide the IE with access to students, staff, facilities, and records as the IE reasonably determines to be necessary to conduct evaluations and assess Defendants' compliance with the requirements of this Consent Decree. The IE may meet with any person or entity that the IE deems reasonably necessary to conduct evaluations and assess Defendants' compliance with the requirements of this Consent Decree.

46. CLASI may request meetings with the IE to discuss information relating to each of the IE's report(s). Representatives from DOE and/or APER may attend any such meeting. CLASI may request no more than one meeting with the IE per report issued.

47. The DOE Defendants shall bear all costs associated with such evaluations and reports of the IE as contemplated by and within the scope of this Consent Decree.

48. The data, findings, or conclusions contained in the IE reports shall not serve as a basis for any new lawsuit against Defendants by CLASI.

D. USE AND CONFIDENTIALITY OF REPORTS REQUIRED BY THIS CONSENT DECREE

49. All reports prepared pursuant to this Consent Decree shall be used solely for the purposes of assessing and/or facilitating Defendants' compliance with the IDEA, the ADA, the Rehabilitation Act, and the provisions of this Consent Decree. Notwithstanding the foregoing, (a) CLASI may provide such reports to its funders, board, and advisory council; and (b) if any party would like to use such reports for any other purposes, they must first present the issue to the opposing party for its consent, which shall not be unreasonably withheld, and a lack of response after five (5) days shall be deemed consent. The reason for any denial of consent must be explained to the other party at the time that the consent is withheld. For the avoidance of any doubt, any disclosure of any report to a non-party to this litigation shall include appropriate redactions removing all Confidential Information.

50. The reports shall not be admissible as evidence of liability or wrongdoing in any proceeding other than one to enforce this Consent Decree, and nothing in this paragraph shall

preclude the Parties from relying on the reports for purposes of monitoring or implementing compliance under this Consent Decree.

51. The terms of the Protective Order in this case (D.I. 29) remain in full force and effect.

52. Unless redacted to remove Confidential Information, all portions of reports that are prepared pursuant to this Consent Decree that share Confidential Information, including any drafts, findings, or related materials, shall be deemed confidential and be protected by the Protective Order (D.I. 29).

E. RELEASE OF CLAIMS

53. Effective upon the entry of this Consent Decree, and in consideration of the relief provided herein, the adequacy and sufficiency of which is expressly acknowledged, Plaintiff, CLASI, hereby releases Defendants from any and all claims under the IDEA, the Rehabilitation Act, the ADA, the related provisions under Delaware statutes, and their respective regulations, to the extent such claims arise from or relate to the alleged failure to provide required special education and related services, or to disability discrimination concerning the students at Young and Vaughn at issue in this action that arose on or before the date of entry of this Consent Decree. This does not release any claims that were brought or could be brought where students or their educational decisionmakers are the plaintiffs or complainants, or any claims for attorneys' fees and expenses related thereto.

F. TERM OF THIS AGREEMENT

54. This Consent Decree shall remain in effect for a period of two (2) years from the date of entry of this Consent Decree, unless extended as provided herein.

55. If a Third IE Report is required under Section C of this Consent Decree and, in the Third IE Report, the IE determines that Defendants are not in substantial compliance with the requirements of this Consent Decree, the term of this Consent Decree shall automatically extend for an additional one (1) year commencing on the date the original two-year term would otherwise expire.

56. Regardless of termination, the intent of the Parties is to establish and maintain a program that complies with the requirements of this Consent Decree and continues in effect following its termination.

G. SCOPE OF AGREEMENT

57. This Consent Decree contains the entire agreement between the Defendants, on one hand, and CLASI, on the other hand, with respect to the matters addressed herein, and supersedes all prior written and oral agreements and understandings between them concerning such matters. For the avoidance of doubt, this Agreement does not supersede or alter any agreement between the DOC Defendants and DOE Defendants regarding the operation of the Prison Education Program,

including, without limitation, the Memorandum of Understanding Between the Delaware Department of Correction and the Delaware Department of Education, except to the extent changes are necessary to comply with the terms herein.

58. This Consent Decree is entered into for the purpose of resolving disputed claims without the time, expense, and uncertainty of further litigation. Nothing in this Consent Decree shall be construed as, or deemed to constitute, an admission of liability, fault, wrongdoing, or violation of any law, regulation, or right by Defendants. Defendants expressly deny any such liability or wrongdoing.

59. The Parties agree that, to the extent the Prison Litigation Reform Act, 18 U.S.C. § 3626(a) is applicable, this Consent Decree complies in all respects with that statute.

H. MODIFICATIONS TO DECREE

60. This Consent Decree may be modified by mutual agreement of the Parties, but such modification to the Consent Decree must be in writing, duly and properly signed by all Parties, and will not be effective until approved by the Court.

I. SIGNATORIES

61. The undersigned representatives of the Parties certify that they are fully authorized to enter into and execute the terms and conditions of this Consent Decree and make such Consent Decree fully and legally binding upon and enforceable against every individual or entity on whose behalf they have executed this Consent Decree.

J. ATTORNEYS' FEES AND EXPENSES

62. CLASI is represented by Terris, Pravlik & Millian, LLP ("TPM") and CLASI's own attorneys. Defendants will pay TPM and CLASI for their reasonable fees and expenses up to the date of the execution of this Consent Decree. The parties will endeavor to reach agreement on that amount in the 30 days following execution of this Consent Decree by the parties. If the parties cannot reach agreement, CLASI will file a motion for attorneys' fees and expenses.

63. TPM and CLASI are entitled to their reasonable fees and expenses incurred after the date of the execution of this Consent Decree to the extent permitted by applicable law.

AGREED:

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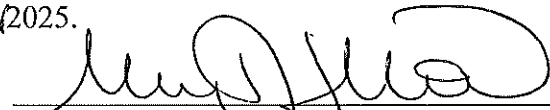
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Attorneys for Defendants Delaware Department of Correction and Terra Taylor

SO ORDERED this 2nd day of December 2025.



THE HONORABLE SHERRY R. FALLON
UNITED STATES MAGISTRATE JUDGE