

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

CHARLES H., ISRAEL F., AND MALIK Z.  
on behalf of themselves and all others  
similarly situated,

*Plaintiffs,*

v.

DISTRICT OF COLUMBIA, *et al.*,

*Defendants.*

Civil Action No. 1:21-cv-00997 (CJN)

**THE THIRD-PARTY AUDITOR'S FIRST REPORT TO THE PARTIES**

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**February 12, 2024**

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APPENDIX A

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APPENDIX B

**UNITED STATES DISTRICT COURT  
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CHARLES H., ISRAEL F., AND MALIK Z.  
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v.

DISTRICT OF COLUMBIA, *et al.*,

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Civil Action No. 1:21-cv-00997 (CJN)

**THE THIRD-PARTY AUDITOR’S FIRST REPORT TO THE PARTIES**

The Third-Party Auditor submits the following report to the Parties pursuant to Paragraph 136 of the Settlement Agreement and Release filed in the above-captioned matter on September 25, 2023 (“Settlement Agreement”).<sup>1</sup> The report is divided into six sections with supporting documents included in the Appendix. Section I describes the methodology used to assess the Defendants’ performance relative to the Settlement Agreement’s requirements. Section II presents general background and contextual information related to the current operation of the Maya Angelou Academy (“MAA”) operated by the See Forever Foundation (“See Forever”) at

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<sup>1</sup> In an October 26, 2023 meeting with counsel for both Parties, in response to the Third-Party Auditor’s request, the Parties agreed to extend the timeline for submission of this report to January 30, 2023 in light of the effective date of the Settlement Agreement and the fact that the Defendants could not authorize the Third-Party Auditor to proceed because they did not have a mechanism in place for paying the Third-Party Auditor until October 16, 2023. Thereafter, during the latter part of the week of January 15, 2024, the Third-Party Auditor advised the parties that she had underestimated the time needed for the assessment and drafting process associated with the report and would need an extension of an estimated week to 10 days beyond January 30, 2024 to submit the report. On January 24, 2024, the Third-Party Auditor advised counsel for the Parties that she would submit the report by no later than February 12, 2024. The Parties have not objected to this additional extension of the deadline. Additionally, on January 29, 2024, the Parties, in consultation with the Third-Party Auditor, agreed to two additional modifications to the reporting schedule: 1) the Third-Party Auditor’s report for the period January 1, 2025 – March 31, 2025 will instead cover the period January 1, 2025 – April 30, 2025 and will be due on May 30, 2025; and, 2) the Third-Party Auditor’s report for the period April 1, 2025 – June 30, 2025 instead will cover the period May 1, 2025 – August 1, 2025 and will be due on September 30, 2025.

the Central Detention Facility (“CDF”) and Correctional Treatment Facility (“CTF”) and the required system for tracking Defendants’ performance relative to the requirements associated with compensatory awards and educational expense awards. Section III summarizes the assessment’s key findings. Section IV details the Third-Party Auditor’s specific findings relative to the Settlement Agreement’s requirements. Recommendations for improving performance are included in Section V, followed by the Conclusion in Section VI. The report’s Appendix is divided into two parts. For the most part, Appendix A contains supporting documents.<sup>2</sup> Many of these documents, which have not been redacted, include confidential information and other supporting data identifying specific class members. Appendix B is limited to photographs of certain areas at both the CDF and the CTF that are used for instruction and/or the delivery of related services.<sup>3</sup> The Third-Party Auditor anticipates that counsel for the Parties will ensure the confidentiality of these data.

The Defendants, and particularly managers and staff, as well as their counsel, from the DOC, MAA, and the Office of the State Superintendent of Education (“OSSE”), have cooperated fully with the Third-Party Auditor’s requests for information. The Third-Party Auditor recognizes the competing workplace demands and challenges they confront and appreciates the ongoing efforts undertaken to facilitate her assessment activities.

## I. **METHODOLOGY**

The Third-Party Auditor’s assessment of the Defendants’ performance relative to the requirements in the Settlement Agreement is based on a monitoring and assessment process that

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<sup>2</sup> Several photographs that do not depict areas used for instruction and/or the delivery of related services are included in Appendix A.

<sup>3</sup> A few of the photographs include images of students, MAA teachers and DOC staff. These images have been blurred to ensure no one is identifiable.

commenced in mid-October 2024 and has been ongoing since that time.<sup>4</sup> Monitoring has included introductory meetings and/or structured interviews initiated by the Third-Party Auditor with the following agency representatives: the Interim General Counsel in the Office of the State Superintendent of Education (“OSSE”); the Interim Deputy General Counsel for the D.C. Department of Corrections (“DOC”); an attorney advisor and the General Counsel for the District of Columbia Public Schools (“DCPS”); the DOC’s Deputy Director for Education, Programs and Case Management, Education Administrator, Acting Deputy Warden for the Correctional Treatment Facility (“CTF”), Deputy Warden for the Central Detention Facility (“CDF”), Chief Technology Officer, and the Education Tablet Coordinator; OSSE’s Director of Special Education and its Educational Specialist for Correctional Facilities who also serves as the Compensatory Services Outreach Coordinator; and the DCPS Specialist for Compensatory Education Outreach.

Structured interviews were also conducted with various members of the management and staff of the See Forever Foundation and MAA Academy, including program managers, teaching staff and related services providers.<sup>5</sup> Follow-up interviews have been conducted with many of these interviewees.<sup>6</sup> More informal interviews have been conducted with the students housed on C4B, C4C,<sup>7</sup> SMUB, So-1 and E4B, and with case managers and correctional officers assigned to

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<sup>4</sup> A team of three highly-qualified consultants have assisted the Third-Party Auditor with her assessment of the Defendants’ performance during this reporting period: Janet Maher, an attorney with substantial experience in analogous contexts, Julia Cade, a senior litigation paralegal, and Won-ok Kim, a senior data analyst. Their credentials and professional experience were shared with counsel for the Parties before they were engaged to work on this project.

<sup>5</sup> The Third-Party Auditor expects to complete initial interviews with the MAA staff members she has not had an opportunity to interview during the next reporting period.

<sup>6</sup> Some of these interviews have been conducted through videoconferencing, but the majority have been in-person.

<sup>7</sup> As of January 30, 2024, students in C4C were relocated to C2A on a temporary basis because, (except for the upper tier classrooms and office space), C4B was closed on a temporary basis for a major maintenance project. Students in C4B were moved to C4C and students in C4C were moved to C2A for the duration of the project.

So-1, SMUB, C4B, C4C, and E4B, as well as with some correctional supervisors.<sup>8</sup> In addition, the Third-Party Auditor has conducted structured interviews with 23 students enrolled in the MAA education program, including, at the CTF, nine students assigned to C4B, six students assigned to C4C, one student assigned to E4B, four students assigned to SMUB, and, at the CDF, three students assigned to So-1.

Site visits and observations at both facilities have been conducted at all locations used to deliver educational services for students enrolled in the MAA program. As of February 6, 2024, the Third-Party Auditor conducted a total of 11 site visits.<sup>9</sup> The site visits, which began in November 2023, have included introductory tours of the key areas used for the delivery of educational services,<sup>10</sup> and both scheduled and unannounced observations of classes and other educational sessions<sup>11</sup> conducted on the restrictive housing units (*i.e.*, So-1 at the CDF and SMUB at the CTF) and on C4C at the CTF.<sup>12</sup> On two occasions, the Third-Party Auditor accompanied the three-member MAA Intake Team to various housing units throughout the CDF to observe initial and follow-up intake-related interviews.<sup>13</sup>

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<sup>8</sup> The Third-Party Auditor expects to continue to conduct both informal and structured interviews with students and the correctional staff on an ongoing basis.

<sup>9</sup> Consistent with the requirements in Paragraph 135(e) of the Settlement Agreement, the Defendants have provided the Third-Party Auditor with full access to all relevant areas of both the CDF and the CTF. *See*, Ex. 1, October 26, 2023 memorandum from Tab[bitha] Burnett to Deputy Warden/Major Vick and Deputy Warden M. Williams (authorizing the Third-Party Auditor access to both facilities). Site visits were conducted on the following dates: November 8, 15, 21, and 29 and December 12, 15, 19 and 22, 2023; January 9 and 12, and February 5, 2024. Site visits were limited from mid-January through early February to afford the Third-Party Auditor the time necessary to complete the drafting of this report.

<sup>10</sup> The initial tours were conducted by DOC and MAA personnel.

<sup>11</sup> The educational sessions that the Third-Party Auditor has observed have included more traditional classes as well as the equivalent of individual and group tutoring sessions during which students work on assignments independently with support, as needed, from their teachers.

<sup>12</sup> The Third-Party Auditor has not yet conducted structured observations of educational services delivery in E4B, or C4B, but expects to do so during the next reporting period. Both housing units have dedicated classrooms that are used for the MAA program. The Third-Party Auditor has very briefly observed classes in C4B on an incidental basis on multiple occasions when she has been in the classroom area for meetings with MAA staff. Additionally, the Third-Party Auditor has very briefly observed classes conducted on C2A.

<sup>13</sup> During the reporting period, the Third-Party Auditor was scheduled to attend an IEP meeting; however, the meeting was rescheduled. The Third-Party Auditor expects to attend IEP meetings during future reporting periods.

Among other records, the following documents were obtained and reviewed or, as described more fully in the related text of this report, analyzed: the December 20, 2023 Memorandum of Agreement (“MOA”) between the DOC, the See Forever Foundation, and OSSE;<sup>14</sup> MAA records, including daily reports submitted by the MAA Principal to the DOC’s Education Administrator;<sup>15</sup> the daily student roster,<sup>16</sup> class attendance sheets,<sup>17</sup> and class schedules; DOC records, including policy documents, post orders, census reports, custom data reports requested by the Third-Party Auditor and produced by the DOC,<sup>18</sup> training materials, records related to educational tablets, the DOC/OSSE Data-Sharing Agreement,<sup>19</sup> and the current contract between the Department of Corrections and the See Forever Foundation for the delivery of special education services at the CDF and CTF.<sup>20</sup> Records generated by or obtained from OSSE were also reviewed, including a list of compensatory relief subclass members; copies of award letters (with attachments) transmitted to 170 members of the compensatory relief subclass;

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<sup>14</sup> As addressed in more detail *infra* at 53-58, Defendants provided a copy of the fully executed MOA to Plaintiffs’ counsel and the Third-Party Auditor on December 20, 2024.

<sup>15</sup> *See, e.g.*, Ex. 2, December 4, 2023 MAA daily report. These reports summarize certain issues regularly encountered by MAA staff. The reports are submitted by the MAA Principal to the DOC’s Education Administrator for review and follow-up. As explained below in the narrative related to ¶ 65, a sample of the reports was audited by the Third-Party Auditor and her team. The audit findings are addressed *infra* at 81-82 and Ex. 30H Daily Reports Review Results.

<sup>16</sup> *See, e.g.*, Ex. 3, Maya Angelou Academy at DC DOC Roster, January 18, 202[4]. This document is dated January 18, 2023, but this is an error. The correct date is January 18, 2024. The rosters are compiled each morning by MAA staff. They contain a list of all students enrolled in the MAA program each day and include their housing unit and cell assignments.

<sup>17</sup> *See, e.g.*, Ex. 4, Sample, Class Attendance Sheet, October 13, 2023, Spanish 1 and 2. Teachers are required to fill out these sheets for each class conducted at the CDF and CTF. They are submitted to MAA management at the end of the school day and used as the basis for electronically recording class attendance. Related Services providers record attendance hours in an OSSE platform, Special Programs, which is accessible to MAA management. *See also* the narrative related to ¶¶ 65 and 70 for more information regarding attendance practices.

<sup>18</sup> These reports include multiple data fields associated with potential class members such as admission, discharge and housing unit assignment dates. *See infra* at 12-14 and Ex. 16C Summary Tables, DOC Housing Assignment Data Analysis.

<sup>19</sup> *See* Ex. 5, Educational Data Access and Use Agreement Between the District of Columbia Office of the State Superintendent of Education and The District of Columbia Department of Corrections As Authorized Representative.

<sup>20</sup> *See* Ex. 6, CW108186, contract issued by the D.C. Office of Contracting and Procurement on behalf of the DOC with the See Forever Foundation for special education services for one base year with four option years, at §C.4.

memoranda regarding the annual OSSE monitoring schedule; the monitoring tool used by OSSE for correctional facilities and the related student and staff interview protocols; reports to the DOC related to IDEA compliance; a summary of the computation methodology used to calculate compensatory awards; and organizational charts.<sup>21</sup>

There are certain Settlement Agreement requirements, which are noted below, for which the Third-Party Auditor is unable to make findings because the data system required by the Settlement Agreement was not available to the Third-Party Auditor during this reporting period. Under the terms of the Settlement Agreement, the Defendants are required to establish “a system for tracking all award determinations and letters, outreach efforts, award declinations, award conversions, award payment and reimbursement requests and determinations, award services provided, enrollment for educational and support programs under Paragraphs 106-109, and all communications and other activities related to the delivery of Contempt Relief and Compensatory Services, and related payments.”<sup>22</sup> The Settlement Agreement specifies that “such data system shall contain all such information for each individual Settlement Class Member even if the data must be retrieved from separate databases. Such data system shall track all information in such a way as to provide a date for each activity (*i.e.*, date of award letter, date of mailing of award letter).”<sup>23</sup>

At the start of her tenure in this case, the Third-Party Auditor initiated meetings with key representatives from the District of Columbia government agencies responsible for implementing the requirements reflected in the Settlement Agreement. The Third-Party Auditor was told that

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<sup>21</sup> In addition, on January 10, 2024, as described more fully *infra* at 8-10, OSSE responded to an information request from the Third-Party Auditor by providing a series of five spreadsheets related to award calculations, enrollment, and the delivery of compensatory education hours to students who were enrolled in the DCPS program at the DOC. The Third-Party Auditor has not had an opportunity to review these data during this reporting period.

<sup>22</sup> Settlement Agreement ¶ 113.

<sup>23</sup> *Id.*



OSSE had responsibility for developing and managing the tracking system required by the Settlement Agreement. Thereafter, on October 30, 2023, the Third-Party Auditor was informed by Victoria Glick, OSSE's Director of Special Education, that a database in Quickbase was under development. Director Glick reported that the database would capture and track all the information mandated by the Settlement Agreement, including the underlying records related to each of the mandated tracking system elements and other key documents such as each student's IEP and documentation reflecting the student's award selections. At that time, the Third-Party Auditor was advised that the database would be operational by the end of November 2023. In a subsequent meeting with the Third-Party Auditor on November 13, 2023, Director Glick provided more specific information about the database, and noted that OSSE was getting the data ready to load. She reiterated that the database would be ready by the end of November.

On November 30, 2023, the Third-Party Auditor contacted Director Glick to obtain an update on the status of the database.<sup>24</sup> In response, on December 1, 2023, Director Glick reported that the database was not yet ready. She indicated "a couple of bugs [were found] in the validation process with regard to the system logic re: what populates when a class member is identified as having been identified in a particular sub-group and also where communications are logged."<sup>25</sup> Director Glick explained that the developer was resolving these issues and that the real data would be loaded once the developer successfully addressed the issues, indicating she would provide an update on December 4, 2023, which was the next business day. Because of the

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<sup>24</sup> See Ex. 7, November 30, 2023 email correspondence from Grace M. Lopes to Victoria Glick.

<sup>25</sup> See Ex. 8, December 1, 2023 email correspondence from Victoria Glick to Grace M. Lopes, with related email thread. The related email threads for email correspondence contained in Appendix A are included with each Exhibit.

delay on OSSE's end, Director Glick offered to provide any raw data that might be needed for the Third-Party Auditor's forthcoming report.<sup>26</sup>

On December 4, 2023, Director Glick informed the Third-Party Auditor that the database would be "all final and data loaded by Monday, 12/11."<sup>27</sup> In response to the Third-Party Auditor's specific inquiry,<sup>28</sup> on that same day Director Glick confirmed that on December 11, 2023, the Third-Party Auditor would have the ability to access the database and download the data.<sup>29</sup> Accordingly, a demonstration of the database for the Third-Party Auditor and her team was scheduled for December 11, 2023.

On the morning of December 11, 2023, Director Glick notified the Third-Party Auditor that the demonstration would need to be cancelled due to the discovery of a "technical problem" with the database requiring another round of User Acceptance testing. At that time, Director Glick indicated that she was hopeful the database "with all data in it" would be available for the Third-Party Auditor by Friday, December 15, 2023,<sup>30</sup> and she offered to produce reports for the Third-Party Auditor "asap." Director Glick proposed December 18, 2023, as the demonstration date.<sup>31</sup>

In light of these circumstances, on December 11, 2023, the Third-Party Auditor requested that Director Glick provide the following data later that week:

- An explanation of how the list of 170 compensatory relief subclass members was compiled and all back-up data relied upon to develop the list of compensatory relief class members;
- For all 170 compensatory relief subclass members, copies of the IEPs that were relied upon for calculating each category of "hours awarded" reflected in the October 20, 2023 award letter sent to each compensatory relief subclass member;

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<sup>26</sup> *Id.*

<sup>27</sup> *See* Ex. 9, December 4, 2023 email correspondence from Victoria Glick to Grace M. Lopes.

<sup>28</sup> *See* Ex. 10, December 4, 2023 email correspondence from Grace M. Lopes to Victoria Glick.

<sup>29</sup> *See* Ex.11, December 4, 2023 email correspondence from Victoria Glick to Grace M. Lopes.

<sup>30</sup> *See* Ex.12, December 11, 2023 email correspondence from Victoria Glick to Grace M. Lopes.

<sup>31</sup> *Id.* Because of scheduling conflicts, it was agreed that the demonstration would be held on December 19, 2023.

- For all 170 compensatory relief subclass members, copies of all back-up data used to calculate each category of hours awarded reflected in each subclass member's October 20, 2023 award letter; and
- A list of all data tables that are in the Quickbase database [Director Glick planned] to make available to [the Third-Party Auditor].<sup>32</sup>

The database demonstration was ultimately scheduled for December 19, 2023. On that date, the Third-Party Auditor and her team were given an overview of the database. However, during the demonstration, the Third-Party Auditor learned that the data had not yet been loaded and thus none of the required data was visible or available for preview.<sup>33</sup> During the meeting, the Third-Party Auditor and some members of her team made certain suggestions about the structure of the database, which Director Glick indicated she would consider. Because the demonstration of the database without the required data was not what was anticipated or helpful, it was agreed that the demonstration would be rescheduled after the database was fully populated.

Later that same day, the Third-Party Auditor transmitted an email to Director Glick, requesting the following: 1) that the Third-Party Auditor be notified when the database was populated with the data; 2) that the definitions for each field in the database along with any instructions provided to those responsible for completing the data entry be provided; and 3) that the entity responsible for collecting and maintaining the data required by Paragraph 144 of the Settlement Agreement be identified.<sup>34</sup>

On January 10, 2024, Director Glick sent an email to the Third-Party Auditor indicating that except for notice letters, the data in the Quickbase database would be “visible” by January

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<sup>32</sup> See Ex 13, December 11, 2023 email correspondence from Grace M. Lopes to Victoria Glick.

<sup>33</sup> Director Glick explained there was a record for one “test” entry in the database during the demonstration.

<sup>34</sup> See Ex. 14, December 19, 2023 email correspondence from Grace Lopes to Victoria Glick (with attached list of database requirements).

17, 2023.<sup>35</sup> The email transmitted five Excel spreadsheets,<sup>36</sup> responding, in part, to the Third-Party Auditor's December 11, 2023 data requests.<sup>37</sup> The Third-Party Auditor's response to this submission is included in Appendix A.<sup>38</sup> Unfortunately, these data were provided too late for a thorough analysis to be completed in advance of finalizing this report. In light of the current time constraints, a review and analyses of the data maintained in the database, including relevant primary source data, along with the January 10, 2024 submissions, will be addressed as appropriate in the Third-Party Auditor's next report.<sup>39</sup>

Accordingly, the Findings section of this report notes the instances in which the Third-Party Auditor is unable to issue findings due to delays in the Defendants' implementation of the Quickbase database. Also noted are the instances in which a requirement is not yet ripe for analysis or that a determination cannot otherwise be made in this reporting period regarding the Defendants' performance.

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<sup>35</sup> See Ex. 15, January 10, 2024 email correspondence from Victoria Glick to Grace M. Lopes.

<sup>36</sup> The email describes the data in the spreadsheets as follows:

- Master Class List, dated 10.4.2023, described as the master document with all final calculations included for each class member;
- Award Calculation for 3.24.20 to 8.31.21, which includes the underlying calculations to support Master Class List calculations for individuals enrolled during the referenced time period;
- Award Calculation for 2.1.22 to 9.22.23, which includes the underlying calculations for variables to support Master Class List calculations for individuals enrolled during the referenced time period;
- DCPS Contempt Compensatory Education Hours Remaining dated 9-20-23, which includes the hours that DCPS reported as having delivered to students; and
- Charles H program eligibility dated 10.18.23, which includes identification of program enrollment eligibility based on age and other factors.

<sup>37</sup> Director Glick's January 10, 2024 email correspondence also responded to several other outstanding issues, which the Third-Party Auditor anticipates exploring further following the submission of this report.

<sup>38</sup> See, Ex. 16A, January 15, 2024 email correspondence from Grace M. Lopes to Victoria Glick.

<sup>39</sup> This is based on the assumption the Third-Party Auditor's next report will focus on compensatory and educational expense awards, the database will be accessible promptly after the submission of this report, and that it will contain all of the required data.

## II. BACKGROUND

The D.C. Public Schools (“DCPS”) operated a high school program for young people eligible for special education services under the Individuals with Disabilities Act (“IDEA”), 20 U.S.C. §1400, *et seq.*, and incarcerated at the CDF and the CTF in March 2020, at the start of the pandemic, through September 30, 2021. Effective October 1, 2021, the DOC contracted with See Forever to assume responsibility for operating the program through the Maya Angelou Academy (“MAA”). The current contract requires See Forever to provide special education instruction and related services to approximately 45 students previously identified as eligible to receive special education services pursuant to IDEA who are incarcerated at the CDF and CTF up to their 22<sup>nd</sup> birthday.<sup>40</sup>

Shortly before the start of the Fall 2023 semester, MAA launched a new intake process designed to enroll eligible students in the educational program at the CTF and CDF promptly after their admission to DOC custody.<sup>41</sup> As soon as a student’s eligibility is confirmed, the student is enrolled in the MAA program and the DOC’s Education Administrator is notified that the student should be moved to an educational housing unit.<sup>42</sup> In turn, the Education Administrator requests that correctional managers move the students to the education units at the

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<sup>40</sup> *See*, Ex. 6, *supra* n. 20. The contract includes a base year commencing August 5, 2023 and continuing through August 4, 2023 and four option years. *Id.* Attachment A §§ C.1. and C.5.1.; Attachment B § B.3.1-4,

<sup>41</sup> MAA staff screen all new admissions who are 23 years old and under daily to determine whether there is an Individual Education Plan (“IEP”) eligibility determination in OSSE’s Statewide Longitudinal Education Data website (“SLED”). According to MAA staff, the website not only provides information about IEP eligibility, it provides information regarding all previous school enrollments. MAA staff also check another OSSE website, PowerSchool, to determine whether MAA has had previous contact with the student. Even if IEP eligibility is not confirmed through SLED and/or PowerSchool, the MAA Intake Team meets with the prospective student within one business day following admission. These meetings, which are generally conducted at the cell door, typically occur in the CDF on the housing unit designated for new intakes. If the prospective student is interested in receiving services, they sign a consent form, and the MAA staff collect records and transcripts from the student’s previous school. If the records are not produced promptly by the previous school, MAA staff visit the school in-person to obtain the records.

<sup>42</sup> The notifications are submitted to the DOC Education Administrator weekly, on Fridays.

CTF. If a student cannot be moved to the CTF for security or safety reasons, they are generally, but not always, assigned to So-1, a restrictive housing unit at the CDF that has a classroom.

It is the Third-Party Auditor's understanding that the Defendants established dedicated housing units for the educational program at the CTF at some point in 2022 or early 2023 to address limitations in student access to the educational program.<sup>43</sup> Prior to that time, students were assigned to various housing units at both facilities based exclusively on their security statuses. They attended class in one of three classrooms at the CDF, and were dependent on the correctional staff to escort them to and from class. DOC and MAA staff have reported that this contributed to delays in students arriving at class on time or, at times, missing classes altogether. The shift to dedicated housing units at the CTF, where the MAA staff have offices, and to what was intended to be one restricted housing unit at the CDF, was implemented to remedy this problem and improve the quality of the classroom space. As explained below, there have been recent variations in these housing assignment practices that adversely impact student access to educational services.<sup>44</sup>

The Third-Party Auditor has received conflicting information about how long it takes to move a student from the CDF to one of the designated education units at the CTF or So-1. Accordingly, she requested admission and housing assignment data by age from the DOC.<sup>45</sup> The data provided showed that there were 243 individuals 23 years old or under admitted to DOC between September 22, 2023 and December 31, 2023. Of the 243, 117 were released before assigned to an education unit, 110 had not been assigned to an education unit as of January 5,

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<sup>43</sup> The Third-Party Auditor has not yet been able to verify the date this shift in housing practices occurred.

<sup>44</sup> *Infra* at 45.

<sup>45</sup> The Third-Party Auditor requested, among other data, a report addressing the following fields for *all admissions* to the CDF/CTF from September 22, 2023 to December 1, 2023: the inmate's full name, DCDC number, DOB, admission date, release date, and all housing unit assignments since the date of admission. *See* Ex.16B, December 6, 2023 email correspondence from Grace M. Lopes to Andrew Mazzuchelli.

2024, and 16 individuals, who became the focus of this analysis, were assigned to an education unit during the period under review.<sup>46</sup> This is depicted in Figure 1, below.

**Figure 1**

**Summary of Education Housing Unit Assignment Status**

For Individuals of 23 years old or under admitted to DOC between 9/22/2023 and 12/31/2023

Status	Month of Admission Date				Grand Total
	2023-09	2023-10	2023-11	2023-12	
Grand Total	19	79	68	77	243
Released before assigned to education unit	10	43	35	29	117
Never (or not yet) assigned to education unit as of 1/5/24	7	27	30	46	110
Assigned to education unit (before release or current)	2	9	3	2	16

*\* Data herein do not include 61 individuals admitted before 9/22/2023 and assigned to one of the education units for at least one day between 9/22/2023 and 12/31/2023.*

Of the 126 individuals admitted during the review period who had not yet been released as of January 5, 2024, none of the 16 who were ultimately assigned to an education unit<sup>47</sup> were moved to an education unit directly from their initial housing unit assignment – all were moved from the initial unit assignment to at least one interim housing assignment.<sup>48</sup> This is reflected in Figure 2, below.

<sup>46</sup> See Ex. 16C, DOC Housing Assignment Data Analysis.

<sup>47</sup> The Third-Party Auditor recently learned, after these analyses were completed, that SMUB is not exclusively dedicated to the educational program. At times, inmates who are not enrolled in the MAA program are housed there. This will be taken into account in any prospective analysis.

<sup>48</sup> *Id.*



**Figure 2**

<b>First Housing Reassignment (Transfer) from Initial Unit*</b>							
Reassigned Unit**	Initial Unit						Grand Total
	E4A	IRC	SE1	SE2	SO2	SO3	
<b>Grand Total</b>	<b>11</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>108</b>	<b>1</b>	<b>126</b>
SO2 (Intake Unit)		4		1			5
E2A & E4B	8						8
NE1					6		6
NO1/2					5		5
NW1/2/3					38		38
SE1/2/3			1		15		16
SW1/2/3					34		34
Remaining in Initial Unit	2				9	1	12
Med Unit or Hospital	1				1		2

**NOTES**  
*\* Initial Unit is the first unit to which the individual is assigned following admission processing. For most individuals, this unit is SO2.  
 \*\* Reassigned unit is the unit to which the individual is transferred from the initial unit. Dedicated education housing units are C4B, C4C, and SMUB for male students. E2A is considered an education unit for female students as most female students are housed on this unit, although the unit also houses female non-students. In the CDF, SO1 is an education unit although it also houses non-students.  
 \*\*\* The remaining units are not considered education units although some individuals may be eligible and receive education services while housed in those units.*

For the 16 individuals who were moved to an education unit between September 22, 2023 and January 5, 2024, the Third-Party Auditor reviewed the length of time from their respective admissions to their assignment to an education unit by month and assigned housing unit. As reflected in Figure 3, below, the median length of time that elapsed after September 22, 2023 from the student's admission to when they were assigned to an education unit was 14 days in September 2023, 12 days in both October 2023 and November 2023, and nine days in December 2023.<sup>49</sup>

**Figure 3****Days from Admission to Education Unit, by Month**

*For Individuals assigned to an education unit by 1/5/2024, after admitted >=9/22/2023*

	2023-09	2023-10	2023-11	2023-12	Grand Total
Count of Admissions	2	9	3	2	16
Median Length from Admission to Education Unit	14 Days	12 Days	12 Days	9 Days	12 Days
Avg. # of Units Assigned Before Education Unit*	1.50	2.11	1.67	1.50	1.88

*\* Many individuals were assigned to one or more non-education units before getting assigned to an education unit. This represents the average number of other non-education units assigned before getting transferred to an education unit for the first time since admission.*

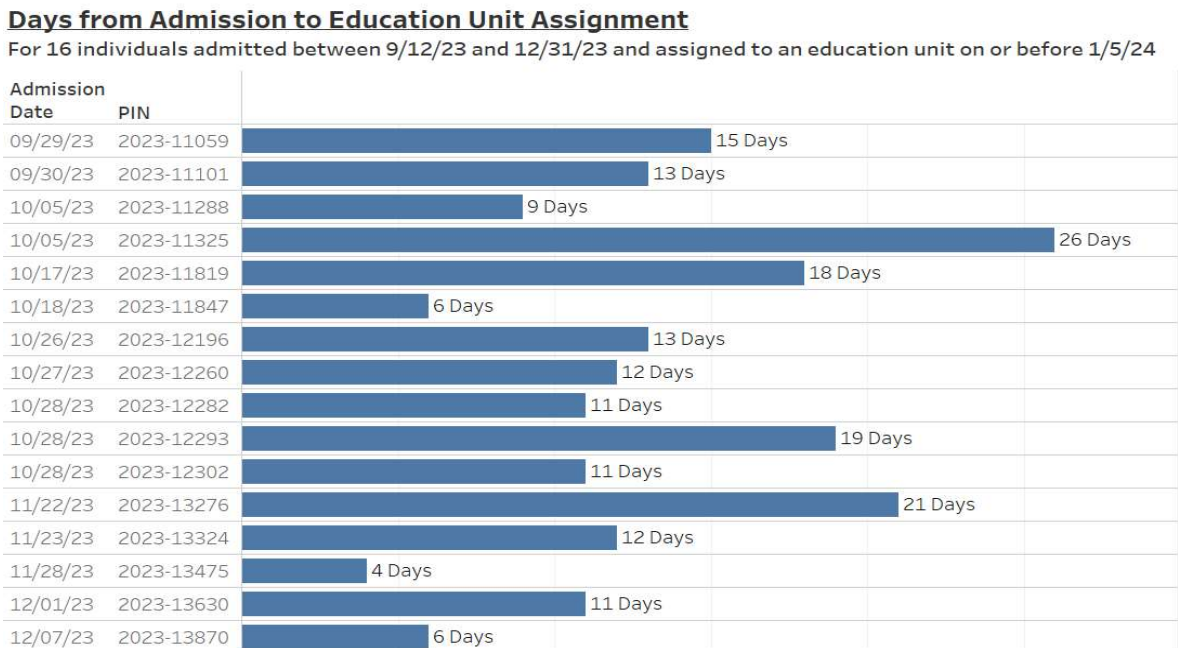
<sup>49</sup> *Id.*



There also was variability in time to assignment to a specific education unit. It took a median of 15 days until assignment to C4B, 13 days until assignment to C4C, nine days for assignment to E4B, and 11 days for assignment to SMUB. Finally, the average number of housing units a student was assigned to prior to being moved to C4B and C4C was two housing units, 1.5 housing units for those assigned to E4B, and three housing units for those assigned to SMUB.<sup>50</sup>

A breakdown of days from admission to assignment by individual student shows significant variability in the time from admission to assignment to an education unit,<sup>51</sup> from a low of four days to a high of 26 days as shown in Figure 4, below.<sup>52</sup>

**Figure 4**



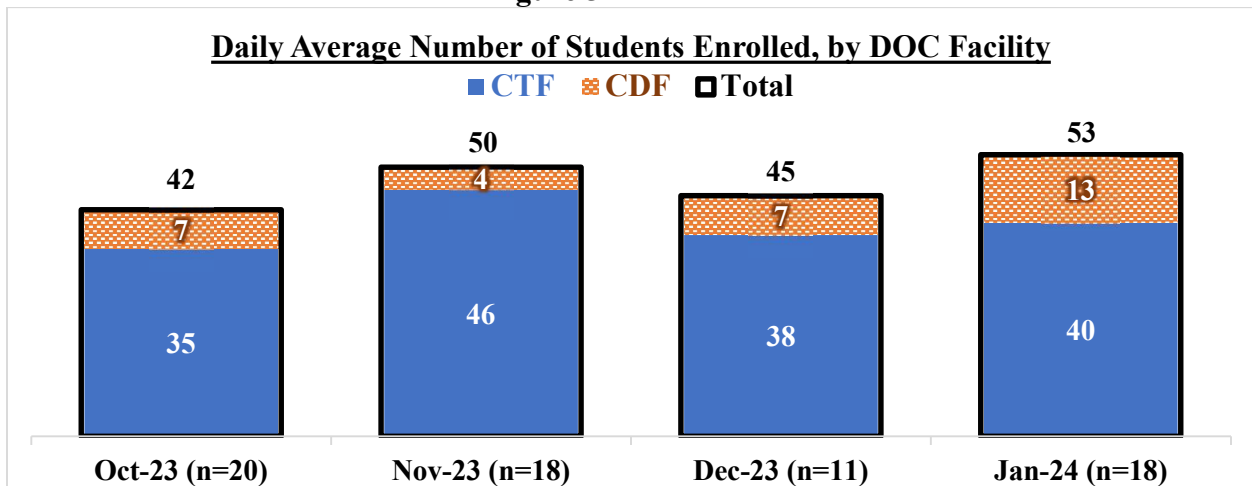
<sup>50</sup> *Id.*

<sup>51</sup> There are multiple reasons that could account for the variability in the length of time between admission and assignment to an education unit, including delays in confirming eligibility and a student initially refusing services. Anecdotally, however, MAA staff indicate that they are generally able to confirm enrollment eligibility status promptly and that with very limited exceptions, those eligible consent to participate in the program. Further investigation is necessary to isolate the factors that contribute to these delays.

<sup>52</sup> *Id.*

The Third-Party Auditor’s analysis of MAA enrollment data indicates that there has been a significant increase in the number of students enrolled in the MAA program since that time as well as a shift in their DOC facility assignments.<sup>53</sup> As Figure 5 illustrates, during 20 school days in October 2023, there was an average daily enrollment of 42 students in the MAA program. Of this number, the daily average enrollment of students assigned to a housing unit at the CTF was 35 and at the CDF the daily average was seven. During 18 school days in November 2023, there was an average daily enrollment of 50 students in the MAA program. Of this number, the daily average enrollment of students assigned to a housing unit at the CTF was 46 and at the CDF the daily average was four. During 18 school days in December 2023, there was an average daily enrollment of 45 students in the MAA program. Of this number, the daily average enrollment of students assigned to a housing unit at the CTF was 38 and at the CDF the daily average was seven. By January 2024, the average daily enrollment in the MAA program during 18 school days was 53 students. Of this number, the daily average enrollment of students assigned to the CTF was 40 and at the CDF the daily average was 13. This is depicted below in Figure 5.

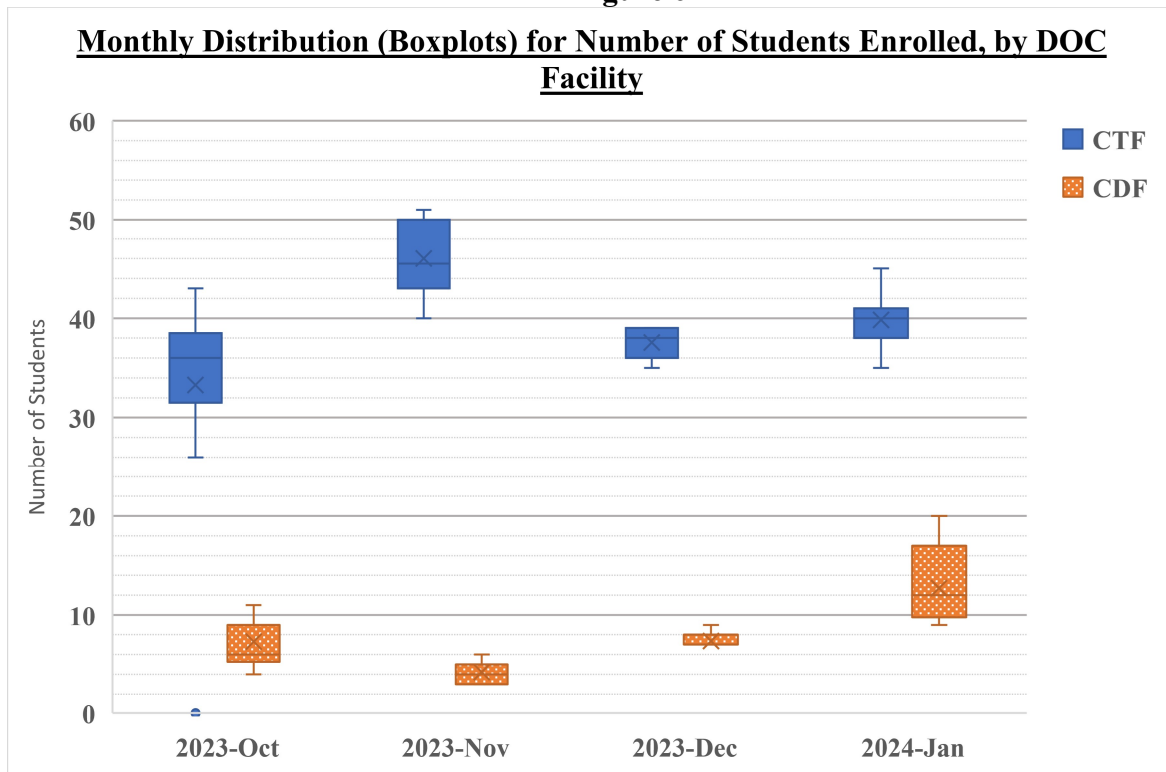
**Figure 5**



<sup>53</sup> See Ex.16D, Summary Tables, Daily Number of Students Enrolled in Maya Angelou Academy (MAA) by DOC Facility (October – January 2024).

During the four-month period between October 2023 and January 2024, the average daily number of students enrolled in the MAA program who were assigned to the CTF was 40 (with a daily average of 10 students on SMUB) and to the CDF the average daily number was eight students (with a daily average of four students on So-1).<sup>54</sup> During the same period, the minimum number of students enrolled in the MAA program who were assigned to a housing unit at the CTF was 26 and the maximum number was 51 while the minimum number of students who were assigned to a housing unit at the CDF was three and the maximum was 20.<sup>55</sup> The number of students assigned to housing units at each facility during the four-month period between October 1, 2023 and January 31, 2024 is reflected in Figure 6, below.

**Figure 6**



<sup>54</sup> *Id.* These numbers have been rounded.

<sup>55</sup> *Id.*

As of January 18, 2024, the MAA program at the DOC had 32 funded positions, including six vacancies.<sup>56</sup> The school day at the CDF and CTF is scheduled to begin at 8:30 a.m. and conclude at 2:30 p.m.;<sup>57</sup> however, as explained below, many factors unrelated to the educational program can at times impact the duration of the school day. Classes are conducted on three designated housing units at the CTF and in one at the CDF.<sup>58</sup> Students enrolled in the MAA program who are assigned to other housing units are provided with assignments and receive more limited guidance and instruction through brief interactions with MAA instructional staff, which typically occur at their cell doors. These assignments are sometimes provided in paper form and at other times through an on-line learning platform, Brightspace, which is available on the educational tablets.<sup>59</sup>

Related services are provided through a combination of MAA staff and subcontractors. MAA staff provide psychological services and counseling in group and individual settings and an MAA subcontractor, Sterling Speech Associates, LLC, provides therapists for speech and occupational therapy.<sup>60</sup> Sterling's executive staff estimate that on average the organization provides speech two to three hours weekly and occupational therapy one to two hours weekly through a Webex platform. These sessions are scheduled and facilitated by MAA staff. Confidentiality is a significant issue impacting the delivery of counseling and psychological

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<sup>56</sup> Vacancies include four special education/case management teachers, one Math teacher, and one Art teacher. MAA management reports that they are actively recruiting to fill these vacancies. It is the Third-Party Auditor's understanding that the staffing plan is based on an enrollment of approximately 45 students.

<sup>57</sup> There is a built-in 30-minute lunch break. MAA and DOC staff have explained that because most students require five and one-half hours of instruction daily, the 30-minute lunch break is not a barrier to students receiving required instructional hours.

<sup>58</sup> Much more limited classroom instruction is provided on a fourth CTF housing unit, E4B, which is a women's unit.

<sup>59</sup> See *infra* 61-71 for a discussion regarding the educational tablets.

<sup>60</sup> See <https://www.sterlingspeechassociates.com/> for more information regarding this MAA subcontractor. The same two providers have been delivering services through the MAA contract with Sterling since its inception.

services in both SMUB and in all units at the CDF because MAA staff often provide these services while speaking to students through their cell doors.<sup>61</sup>

The CDF is a multi-story, secure detention facility. The facility has 18 housing units. Cellblocks are divided into two sides, and for many of the facility's housing units, each side contains two tiers with 20 cells per tier, a dayroom, a small recreation area, and limited, if any, office space. During the Third-Party Auditor's tenure, an office in So-1 that is also used by the restricted housing clerk, has been used by MAA staff and students as a classroom. Among other fixtures, the office, which is located on an upper tier, has chairs, a desk, file cabinets and a white board.<sup>62</sup> Four metal anchoring devices are affixed to different places on the floor of the office. These devices are used to anchor leg irons so that each student can be shackled to the floor while attending class. No more than four students are permitted in the area at one time. Therefore, if more than four students are housed on So-1, the time available for each to receive classroom instruction is limited. And even if four students are assigned to So-1, their respective security statuses may require that fewer than four participate in classroom activities at one time.<sup>63</sup>

At times, factors other than the number of students assigned to So-1, impact access to face-to-face classroom instruction on the unit. For example, some students may have separation orders or a security status that requires the correctional staff to maintain their separation from all others. As a practical matter, this often means these students must remain locked in their cells if others, including fellow students, are out of their cells. For example, on January 23, 2024, there were 17 MAA students assigned to housing units located at the CDF, and eight of the students

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<sup>61</sup> See *infra* at 84-85 for more detailed information regarding this issue.

<sup>62</sup> MAA teachers carry markers with them to use on the whiteboard. See Appendix B for photographs of this area.

<sup>63</sup> This may be the case for students with certain custody statuses or alerts, including some students on protective custody status, students with separation orders, and students who have a "special handling" designation.

were assigned to So-1.<sup>64</sup> Because of his security status, at least one of the eight was only able to attend class by himself.<sup>65</sup> The daily report for that date indicates that only three of the eight students assigned to So-1 attended class that day: one student in the morning and two students in the afternoon.<sup>66</sup>

In addition, the office that serves as a classroom for face-to-face instruction on So-1 is used during the school day for other purposes, including IEP meetings and related service sessions as well as adjustment board hearings.<sup>67</sup> Moreover, according to correctional staff assigned to the housing unit, the office recently was used each afternoon by an inmate with an eye injury who was not enrolled in the MAA program in order to afford him the opportunity to use a special reading machine that is located in the room.<sup>68</sup> When it is used for other purposes during the school day, the office on So-1 is not available for classes.

Factors unrelated to the use of the classroom also impact the availability of classroom instruction for students assigned to So-1, including inadequate correctional officer staffing

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<sup>64</sup> See Ex. 17A, Maya Angelou Academy at DC DOC Roster, January 23, 20[24] (reflecting the housing assignments for MAA students on January 23, 2024). The roster is incorrectly dated January 23, 2023 instead of January 23, 2024.

<sup>65</sup> See Ex.17B, January 23, 2024 email from Kiana Sweatt to Russell Waller, *et al.*, transmitting January 23, 2024 MAA Daily Report.

<sup>66</sup> *Id.* According to the MAA daily report, one of the eight students refused class, but the others did not attend.

<sup>67</sup> See, e.g., Ex. 17C, January 31, 2024 email from Kiana Sweatt to Russell Waller, *et al.*, transmitting January 31, 2023 MAA Daily Report (noting that when MAA staff arrived on So-1 for class, they were told “they would have to wait because the adjustment board was having hearings in the classroom[,],so they spoke with students at their cells and “attempted to conduct a virtual classroom with students at 10am.”).

<sup>68</sup> According to the correctional staff, the inmate used the reading machine for 45 minutes each afternoon and during this time the MAA staff cannot use the room. See Ex.17D, January 2, 202[4] MAA Daily Report at 2, So-1 (noting that MAA staff went to So-1 to conduct an afternoon class session with a specific student, but that the student could not be released from his cell because another inmate was in the classroom space using a reading machine, which he would use for 45 minutes daily).

levels,<sup>69</sup> unspecified security issues and shakedowns,<sup>70</sup> and maintenance issues that render the classroom or the housing unit inaccessible to the teaching staff.<sup>71</sup> If students on So-1 do not have access to classroom instruction, the assumption is that they are working independently on paper assignments that are handed to them at their cell doors by teachers or on assignments they can access through Brightspace, the MAA program available on the educational tablets.<sup>72</sup>

While there are students enrolled in the MAA program who are assigned to housing units other than So-1 at the CDF, there are no other areas at the CDF used as a classroom. MAA students housed in units at the CDF other than So-1, do not, with one limited exception,<sup>73</sup> have

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<sup>69</sup> As addressed in various sections of this report, there is evidence that limitations in correctional officer staffing levels at both facilities at times interferes with the educational program, especially on restricted housing units. If staffing levels are inadequate, students are not released from their cells and classes are delayed, cancelled, or MAA staff speak to students about their assignments at their cell doors. *See, e.g.*, Ex. 17E, January 31, 2024 email correspondence from Kiana Sweatt to Russell Waller, *et al.*, transmitting January 30, 2024 MAA Daily Report (reporting that on January 30, 2024 two MAA teachers who went to So-1 to conduct class were “turned away” “due to no officers being on the unit”[;] the teachers “went to each students’ [sic] cells and discussed work with them . . . inform[ing] them on how to complete their assignments on BrightSpace[,]” which is an electronic program students can access through the educational tablets. *See infra* at 61-71 regarding limitations in access to the tablets as well as in their functionality. *See also* Ex. 18A, January 29, 2024 email correspondence from Kiana Sweatt to Russell Waller, *et al.*, transmitting January 29, 2024 MAA Daily Report (reporting that on the morning of January 29, because only one officer was present on So-1, class could not be conducted, but the teacher “went to all the students at their cells and distributed classwork[;]” teaching staff returned in the afternoon but was told by a correctional officer “not to pull any residents out due” to a reference that is not included in the report; Ex. 18B, January 26, 2024 email correspondence from Kiana Sweatt to Russell Waller, *et al.*, transmitting January 25, 2024 MAA Daily Report (reporting that when teaching staff arrived at So-1 for the morning session, they were asked to come back due to “shakedowns happening” and “only one officer being there”); Ex. 18C, January 3, 202[4] MAA Daily Report (when teaching and related services staff arrive, only one officer on So-1, so morning session delayed); Ex. 18D, December 1, 2023 MAA Daily Report (delay in class start time because only one correctional officer on the housing unit when teaching staff arrives for afternoon session); and, Ex. 18E, October 6, 2023 MAA Daily Report (due to insufficiency in correctional officer staffing on So-1, teaching staff spoke with students at their cell doors). *See also* Ex. 30H, *infra* note 210, Daily Reports Review Results, Table 2.

<sup>70</sup> *See, e.g.*, Ex. 18F, November 30, 2023 MAA Daily Report (reporting that due to a security issue on So-1, the teaching staff left early); Ex. 18G, December 12, 2023 MAA Daily Report (no school due to a security issue and shakedown on So-1). *See also* Ex. 30H, *infra* note 210, Daily Reports Review Results, Table 4.

<sup>71</sup> *See, e.g.*, Ex. 18H, November 16, 2023 MAA Daily Report (maintenance was being conducted on cameras in the So-1 classroom; teaching staff spoke to students at cell doors); Ex. 18I, December 4, 2023 MAA Daily Report (reporting that class could not be conducted on So-1 because the classroom and tier were flooded; teacher spoke to all but one of the students at their cells); Ex. 18J, December 5, 2023 MAA Daily Report (reporting that the classroom had not been cleaned after flood the previous day, so class could not be conducted). *See also* Ex. 30H *infra* note 210, Daily Reports Review Results, Tables 1 and 4.

<sup>72</sup> There are significant issues related to the tablets that are addressed *infra* at 61-71.

<sup>73</sup> MAA staff report that they have been permitted to meet with students in a TV room on NE-1 between 8:30 a.m. and 9:30 a.m. before the inmates on the housing unit are released from their cells for recreation.

access to classroom instruction. In fact, MAA staff have been told by correctional staff and supervisors at the CDF that they are prohibited from providing educational services to students housed in general population units<sup>74</sup> as well as in restrictive housing units other than So-1.<sup>75</sup>

The CDF is connected to the CTF via an elevated walkway accessed by passing through the medical units of each facility and linked by a series of sallyports and other security doors. The CTF is comprised of five separate multi-story buildings, designated as buildings A – E. The facility has 25 housing units. Eighteen have a capacity of 50 beds, four have a capacity of 96 beds, and one has a capacity of 65 beds. There are two medical housing units and two special management units that have varying capacities and are not intended for general population housing. The CTF also has a 30-room infirmary with 40 beds. The infirmary serves both facilities.

The MAA staff offices and dedicated housing units are in C building. At least since September 22, 2023, housing units C4B and C4C<sup>76</sup> have been used exclusively for students enrolled in the MAA program. While SMUB was intended to serve as a dedicated housing unit for students enrolled in the MAA program, there have been occasions when inmates who are not enrolled in the MAA program are confined there. Part of the upper tier in unit C4B includes

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<sup>74</sup> See, e.g., Ex. 19A, October 26, 2023 MAA Daily Report (reporting that teaching staff was informed they were not permitted to go on to general population units at the CDF, so they were unable to see a student housed on SW-2; instead classwork for the student was added to the Brightspace program on the educational tablet); Ex. 19B, November 8, 2023 MAA Daily Report (reporting that the teaching staff was unable to see a student at the CDF housed on NW-3 “due to previous directives not to go on to general population units on CDF for school.”).

<sup>75</sup> See, e.g., Ex. 19C, January 2, 2024 MAA Daily Report (reporting that correctional staff on No-1, a restrictive housing unit, told MAA teachers who went to the unit to meet with a student that school was only held on So-1; the teachers followed up with a correctional supervisor who confirmed that was the case but indicated he would make an exception and to let the student out of his cell, but the student refused to participate in school); Ex. 18C, January 3, 2024 MAA Daily Report, *supra* note 69 (reporting that when MAA teacher and related services provider went to No-1 and asked to hold class with a student assigned to the unit, they were told by correctional staff and a supervisor that school is only held on So-1).

<sup>76</sup> See *supra* note 7 (as of January 30, 2024, students in C4C were relocated to C2A on a temporary basis and students in C4B were relocated to C4C due to the initiation of a mandatory maintenance project in C4B).



MAA offices and additional office space that has been converted into small classrooms.<sup>77</sup> There are five fully-equipped classrooms in this area. Each of these classrooms accommodates a small number of students assigned to C4B, but the classrooms are only used where there are two correctional officers assigned to the housing unit. Unit C4C is adjacent to unit C4B but separated from it by several interior offices and a restroom that are also used by MAA staff. While Unit C4B operates like a general population unit for MAA students, Unit C4C is referred to as a protective custody unit for MAA students. While Unit C4C does not have a dedicated classroom, it does have an office that is used for related services and sometimes for a small breakout class;<sup>78</sup> however, class in C4C is generally conducted in the dayroom with students sitting with their teachers at different tables.<sup>79</sup>

Also in C Building is SMUB, which is a higher security restricted housing unit used mostly, but not exclusively, for MAA students on some type of disciplinary status. SMUB is double-tiered and has a 15-cell capacity. Classes in SMUB are conducted at three small tables, each with two chairs, one for a student and one for a teacher. The tables are located in a narrow area facing the cell doors that the entry door opens into. At each of the three tables, metal anchoring devices are affixed to the floor. Like the devices in So-1, these devices are used to anchor leg irons so that each student can be shackled to the floor while meeting with their teacher. No more than three students are permitted in the area at one time. A desk for the correctional officer(s) assigned to the SMUB post is perpendicular to the tables. A small room adjacent to the narrow area has been made available by DOC for related services, but because of

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<sup>77</sup> Photographs of some of these areas are included in Appendix B.

<sup>78</sup> There is a second office on the first floor of C4C. The office is not available to MAA staff because the key to the office cannot be located. It has been missing since at least early November 2023. Despite MAA staff requests for a duplicate key, it has not been provided.

<sup>79</sup> MAA staff report, and the Third-Party Auditor has observed, that even when two officers are assigned at the start of a shift, one of them might be assigned to a different post during the course of the shift.

its size and connectivity limitations, it is not used for this purpose. In response to concerns raised by the Third-Party Auditor and the OSSE monitor about the suitability of the space in SMUB, during November 2023, the Defendants made a small office outside SMUB available to the MAA teaching staff and equipped it with multiple anchoring devices that could be used to shackle students to the floor. The office is rarely use by the MAA teaching staff because correctional staff generally have been unavailable to monitor it.<sup>80</sup>

Like the CDF, shortcomings in correctional officer staffing levels have an impact on the educational program offered in the housing units at the CTF, particularly in SMUB.<sup>81</sup> Moreover, like the CDF, at times other factors interfere with the school day for students assigned to housing units at the CTF, including safety and security issues,<sup>82</sup> and the failure to coordinate the

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<sup>80</sup> Photographs of some of these areas are included in Appendix B.

<sup>81</sup> *See, e.g.*, Ex. 20A, November 3, 2023 MAA Daily Report, (reporting on delays in allowing students out of their cells for instruction in both the morning and afternoon sessions because there was only one officer present on SMUB); Ex. 20B, November 6, 2023 MAA Daily Report (reporting on one hour delay in start of afternoon education session in SMUB due to only one officer on the unit); Ex. 20C, November 13, 2023 MAA Daily Report (because only one correctional officer was in SMUB, MAA related services provider could not conduct psychological testing); Ex. 20D, November 30, 2023 MAA Daily Report (reporting that class could not be held for protective custody students housed on SMUB because the assigned officer was unavailable); Ex. 17E, *supra* note 69, January 30, 2024 MAA Daily Report (reporting only one correctional officer was on SMUB during morning session and unable to take student out of cell for school). Moreover, when there are fewer than two correctional officers assigned to C4B, the MAA staff cannot use the classrooms on the upper tier and instead convene class in the day room, which, while acceptable if all the students are participating in class, is not always conducive to promoting an appropriate educational environment. *See, e.g.* Ex. 19B, *supra* note 74, November 8, 2023 MAA Daily Report (because only one correctional officer was assigned to C4B, school was conducted “down on the unit” which means it was conducted in the dayroom and not in the classrooms adjacent to the MAA offices on the upper tier); Ex. 20B, *supra* note 81, November 6, 2023 MAA Daily Report (reporting school began “on the unit” during morning session in C4B because there was only one correctional officer on the unit); Ex. 20E, November 9, 2023 MAA Daily Report (reporting that for morning session, class was conducted “down on the unit” in C4B because only one correctional officer was on the unit); Ex. 18I, *supra* note 71, December 4, 2023 MAA Daily Report (reporting delay in second officer arriving on C4B for morning session resulted in class held “on the unit”); and, Ex. 20F, January 4, 2024 MAA Daily Report (reporting minor delay in arrival of second correctional officer resulted in class being conducted “on the unit”). *See also* Ex. 30H, *infra* note 210, Daily Reports Review Results, Tables 1 and 2.

<sup>82</sup> *See, e.g.*, Ex. 21A, October 24, 2023 MAA Daily Report (reporting that a safety concern on SMUB prevented class from being conducted during the afternoon session); Ex. 19A, *supra* note 74, October 26, 2023 MAA Daily Report (reporting that a serious safety concern prevented school from being held on October 26, 2023 in SMUB); Ex. 21B, October 31, 2023 MAA Daily Report (reporting that MAA staff were told to leave SMUB during the morning session due to a safety concern and later told not return in the afternoon); and, Ex. 21C, November 20, 2023 MAA Daily Report (reporting MAA teacher unable to go to E4A and E4B due to a safety concern). *See also* Ex. 30H, *infra* note 210, Daily Reports Review Results, Table 4.

scheduling of routine institutional activities with the daily school schedule, such as the delivery of lunch to the housing units,<sup>83</sup> daily recreation time, and the opportunity for students to obtain haircuts in the facility's barber shop.<sup>84</sup> The failure to coordinate scheduling appears to be a particular concern insofar as the women students assigned to E4B, who only meet with their teachers one to two hours per day due to reported limitations in MAA staffing levels.

### III. SUMMARY OF FINDINGS

By all accounts, since the advent of the pandemic, the Defendants have made substantial investments and improvements in the high school special education program offered for students incarcerated at the CDF and the CTF. The DOC's contract with See Forever has allowed the MAA to build an educational program at the DOC's facilities designed to meet student needs. While both the CDF and CTF represent dynamic and challenging environments, the DOC's

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<sup>83</sup> The CTF Culinary Unit closed during the pandemic. Meals are transported to the CTF housing units from the CDF kitchen. Correctional staff and students note that delivery times are not reliable and can vary considerably. This impacts the educational program, particularly on C4B and C4C. If the students have not had lunch by the time the teachers return from their lunch breaks, class is either delayed or disrupted until the students have an opportunity to eat. *See, e.g.*, Ex. 22A, November 17, 2023 MAA Daily Report (reporting teachers went to the housing unit for the afternoon session and students participated in school after lunch arrived); Ex. 22B, November 27, 2023 MAA Daily Report (reporting that students in C4C were still eating lunch when teaching staff arrived and school started late for this reason, but also ended 10 minutes early so students could participate in recreation); Ex. 22C, November 29, 2023 MAA Daily Report (reporting the afternoon school session on C4B started late because the student's lunch was late); Ex. 18J, *supra* note 71, December 5, 2023 MAA Daily Report (reporting that lunch arrived late so afternoon session started late for students in C4C, but class also ended 10 minutes early so students could participate in recreation) and Ex. 18D, *supra* note 69, December 1, 2023 MAA Report (reporting that when teaching staff arrived on the unit for the afternoon session, students were still eating and the start of class was delayed). ). *See also* Ex. 30H, *infra* note 210, Daily Reports Review Results, Table 4.

<sup>84</sup> At times, staff report that daily recreation and visits to the barber shop for haircuts also interfere with the school day, and there is documentation of these phenomena in the MAA Daily reports. *See, e.g.*, Ex. 23A, December 7, 2023 MAA Daily Report (reporting that students in SMUB were at recreation and could not participate in the afternoon session); Ex. 20D, *supra* note 81, November 30, 2023 MAA Daily Report (reporting that the majority of students left class 30 minutes early because a correctional officer arrived on the unit to escort them to recreation); Ex. 22C, *supra* note 83, November 29, 2023 MAA Daily Report (reporting that five students left school shortly after the start of the afternoon session to go to the barbershop for haircuts and they did not return until the end of the school day); Ex. 23B, November 28, 2023 MAA Daily Report (reporting on the absence of multiple students for the afternoon session in C4C because they were getting haircuts). *See also* Ex. 30H, *infra* note 210, Daily Reports Review Results, Tables 4 and 5-a.

skilled and experienced Education Administrator works collaboratively with MAA managers and staff in ongoing efforts to promote the educational goals of students.

The MAA program does not operate in a vacuum. The Academy's ability to deliver specialized instruction and related services to its students, as required by the Settlement Agreement, is contingent upon ongoing support from an array of DOC managers and line staff. As recognized by many Settlement Agreement requirements, this support must take many different forms. For example, adequate educational environments for instruction, specialized instruction, and the delivery of related services must be available and properly equipped; all applicable policies, practices and procedures must promote implementation of the Settlement Agreement's requirements; initial and ongoing training of all those who play a role in implementation must be undertaken; the technological infrastructure and related policies and practices must meet the needs of the educational tablet program, a necessary adjunct to face-to-face instruction; correctional staff must be available to escort students to classes and otherwise support their attendance in classes; and the correctional staffing levels and institutional program scheduling necessary to ensure instruction and related services are delivered as required must be maintained regardless of a student's housing assignment.

The evidence shows that while the Defendants have made certain progress in some of these areas, additional progress will be needed to meet Settlement Agreement requirements. Indeed, as detailed in this report, during the last quarter of 2023, only fifty-three percent of students in restrictive housing assignments and seventy-five percent of students in nonrestrictive housing assignments received the specialized instruction required by their IEPs. Moreover, among other issues, appropriate confidential space for the delivery of related services, particularly behavioral support services, remains a substantial concern in several key housing

units. Furthermore, the technological infrastructure, policies and practices necessary to support the educational tablet program require substantial remediation. The findings in this report indicate that multiple factors have contributed to these limitations, and they will need to be addressed.

Like the DOC, OSSE has also played a significant role in Defendants' efforts to implement the Settlement Agreement. OSSE staff have conducted the required in-person and desktop monitoring and serve as a valuable resource to the MAA program. Both DCPS and OSSE have assigned staff to serve in the required Compensatory Services Outreach Coordinator role. However, as addressed in this report, OSSE has experienced substantial challenges implementing the database required by the Settlement Agreement and this has adversely impacted the Third-Party Auditor's ability to monitor Defendants' performance relative to the compensatory and educational expense award program required by the Settlement Agreement. And of at least equal concern, it may also impact the Defendants' ability to manage the compensatory and educational expense award program.

Finally, because the Settlement Agreement implicates activities of multiple government agencies, and because the compensatory and educational expense award program it establishes is driven by a complex set of processes and procedures, the Defendants are presented with some formidable challenges. Thus far, and notwithstanding the evident experience and skill of the OSSE and DCPS staff who are serving in the Outreach Coordinator role, the evidence suggests that both OSSE and DCPS may not have the capacity, in terms of both data management and administrative staff support, to timely implement the program. The absence of appropriate staff support is also evident in the DOC's efforts to implement the Settlement Agreement. As the

report points out, two staff positions intended to support the DOC's implementation efforts remained vacant as of late January 2024.

These issues and many others are addressed in this report.

#### **IV. SPECIFIC FINDINGS**

##### **Section II. The Provision of Special Education and Related Services**

Paragraphs 45-49 of the Settlement Agreement require Defendants require Defendants to implement students' IEPs regardless of housing placement and to ensure an appropriate environment for the provision of instruction and related services in accordance with student IEP. Defendants' performance relative to these requirements are set forth below.

**This Settlement Agreement applies to the provision of special education and related services to high school students with disabilities at the DOC Facilities.**

##### **Paragraph 45:**

**Defendants shall fully implement students' IEPs regardless of the students' housing placement at the DOC Facilities.**

**Status of Compliance with Paragraph 45:** The evidence shows Defendants did not meet this requirement during the reporting period. This finding is based upon data submitted by Defendants in their monthly reports, which is consistent with information the Third-Party Auditor has obtained from MAA records, interviews with MAA staff, and observations conducted during site visits at the CDF and CTF. The reasons for this finding are explained below.

Since the time the preliminary injunction was entered,<sup>85</sup> and continuing after the effective date of the Settlement Agreement, Defendants have transmitted monthly reports to the Third-Party Auditor and Plaintiffs' counsel. Included with each report is a monthly "Summary of IEP

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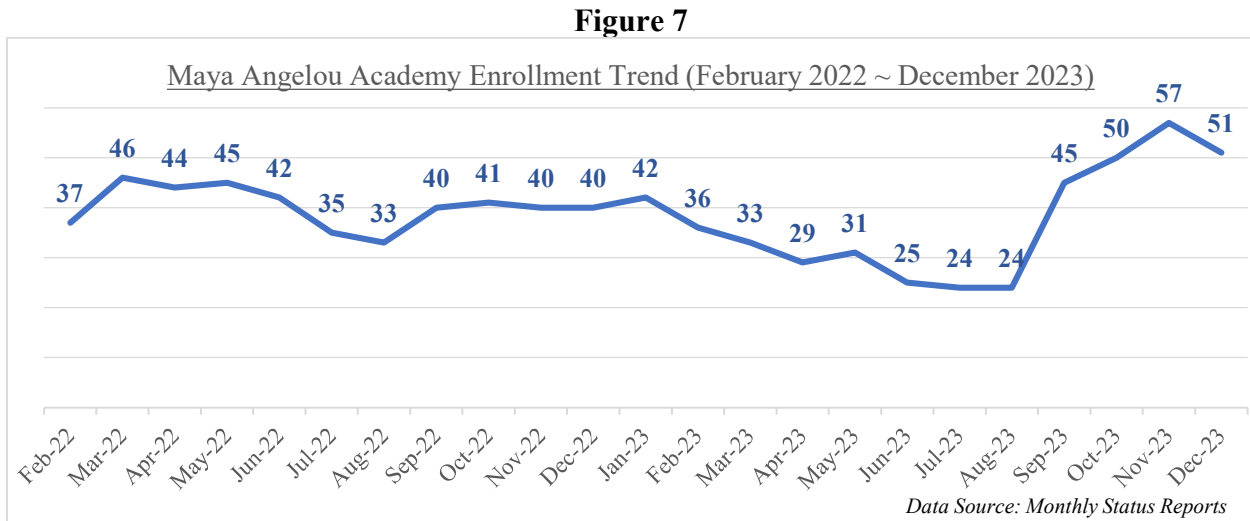
<sup>85</sup> Order granting Plaintiffs' Motion for Preliminary Injunction (ECF 37), filed June 16, 2021.

Hourly Requirements and Hours Received by Maya Angelou Academy Students” (“Summary of IEP Hours Received”).<sup>86</sup> The summary, which is presented in tabular form by students enrolled in MAA during the previous month, reflects the number of weekly hours of specialized instruction outside general education required by each student’s IEP, weekly hours of specialized instruction general education, and the total hours of specialized instruction received weekly for each student enrolled during the month. Teacher-facing hours received, if any, are tracked and noted separately only for those students who spend any part of the week outside the CTF classroom units. The reports also track the number of school days each student spent in restrictive housing and the number of specialized instruction hours the student received while in restrictive housing, with teaching-facing hours indicated. Each month’s “Summary of IEP Hours Received” also tracks and reports on related services by type, by monthly hours required, and by monthly hours received.

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<sup>86</sup> The Defendants file monthly reports with attachments submitted to the Court under seal. Except for a brief narrative update, the content of these reports have not been shared with the Third-Party Auditor. (The Third-Party Auditor expects to address this matter with counsel for the Parties). However, each month the Defendants transmit what appear to be a different set of monthly reports to the Third-Party Auditor and Plaintiffs’ counsel pursuant to Paragraph 141 of the Settlement Agreement. Among other data, the monthly reports summarize Defendants’ efforts to implement the Settlement Agreement and include, in tabular format, a listing of all students enrolled in MAA during the previous month, IEP requirements applicable to each student, and the IEP-required hours of specialized instruction and related services that each student received. Since the effective date of the Settlement Agreement through February 1, 2024, the following reports have been transmitted to the Third-Party Auditor and Plaintiffs’ counsel pursuant to Paragraph 141: Defendants’ October 10, 2023 Status Report (including data filed with the court on October 3, 2023 related to the delivery of specialized instruction during September 2023); Defendants’ October 12, 2023 supplement (adding data concerning the delivery of related services); Defendants’ November 10, 2023 Status Report (reporting October 2023 monthly hours of instruction and related services); December 8, 2023 Status Report (reporting November 2023 monthly hours of instruction and related services); and January 10, 2024 Status Report (reporting December 2023 monthly hours of instruction and related services). The Third-Party Auditor has not yet been able to verify the accuracy of the calculations reflected in the reports because she has not had access to the requisite data as explained in the Methodology section of this report, *supra* 6-10.

As a threshold matter, it is noteworthy that student enrollment *increased* in the last three months of 2023 compared with the first three months of 2023. Student enrollment in March 2023 was 33, but reached a high of 57 in November 2023, and was at 51 in December 2023.<sup>87</sup> This is reflected in the enrollment trend analysis for the period beginning February 2022 and ending in December 2023 that is depicted below in Figure 7.



Enrollment during January 2024 reached a high of 61 students and generally hovered between that number and the November and December 2023 levels.

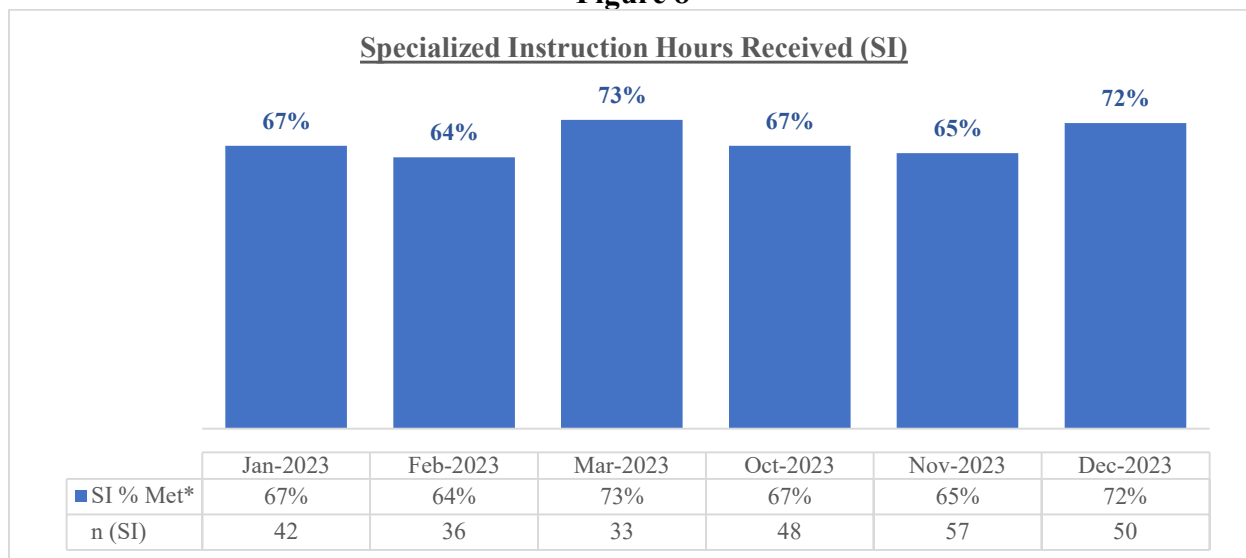
### Specialized Instruction

An examination of specialized instruction hours reported in the Defendants' monthly status reports for the three-month period following the effective date of the Settlement Agreement establishes that in each of these months, the percentage of students who were receiving the number of specialized instruction hours required by their IEPs ranged from a low of 65 percent in November 2023 to a high of 72 percent in December 2023.<sup>88</sup> This is reflected in Figure 8, below.

<sup>87</sup> The Trendline reflects data from Defendants' Monthly Status Reports.

<sup>88</sup> See Ex. 24, Summary Tables, IEP Hours Required vs. Received.



**Figure 8**

\* The percent met represents the number of students who received specialized instruction as required by their IEPs during each reported month divided by the applicable number of students with required specialized instruction hours in their IEPs. "n" represents the total number of students enrolled in MAA with specialized instruction hours required by their IEPs.

More specifically, the data the Defendants reported show that in October 2023, only thirty-two of forty-eight students (sixty-seven percent) received their required specialized instruction hours, in November 2023, thirty-seven of fifty-seven students (sixty-five percent) received their required specialized instruction hours, and in December 2023, thirty-six of fifty students (seventy-two percent) received their required specialized instruction hours.<sup>89</sup> This means that in October, 2023, sixteen students (thirty-three percent) did not receive their IEP-required hours of specialized instruction. In November 2023, twenty students (thirty-five percent) did not receive their IEP-required hours of specialized instruction, and in December 2023, fourteen students (twenty-eight percent) did not receive their IEP-required hours of specialized instruction.<sup>90</sup> Thus, Defendants-reported data establish that all students did not

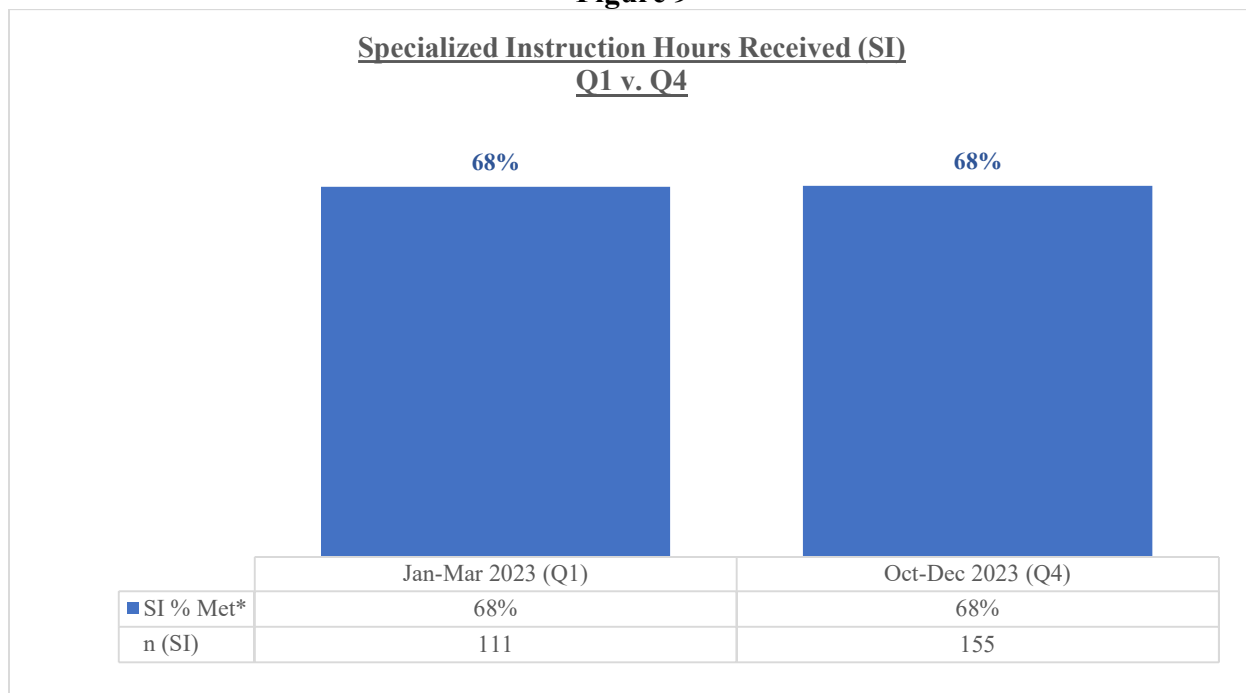
<sup>89</sup> *Id.*

<sup>90</sup> The Third-Party Auditor compared the data from the first three months of Calendar Year 2023 to determine the level of progress. As shown in Figure 8, in January 2023, twenty-eight of forty-two students (sixty-seven percent) received their IEP-specified specialized instruction, and fourteen students (thirty-three percent) did not. In February 2023, twenty-three of thirty-six students (sixty-four percent) received their IEP-specified specialized instruction, and thirteen students (thirty-three percent) did not. In March 2023, twenty-four of thirty-three students (73 percent) received their IEP-specified specialized instruction, and nine students (twenty seven percent) did not.

receive their IEP hours of specialized instruction as required by this subsection. The Defendants ended the calendar year with almost thirty percent of MAA students not receiving all of the specialized instruction hours required by their IEPs.

Further, the data show that the percentage of students receiving their IEP-required specialized instruction hours was virtually unchanged in the last three months of 2023 relative to the first three months of 2023, although more students were served in the Fourth Quarter of the calendar year. In both the First Quarter 2023 and the last Quarter 2023, only sixty-eight percent of students received their IEP-required hours of specialized instruction. This is depicted in Figure 9, below.

**Figure 9**



\* % Met represents the number of students who received specialized instruction as required in their IEPs during each referenced quarter divided by the applicable number of students who have required specialized instruction hours in their IEPs.  
n=the number of students whose IEP provided for specialized instruction hours

In the First Quarter of 2023, 75 of 111 students received the specialized instruction hours required by their IEPs and 36 students did not. In Quarter Four, 106 of 156 students received the specialized instruction hours required by their IEPs and 50 did not. Thus, Defendants did not

provide specialized instruction hours in accordance with student IEPs as required by this subsection.

Related Services: Behavioral Support Services

The same “Summary of IEP Hours Received” included in Defendants’ monthly reports indicates that students are not receiving the related services hours required by their IEPs.<sup>91</sup> Thirty five of forty-one students (eighty-five percent) of students whose IEPs require behavioral health services received the service hours specified in their IEPs during October 2023, but six students (fifteen percent) did not. In November 2023, forty of fifty students (eighty percent) received their IEP-required behavioral health supports, but ten students (twenty percent) did not. In December 2023, thirty-eight of forty-four students (eighty-seven percent) received their IEP-required behavioral health supports, but six students (thirteen percent) did not.<sup>92</sup> In both November and December 2023, one hundred percent of students for whom a behavioral health consultation was included in the IEP received these services; however, in October 2023, eighty-three percent of IEP-required behavioral support consultations were completed. IEP-required consultations for behavioral support services were completed for five of six students in October 2023, for six of six students in November 2023, and for four of four students in December 2023.<sup>93</sup> These findings are presented in Figure 10, below.

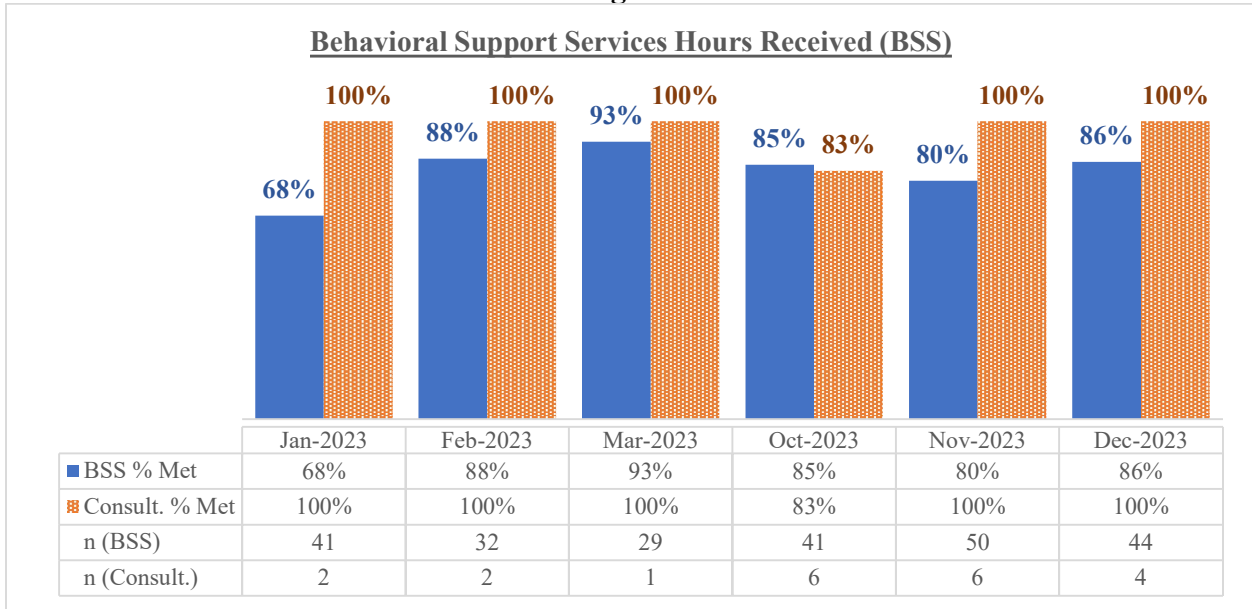
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<sup>91</sup> As noted in the Background Section of this report, *supra* at 18, behavioral support services are provided directly by MAA staff. Occupational therapy and speech therapy are provided virtually through a contract between MAA and Sterling Speech Associates, LLC.

<sup>92</sup> See *id.*, Ex. 24, *supra* note 88, IEP Hours Required vs. Received, Summary Table, Behavioral Health Supports.

<sup>93</sup> As noted in Figure 10, in January 2023, twenty-eight of forty-one students (sixty-eight percent) received their IEP-specified behavioral support services, and thirteen students (thirty-two percent) did not. In February 2023, twenty-eight of thirty-two (eighty-eight percent) received their IEP-specified behavioral support services, and four students (twelve percent) did not. In March 2023, twenty-seven of twenty-nine students (ninety-three percent) received their IEP-specified behavioral support services, and two students (seven percent) did not.

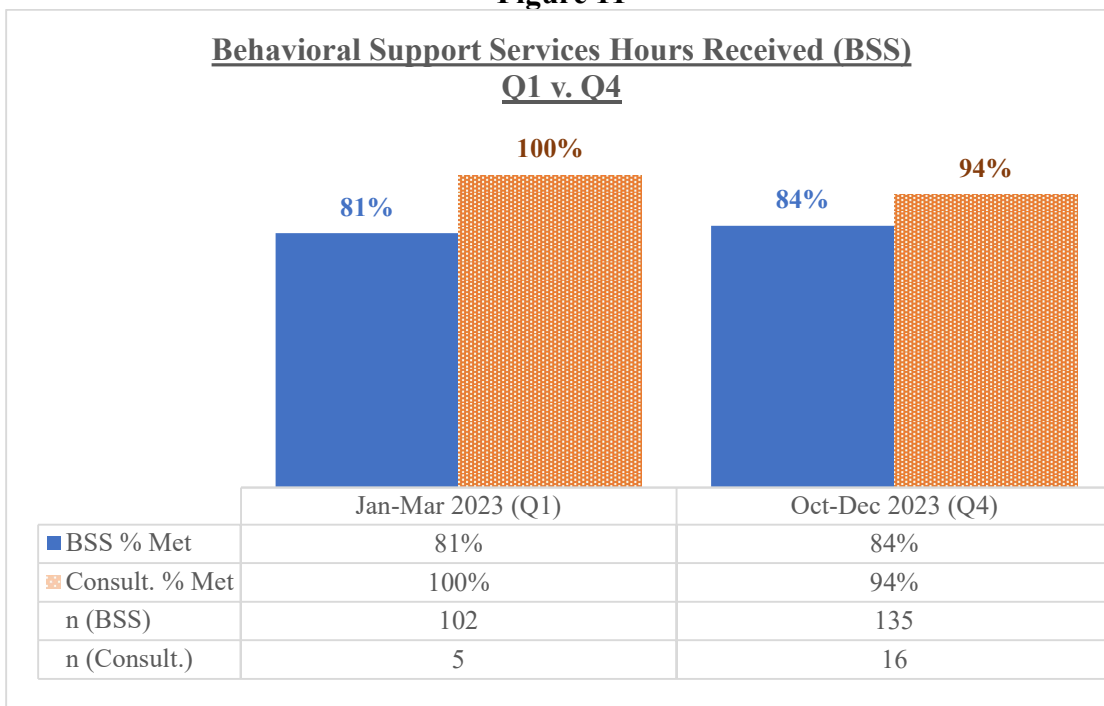
**Figure 10**



\* Percent met represents the number of students who received behavioral support services during each reported month as required by their IEPs divided by the applicable number of students who have behavioral support service hours required by their IEPs. “n (BSS)” represents the total number of students enrolled whose IEPs required behavioral support services. “n (Consult)” represents the total number of students enrolled whose IEPs required a consultation for behavioral support services.

The Third-Party Auditor also compared the delivery of behavioral support services in the first three months of 2023 with the last three months of 2023. As shown below in Figure 11, there was only marginal improvement in the provision of behavioral support services consistent with a students’ IEP between the First Quarter 2023 and the Fourth Quarter 2023. Specifically, in the First Quarter, 83 of 102 students (eighty-one percent) received their IEP-required monthly hours of behavioral support services, and in Quarter Four, 113 of 135 (eighty-four percent) received their IEP-required hours of behavioral support services. With respect to behavioral support consultations, the data shows that performance declined between the First and Fourth Quarters, 2023, from one hundred percent in the First Quarter to ninety-four percent in the Fourth Quarter. Defendants’ performance is reflected below in Figure 11, below.

**Figure 11**



\* % Met means the number of students who received behavioral support services during each referenced quarter as required in their IEPs divided by the applicable number of students who have required behavioral support service hours in their IEPs. n=the number of students whose IEP provided for behavioral support services hours or consultations.

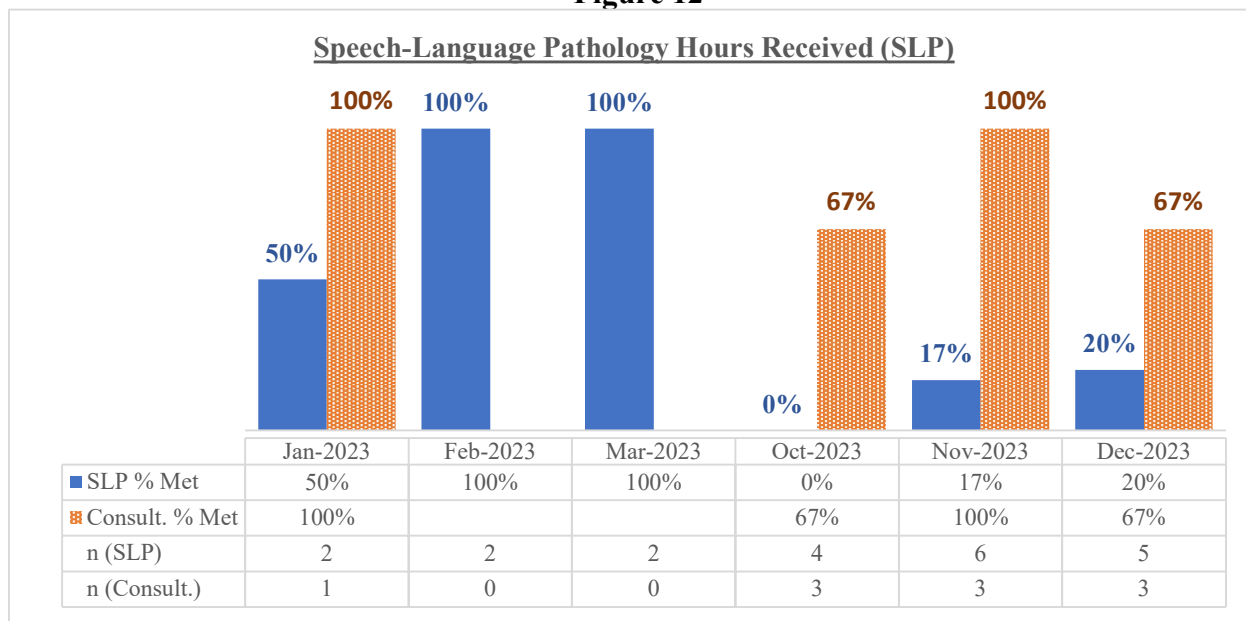
**Related Services: Speech Language Pathology Services**

For those students for whom speech language pathology services were required by their IEPs, Defendants’ monthly reports indicate that none received their IEP-required hours during October 2023, one of six students (seventeen percent) received their IEP-required hours during November 2023, and one of five students (twenty percent) received their IEP-required hours during December 2023.<sup>94</sup> In other words, in October, four students did not receive the speech language pathology service hours required by their IEPs; five students in November 2023 did not receive their required hours, and in December 2023, four students did not receive their required hours. In both October and December 2023, one of three students did not receive an IEP-required speech and language consultation. One hundred percent of students for whom

<sup>94</sup> See *id.*, Ex. 24, *supra* note 88, Summary Tables, IEP Hours Required vs. Received, Speech Language Pathology Services.

speech pathology consultations were required by their IEPs received the consultations in November 2023, but only 67 percent of students received the required consultations in October and December 2023.<sup>95</sup> These findings are presented below in Figure 12.

**Figure 12**



\*Percent met represents the number of students who received speech language pathology services during each reported month as required by their IEPs divided by the applicable number of students with speech language pathology services required by their IEPs.

“n (SLP)” represents the total number of students enrolled whose IEPs required speech pathology services.

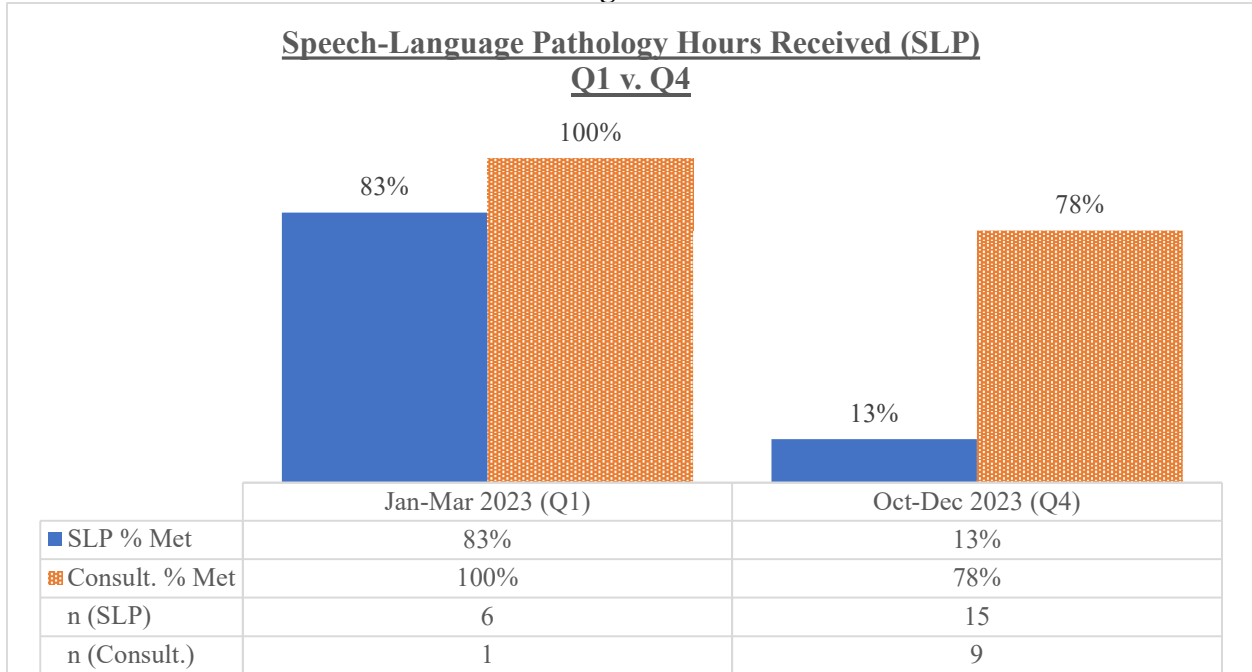
“n (Consult)” represents the total number of students enrolled whose IEPs required consultation for speech language pathology services.

In comparing First Quarter data concerning speech language pathology services with the Fourth Quarter 2023 data that the Defendants have reported, there appears to be a significant decrease in the percentage of students who received the hours of speech therapy services provided for in their IEPs. As reflected in Figure 13, below, while eighty-three percent of students (five of six students) received the hours of speech therapy services required by their

<sup>95</sup> As noted in Figure 12, in January 2023, one of two students (fifty percent) received their IEP-specified speech and language pathology services, and one student (fifty percent) did not. In February 2023, two of two students (one hundred percent) received their IEP-specified speech and language pathology services. Similarly, in March 2023, two of two students (one hundred percent) received their IEP-specified Speech Language Pathology Services, and two students (seven percent) did not.

IEPs in the First Quarter, only thirteen percent (two of fifteen) received their IEP-required hours of services in the Fourth Quarter 2023.

**Figure 13**



\* % Met means the number of students who received speech-language pathology services as required in their IEPs during each referenced quarter divided by the applicable number of students who have required speech-language pathology hours in their IEPs.

n=the number of students whose IEPs provided for speech-language pathology service hours or consultations.

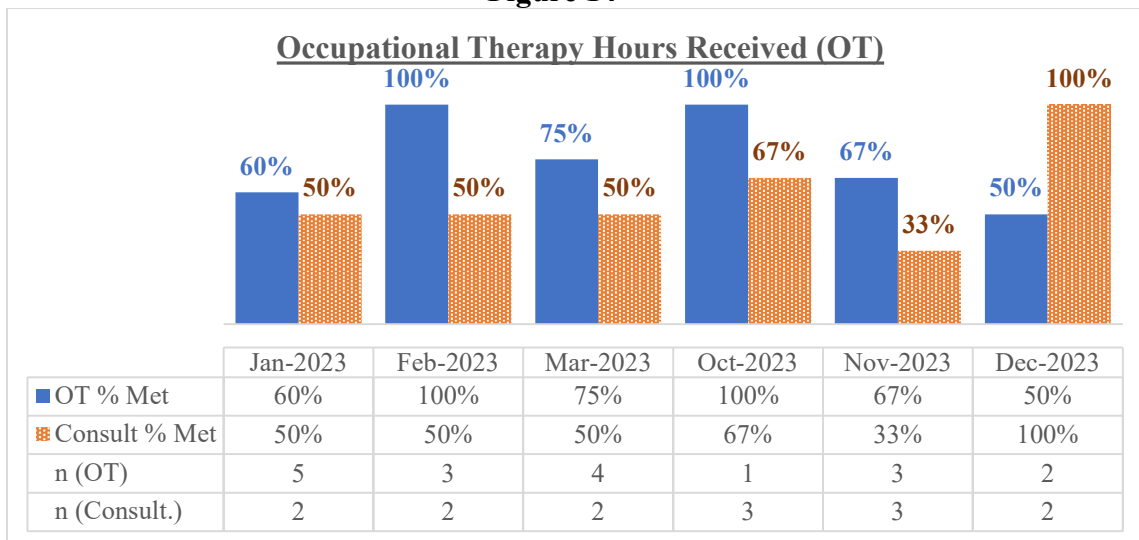
**Related Services: Occupational Therapy Services**

According to the Defendants’ monthly reports, the IEPs for several students have included occupational therapy services since the effective date of the Settlement Agreement. In October 2023, one of one student (one hundred percent) whose IEP required occupational therapy services received the requisite number of hours. In November 2023, two of three students (sixty-seven percent) received their IEP-required hours of occupational therapy services, and one student (thirty-three percent) did not. In December 2023, one of two students (fifty

percent) received their IEP-required hours of occupational therapy services and one (fifty percent) did not.<sup>96</sup>

For students whose IEPs required occupational therapy consultations, sixty-seven percent (two of three students) received the consultations in October 2023, but thirty-three percent (one of three) received the required consultations in November 2023. In December 2023, one hundred percent of occupational therapy consultations required by student IEPs were completed.<sup>97</sup> This is reflected in Figure 14, below.

**Figure 14**



\* % Met means the number of students who received occupational therapy services as required by their IEPs during each reported month divided by the applicable number of students who had required occupational therapy hours in their IEPs.  
 “n (OT)” represents the total number of students enrolled whose IEPs required occupational therapy services.  
 “n (Consult.)” represents the total number of students enrolled whose IEPs required consultation for occupational therapy services.

In comparing 2023 First Quarter and Fourth Quarter cumulative data relating to the delivery of occupational therapy services, performance declined in the Fourth Quarter, with

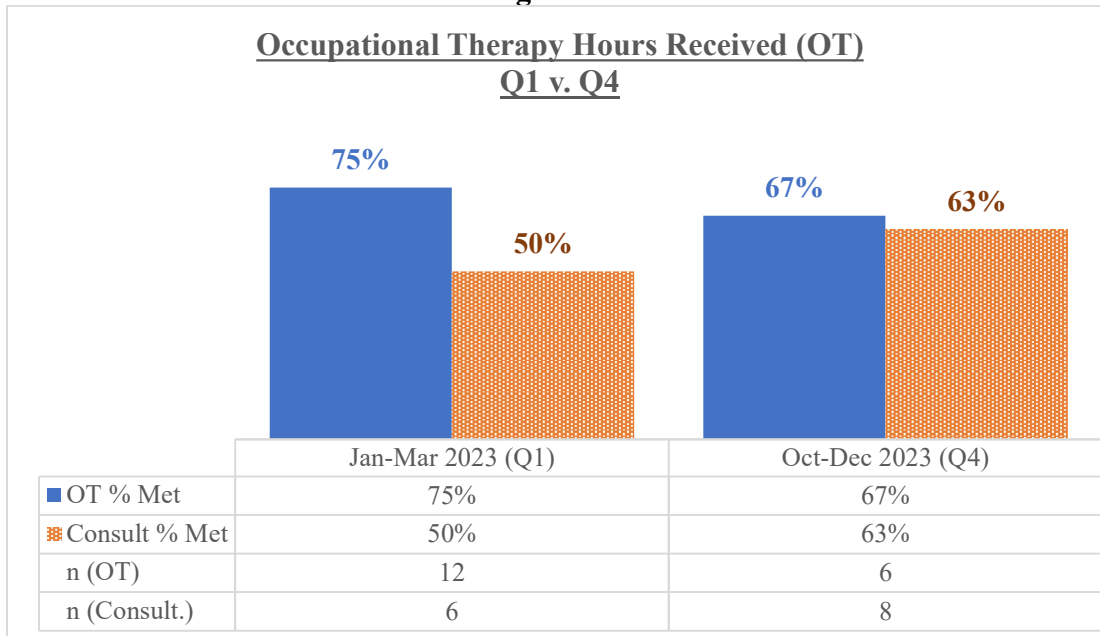
<sup>96</sup> See *id.*, Ex. 24, *supra* note 88, Summary Tables, IEP Hours Required vs. Received, Occupational Therapy Services.

<sup>97</sup> As noted in Figure 14, in January 2023, three of five students (sixty percent) received their IEP-specified occupational therapy services, and two students (forty percent) did not. In February 2023, three of three students (one hundred percent) received their IEP-specified occupational therapy services. In March 2023, three of four students (seventy-five percent) received their IEP specified occupational therapy services, and one student (twenty-five percent) did not.



sixty-seven percent of students (four of six students) receiving their IEP-required hours. This compares unfavorably to the First Quarter data, during which seventy-five percent of students (nine of twelve students) received their IEP-required hours of service. However, the provision of consultations for occupational therapy services improved between the First and Fourth Quarters, from fifty percent completed to sixty-three percent. This is reflected below in Figure 15.

**Figure 15**



\* % Met means the number of students who received the occupational therapy services required in their IEPs during each reported month divided by the applicable number of students who have required occupational therapy hours in their IEPs. n=the number of students whose IEPs provided for occupational therapy hours.

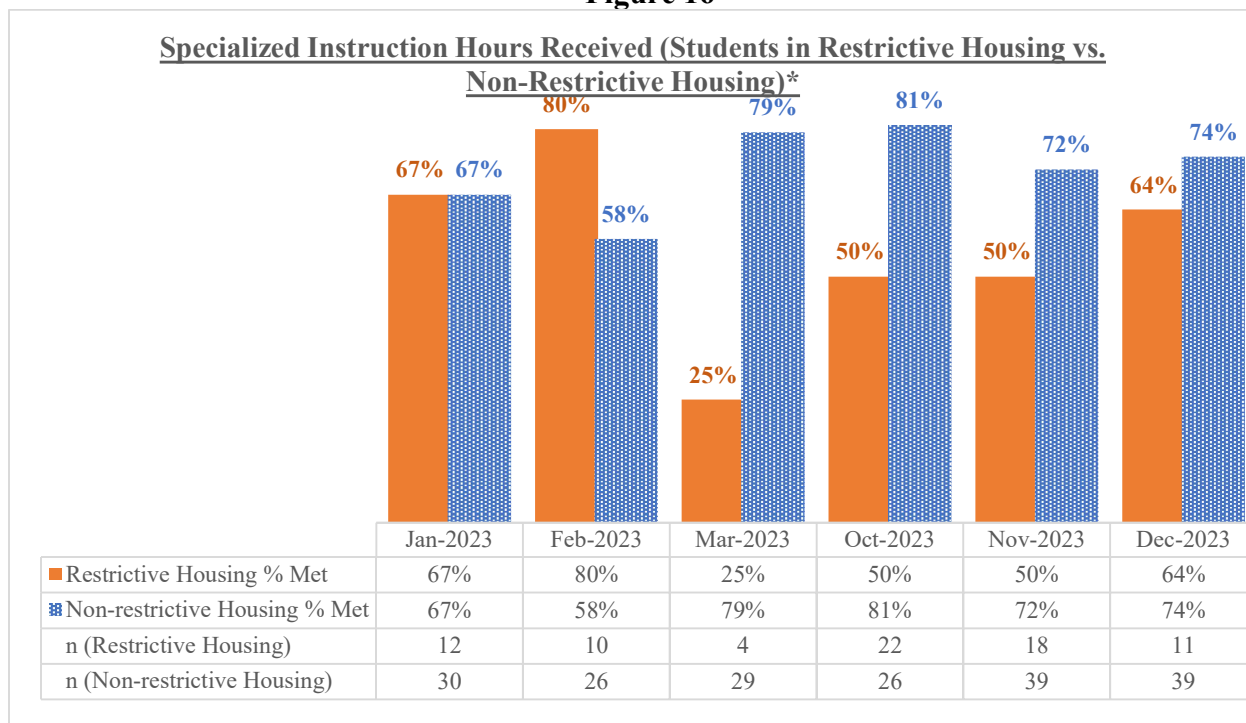
**Students Housed in Restrictive Housing**

Data from Defendants’ Monthly Status Reports also establishes that there is a disparity in specialized instruction hours received based upon the students’ housing assignment. In fact, students assigned to restrictive housing units are more likely *not* to receive the specialized instruction hours provided in their IEPs compared with their counterparts who are assigned to non-restrictive housing units. As reflected in Figure 16, below, in the months since the effective date of the Settlement Agreement, the percentage of students on non-restrictive housing units who received specialized instruction consistent with their IEPs ranged from 72 percent to 81

percent, while the percentage of students on restrictive housing units who received specialized instruction consistent with their IEPs ranged from 50 to 64 percent. In October 2023, twenty-two of twenty-seven students residing on non-restrictive housing units were provided specialized instruction hours consistent with their IEPs, but only eleven of 22 students assigned to restrictive housing units were provided specialized instruction consistent with their IEPs. In November 2023, only nine of eighteen students assigned to restrictive units were provided their IEP-required specialized instruction hours, compared with twenty-eight of thirty-nine students assigned to non-restrictive hours. In December 2023, seven of eleven students on restrictive housing units were provided the specialized instruction hours required by their IEPs, but 29 of 39 students on non-restrictive housing units received their IEP-required hours.<sup>98</sup> This is reflected below in Figure 16.

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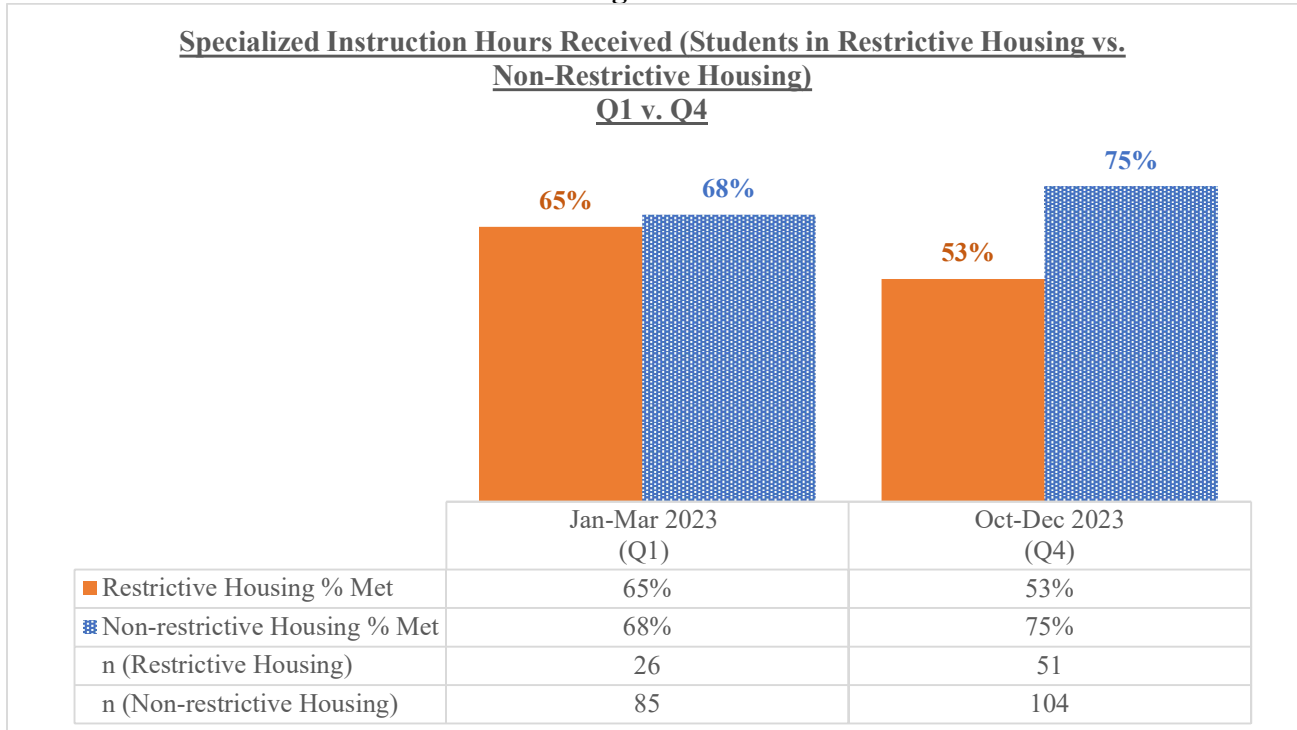
<sup>98</sup> As noted in Figure 16, in January 2023, twenty of thirty students (sixty-seven percent) assigned to non-restrictive housing units received their IEP-specified specialized instruction services hours, and eight of twelve on restrictive housing units (sixty-seven percent) received their IEP-required hours. In February 2023, fifteen of twenty-six students (fifty-eight percent) assigned to non-restrictive housing units received their IEP-specified specialized instruction service hours, and eight of ten on restrictive housing units (eighty percent) did so. In March 2023, twenty-three of twenty nine students (79 percent) residing on non-restrictive housing units received their IEP-specified SI service hours, but only one of four students (twenty-five percent) on restrictive housing units did so.

**Figure 16**

\* % Met represents the number of enrolled students who received their IEP-required specialized instruction hours during each reported month divided by the applicable number of students whose IEP required specialized instruction.  
 “n ” represents the total number of enrolled students assigned to each type of housing unit.

A comparison between the First Quarter and Fourth Quarter 2023 data shows that the percentage of students assigned to restrictive housing units who received their IEP-required specialized instruction decreased during the calendar year, although the percentage of students housed on non-restrictive housing units who received their IEP-required hours of specialized instruction increased. For the First Quarter 2023, seventeen of twenty-six students (sixty-five percent) assigned to restrictive housing units received their IEP-required hours of specialized instruction, but in the Fourth Quarter 2023, only twenty-seven of fifty-one students (fifty-three percent) assigned to restrictive housing units received their IEP-required hours. For those on non-restrictive housing units, in the First Quarter 2023, fifty-eight of eighty-five students (sixty-eight percent) received their IEP-required hours of specialized instruction and in the Fourth Quarter 2023, seventy-nine of one hundred five students (seventy-five percent) received their IEP-required hours. This is reflected in Figure 17, below.

**Figure 17**



\* % Met represents the number of enrolled students who received their IEP-required specialized instruction hours during each reported month divided by the applicable number of students whose IEPs required specialized instruction.  
n=the number of enrolled students by housing type.

These findings are consistent with information provided to the Third-Party Auditor through MAA daily reports, interviews with MAA and DOC staff, as well as through the Third-Party Auditor’s own observations in the CDF and CTF housing units. As detailed in the Background Section of this report,<sup>99</sup> and in the narrative related to Paragraph 62,<sup>100</sup> IEPs are not being implemented regardless of a student’s housing placement.

**Paragraph 46:**

**The Parties have agreed to provisions in this Settlement Agreement that are designed to maximize the proportion of specialized instruction and related services provided to students in person. Although it is Defendants’ position that Virtual Instruction or Virtual Services are acceptable alternatives and may be used by the LEA at the DOC Facilities in accordance with their Charter or other authority, in the event that the High School at the DOC Facilities temporarily moves to Virtual Instruction and Virtual Services on a school-wide basis, Defendants will notify Plaintiffs’ counsel of the reason for the temporary change within two (2) days of the beginning of the change and again upon its end. It is Plaintiffs’ position that Virtual Instruction or Virtual Services are only appropriate for an individual student if the delivery of such services virtually provides the student with FAPE.**

<sup>99</sup> *Supra* Section II.

<sup>100</sup> *Infra* at 73-74.

**Status of Compliance with Paragraph 46:** The evidence shows that no Virtual Instruction or Virtual Services have been provided on a school-wide basis since the effective date of the Settlement Agreement. Therefore, Defendants have not been obligated to provide notice pursuant to this requirement during this reporting period.

**A. Rooms and Other Facilities**

**Paragraph 47:**

**Defendants shall ensure the availability of classrooms with adequate educational environments at the DOC Facilities in which to provide instruction, including specialized instruction, and related services in accordance with the students' IEPs. These classrooms shall be equipped to provide students with a comparable educational experience regardless of whether on any given day the student is receiving in-person or Virtual Instruction. Defendants also shall provide space of a sufficient size to allow for full participation of all individuals required to participate in IEP and other meetings and provide the privacy necessary to ensure confidentiality.**

**Status of Compliance with Paragraph 47:** This requirement has been satisfied in part; however, additional progress is needed because classrooms with adequate educational environments are not available to any students incarcerated at the CDF who are not assigned to So-1 (with one very limited exception),<sup>101</sup> nor are they available on a consistent basis to students confined at the CTF who are assigned to SMUB or any housing units other than E4B, C2A, C4B and C4C. Moreover, there are shortcomings in the adequacy of the environments available for the delivery of related services in So-1 and SMUB and in some instances also in C4B and C4C.<sup>102</sup> Because IEP meetings have been conducted virtually during this reporting period, the Third-Party Auditor makes no finding with respect to Defendants' performance related to the size of the areas afforded for IEP meetings at this time. The basis for these findings is explained below.

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<sup>101</sup> The exception at the CDF is the TV room on NE-1, which is available to the teaching staff for one hour daily between 8:30 a.m. and 9:30 a.m.

<sup>102</sup> The adequacy of the environment for related services in C2A is contingent upon appropriate security being provided in the TV rooms, assuming they will be available for the delivery of related services.

As described in the Background Section of this report,<sup>103</sup> access to a classroom for students assigned to a housing unit at the CDF is limited to those students who are assigned to So-1.<sup>104</sup> The So-1 classroom is an office that is used as a classroom.<sup>105</sup> The availability of the So-1 classroom for instruction is limited to a maximum of four students at one time.<sup>106</sup> If more than four students are assigned to So-1, or if one or more students have a security status that would prevent them from being in the classroom with other students, access to the classroom is provided on a rotational basis with some students participating in the classroom during the morning session and others during the afternoon session, or on an alternating combination of days or sessions for the duration of their assignment to So-1. This operates to preclude some students from receiving the hours of specialized instruction required by their IEPs.

Moreover, as explained in the Background Section of this report,<sup>107</sup> access to the classroom even for those students assigned to So-1 is, at times, limited by inadequate correctional officer staffing,<sup>108</sup> unspecified security issues and shakedowns,<sup>109</sup> maintenance issues,<sup>110</sup> and the use of the classroom for other purposes during the school day.<sup>111</sup> In these instances, which cumulatively occur with some frequency, “instruction” is either limited to brief encounters between teachers and their students at cell doors or no “instruction” at all.

As described in the Background Section of this report,<sup>112</sup> when students on So-1 do not have access to the classroom for instruction, the assumption is that they are working

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<sup>103</sup> *Supra* at 19-21.

<sup>104</sup> *See supra* note 73 regarding the one hour daily the TV room on NE-1 is available for instruction.

<sup>105</sup> *See* Appendix B for photographs of the So-1 classroom area.

<sup>106</sup> The capacity limitation is a function of the room size and the fact that four anchoring devices have been installed on the floor so that leg irons can be used to shackle the students to the floor.

<sup>107</sup> *Supra* at 11-25.

<sup>108</sup> *Supra* note 69.

<sup>109</sup> *Supra* note 70.

<sup>110</sup> *Supra* note 71.

<sup>111</sup> *Supra* at 20.

<sup>112</sup> *Supra* at 10-25.

independently on paper assignments that are handed to them during brief encounters with their teachers at their cell doors or that they are working on electronic assignments, which are also discussed with teachers at their cell doors. The electronic assignments are accessed through the Brightspace platform on the educational tablets. The same circumstance holds true for students assigned to other housing units at the CDF. Even if they are able to use their tablets to access Brightspace on a consistent basis from their cells – and, as explained below,<sup>113</sup> the evidence establishes that is not the case – cell door encounters do not constitute an adequate educational environment and cannot substitute for a classroom.

While the number of students assigned to housing units at the CDF has increased since September 22, 2023, far more students have been assigned to the CTF,<sup>114</sup> which has the following housing units dedicated to the educational program:<sup>115</sup> C4B,<sup>116</sup> C4C and SMUB.<sup>117</sup> Classes in C4B, generally have been conducted in the offices on the upper tier of the housing unit, which were converted into small classrooms.<sup>118</sup> As explained above, the classrooms in C4B are not used when fewer than two correctional officers are assigned to C4B.<sup>119</sup> Instead, classes are conducted in the housing unit's dayroom where students work with their teachers in small groups and individually at tables scattered throughout the dayroom. The dayroom in C4B constitutes an adequate occasional substitute for the classrooms.<sup>120</sup> Related services in C4B are

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<sup>113</sup> See *infra* at 61-71.

<sup>114</sup> See *supra* at 12-14 for data related to the distribution of the student population between the CDF and CTF.

<sup>115</sup> Women enrolled in the MAA education program are generally assigned to E4B, which is not a unit dedicated to MAA students. The unit has adequate classroom space and appropriate space for delivery of related services.

<sup>116</sup> As noted *supra* 7, C4B was temporarily closed, but the classrooms are still in use. In its place, the Defendants opened C2A. Related service delivery for students in C2A can occur in the offices of the upper tier of C4B or if officer staffing is inadequate, in C2A; however, adequate security would need to be provided for the two TV rooms in C2A, which could be used for related services sessions.

<sup>117</sup> See *supra* at 23-24. As noted elsewhere in this report, at times nonstudents are also assigned to SMUB.

<sup>118</sup> See Appendix B for photographs of this area.

<sup>119</sup> See *supra* at 23-24.

<sup>120</sup> There are many more disruptions in the dayrooms of the CTF housing units than there would be in a classroom or office; however, the C4B housing unit is limited to students enrolled in the MAA program, and the MAA teaching staff appears skilled in their attempts to keep students focused.

provided in the MAA offices on the upper tier of the housing unit if correctional officer staffing is adequate. However, if only one officer is assigned to the housing unit, or if an assigned officer is redeployed to a different post at the facility, related services are provided in the dayroom which does not afford the necessary confidentiality safeguards.

Classes in C4C are conducted in the dayroom and, at times, individual and small group sessions as well as related services are conducted in an office that abuts the dayroom.<sup>121</sup> While MAA staff have been told they could use a second office that abuts the dayroom for classes or related services in C4C, the key to that office has been unavailable since at least early November 2023. The dayroom is equipped with a whiteboard and, like the C4B dayroom, students work with their teachers individually and in small groups at tables scattered throughout the dayroom. The dayroom in C4C in combination with the offices that abut it, constitute an adequate substitute for a more traditional classroom.<sup>122</sup> However, related services in C4C are provided by MAA staff in the dayroom and sometimes in one of the offices in the dayroom that has been accessible to providers. The dayroom does not afford necessary confidentiality safeguards. Presumably, if the second office that abuts the dayroom could be accessible to the MAA, this issue would be resolved.

SMUB generally, but not exclusively, houses MAA students on restrictive housing status. As noted in the Background Section,<sup>123</sup> this housing unit is double-tiered and has a 15-cell capacity.<sup>124</sup> The entry to the housing unit opens into a narrow area that contains a desk for the correctional staff on one end near the entry door, showers on the other end facing the desk, and

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<sup>121</sup> See Appendix B for photographs of this area.

<sup>122</sup> Like C4B, this housing unit is limited to student enrolled in the MAA program and the MAA staff appear to be skilled in keeping students focused notwithstanding the disruptions that regularly occur in the dayroom.

<sup>123</sup> See *supra* at 23-24.

<sup>124</sup> See Appendix B for photographs of SMUB.



three small tables in the middle that are used for instruction. The tables face the cell doors. Each table has two chairs. One of the chairs is usually near the metal anchoring devices that are used along with leg irons to shackle the students to the floor. Assuming their security statuses will allow them to be out of their cells at the same time, no more than three students are permitted in this area at the same time.

In the Third-Party Auditor's view, this area does not constitute an adequate educational environment. When students are sitting at the tables, students and other inmates who are in their cells often scream at each other, yell at the students who are sitting at the tables with teachers, bang on their cell doors, yell at the correctional staff, and otherwise disrupt the instructional sessions. In turn, the students who are sitting at the tables yell back at the students and other inmates who are in the cells. And while staff report that these phenomena occur less frequently during the morning sessions when more of the cell occupants are asleep, they occur with regularity during the afternoon sessions.

In recognition of this problem, the DOC Education Administrator collaborated with correctional supervisors to make a case management office adjacent to SMUB available for classes. The room was retrofitted with metal anchoring devices used with leg irons for shackling students to the floor.<sup>125</sup> However, MAA staff report the room is rarely used because, for the most part, DOC correctional staff have been unavailable to provide security for the MAA staff and students in this area.

Even if the area with the three tables that is used for instruction inside SMUB was adequate – and it is not – as a practical matter not all students assigned to SMUB can receive face-to-face instruction in this setting every day. Their access to the area with the three tables is

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<sup>125</sup> See Appendix B for photographs of this area.

provided on a rotational basis with some students meeting face-to-face with teachers during the morning session and others during the afternoon session, or on an alternating combination of days or sessions for the duration of their assignment to SMUB. Moreover, as described in the Background Section of this report, student access to this area for face-to-face instruction with their teachers is, at times, further limited by shortcomings in the number of correctional officers assigned to the unit,<sup>126</sup> and security issues.<sup>127</sup>

Like the students in housing units at the CDF that are not dedicated to the educational program, students in SMUB who are not released from their cells for instruction, are presumed to be working independently on paper assignments that are handed to them during brief encounters with their teachers at their cell doors or on electronic assignments, which, as explained below,<sup>128</sup> they are to access on their tablets from their cells in SMUB.

While not a dedicated education unit, women enrolled in the MAA education program are assigned to E4B. The unit has a dedicated classroom with a whiteboard and sufficient space to accommodate IEP meetings, related services providers and instruction. Despite this, MAA teacher staffing vacancies during this reporting period have limited the amount of face-to-face instruction women in E4B can receive.

## **B. Revision of Policies, Practices, and Procedures**

### **Paragraph 48:**

**Defendants shall revise any applicable policies, practices, and procedures as necessary to effectuate the entirety of this Settlement Agreement.**

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<sup>126</sup> See, e.g., *supra* note 81, Ex. 20A, November 3, 2023 MAA Daily Report; Ex. 20B, November 6, 2023 MAA Daily Report; Ex. 20C, November 13, 2023 MAA Daily Report; Ex. 20D, November 30, 2023 MAA Daily Report; and, Ex. 20E, November 9, 2023 MAA Daily Report.

<sup>127</sup> See, e.g., *supra* note 82, Ex. 21A, October 24, 2023 MAA Daily Report; Ex. 19A, October 26, 2023 MAA Daily Report; and, Ex. 21B, October 31, 2023 MAA Daily Report.

<sup>128</sup> *Infra* ¶¶ 55-61.

**Status of Compliance with Paragraph 48:** This requirement has been satisfied in part. However, as explained below, additional progress is necessary to meet the requirements of this subsection.

As explained in the narrative related to Paragraph 49,<sup>129</sup> the Defendants finalized a substantial revision to the DOC policy related to educational services on January 26, 2024. The revision addresses policies and procedures that incorporate many of the substantive requirements in the Settlement Agreement. The evidence shows, however, that there is a need for the Defendants to review and revise, as needed, other policies, practices and procedures that are relevant to the Settlement Agreement's requirements to ensure they are consistent with its requirements. The education program required by the Settlement Agreement does not exist in a vacuum. The program cannot function as intended by the Settlement Agreement if its requirements are not reflected in related DOC policies that impact the operation of the program.

The following list of DOC policies, among others, should be reviewed and revised, as appropriate: Program Statement 4090.3K, Classification/Program Review, which does not address policy or procedures related to the identification and housing of members of the injunctive relief subclass; Program Statement 6000.3A, Mental Health Step Down Unit, which addresses a program for intermediate care of inmates with serious mental illness, but does not address participation in the MAA education program; Program Statement 6080.2G, Suicide Prevention and Intervention, which addresses policy and procedure related to suicide prevention and management of inmates at risk of suicide, including access to visits and property when an inmate is on suicide watch and suicide precaution status, but does not address access to

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<sup>129</sup> See *Infra* at 52-53.

instruction or educational materials if a clinician determines appropriate;<sup>130</sup> Program Statement 5300.11, Inmate Disciplinary and Administrative Housing Hearing Procedures, which addresses considerations related to inmates with “special needs” but does not explicitly address student disabilities as a factor related to the targeted behavior; and, Program Statement 4500.1, Tablet Distribution Program, which does not address policy or procedures related to the educational tablets.<sup>131</sup>

Moreover, the Third-Party Auditor’s review has established that there is a need for the Defendants to revise the post orders for the housing units that have been designated for students enrolled in the MAA educational program. Post orders are used to communicate the duties and responsibilities of correctional staff assigned to each security post at the CDF and CTF. They specify procedures that correctional officers are required to follow in performing their duties, which can vary considerably from post to post. Post orders are required to be maintained at each housing unit post and reviewed by each correctional officer upon assuming their assigned post. They serve as an important accountability mechanism in the correctional context.

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<sup>130</sup> The DOC’s Suicide Prevention and Intervention Program Statement provides for an individualized determination by a clinician about whether an inmate on suicide watch who is housed in a safe cell may have access to, among other things, out of cell time, video visitation, family visits and personal property such as books, paper, pens and pencils. *See* Ex. 25A, Suicide Prevention and Intervention, § 23.B.6.a., c. d. and k. It does not address access to educational materials or educational programs while an inmate is on suicide watch and housed in a safe cell. MAA staff have told the Third-Party Auditor that when an inmate is in a safe cell, they cannot have access to any educational program materials. *See also e.g.*, Ex. 25B, December 11, 2023 MAA Daily Report (noting MAA staff checked on student in So-3 who could not have any school materials because he was in a safe cell). When an inmate is housed in a safe cell, the clinician fills out a safe cell checklist, which is a form posted next to the door of the safe cell. The checklist indicates the specific restrictions that have been required by the clinician. The checklist form is not an attachment to the program statement. A copy of the checklist that was posted next to the cell of an MAA student on suicide watch in a safe cell on So-3 on December 15, 2023, which was photographed by the Third-Party Auditor, is attached as Ex. 25C. Among the items specifically listed on the checklist are books, paper, pencils, pens, visits and tablets. There is a need for the Defendants to review the Suicide Prevention Program Statement in light of the requirements in this lawsuit and best practices in correctional behavioral health services to determine whether the policy should address access to educational programming and education program materials while an MAA student is on suicide watch in a safe cell.

<sup>131</sup> There are other policies that should be reviewed to ensure they are consistent with the requirements in the Settlement Agreement, including Policy No. 5500.2, Restrictive Housing of Inmates.

Among the basic duties of the correctional staff assigned to housing units dedicated to the educational program is to wake students up for school every morning and charge, issue and collect their educational tablets during set time periods. The post orders for these housing units should address these duties, which are central to the operation of the educational program, to ensure that the related Settlement Agreement requirements for a six-hour school day and appropriate access to educational tablets are being implemented.

Interviews with MAA staff and students as well as documentation in some MAA daily reports indicate that one issue that has interfered with the start of the school day has been the failure of some members of the correctional staff to wake students up in advance of the morning session. MAA staff report that this problem has improved considerably over time, especially when the same cadre of officers are assigned to the education units. However, at times there is a lack of consistency in post assignments, and when this occurs, officers who are not regularly assigned to the education program units do not wake students up for class. As a result, when the MAA staff arrive on the unit to teach, they must assist in waking up the students and the school day starts considerably later than the scheduled time. Moreover, as detailed in the narrative related to Paragraph 60(a), there are pervasive shortcomings in the management of the educational tablets by many members of the correctional staff, which undercut performance relative to the related Settlement Agreement requirements.

Accordingly, on January 12, 2024, the Third-Party Auditor reviewed the post orders available to the correctional staff in SMUB and So-1, and also sought to review the post orders in C4B and C4C to determine whether they addressed these specific duties and responsibilities of the correctional staff assigned to the education units. The post orders available on SMUB are

dated September 15, 2022, and they are silent with respect to these duties.<sup>132</sup> The post orders available on So-1 are dated November 10, 2021, and like the post order available on SMUB, they do not address these duties.<sup>133</sup> There were no post order available to the officers assigned to C4C and C4B on January 12, 2024, and each of the assigned officers informed the Third-Party Auditor that these were not their regular posts.<sup>134</sup>

**Paragraph 49:**

**During the term of this Settlement Agreement, if there is a planned change or amendment of any policies, practices, or procedures of the LEA at the DOC Facilities, OSSE, or DOC that is intended to address one or more terms of this Settlement Agreement, Defendants shall provide notice of such proposed change or amendment to Plaintiffs' counsel, when possible, to allow for a reasonable opportunity for comment before the change or amendment is finalized. Defendants shall consider the comments in good faith. If Defendants must make any such change or amendment so quickly that advance notice and comment by Plaintiffs' counsel is not possible, Defendants shall provide notice of the change or amendment to Plaintiffs' counsel within five (5) business days of implementing the change or amendment.**

**Status of Compliance with Paragraph 49:** The Defendants satisfied this requirement during this reporting period. The reasons for this finding are explained below.

On January 11, 2024, pursuant to Paragraph 49 of the Settlement Agreement, the Defendants submitted a draft revision to the DOC Educational Services Policy, No. 4110.7G, for review and comment to Plaintiffs' counsel and the Third-Party Auditor.<sup>135</sup> Defendants requested comments by January 17, 2023, and when they did not receive them by January 19, 2023,

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<sup>132</sup> See Ex. 25D, DOC Post Order, Pre-Hearing Housing, September 15, 2022. On January 12, 2023, when the Third-Party Auditor visited SMUB during the day shift, there was one officer assigned to SMUB. He reported that he had been drafted and that it was not his regular post assignment.

<sup>133</sup> See Ex. 25E, DOC Post Order, Restrictive Housing, November 10, 2021. The post order refers to the DC Public Schools program for students with IEPs. Among other variances, it states the hours of operation, which are not consistent with the MAA school day. *Id.* Ex. 25E, §13.

<sup>134</sup> See Ex. 25F, November 14, 2024 MAA Daily Report (noting a new correctional officer was assigned to C4C and was unaware of the school routine; as a result the students "were not awake and did not come out [of their cells for class] until 9:30."). The correctional officer assigned to C4B was able to locate a post order acknowledgement sheet. This is a form that correctional officers are generally required to sign at the start of each shift, acknowledging that they have read the post orders. The last entry on the acknowledgement sheet was dated ten days earlier, on January 2, 2024.

<sup>135</sup> See Ex. 26A, January 11, 2024 email from Honey Morton to Tayo Belle, *et al*, with attached draft Educational Services policy, No. 4110.75. The Third-Party Auditor requested the attachments to the policy on January 12, 2024, and was informed that Defendants would provide the attachments with the final version of the policy, which they have done.

Defendants contacted Plaintiffs' counsel to determine whether they intended to comment on the draft. Plaintiffs indicated they would do so, and submitted comments on January 22, 2024.<sup>136</sup> Defendants submitted a final version of the policy, dated January 26, 2024, to Plaintiffs' counsel and the Third-Party Auditor on January 30, 2024.<sup>137</sup> A comparison of the final version of the policy with the comments that Plaintiffs' counsel submitted on January 22, 2024, indicates that Defendants considered and incorporated most, albeit not all, of the comments that Plaintiffs' counsel submitted.

### **B. 1. Amendments to the Memorandum of Agreement**

Paragraphs 50-53 of the Settlement Agreement require Defendants to make specific amendments to the October 1, 2021, Memorandum of Agreement ("MOA") executed by the DOC, OSSE, and the Maya Angelou Public Charter School Academy ("Maya Angelou PCS Academy") within 90 days of the effective date of the Settlement Agreement. The Third-Party Auditor's findings concerning the Defendants' performance relative to these requirements are set forth below.<sup>138</sup>

#### **Paragraph 50(a)-(h):**

**Defendants shall make the following amendments to the currently operative MOA, executed on October 1, 2021 by DOC, OSSE, and Maya Angelou PCS Academy:**

- a. Defendants shall include a provision that defines the School Day as at least six (6) hours;**

**Status of Compliance with Paragraph 50(a):** The evidence shows Defendants have complied with this requirement. This finding is explained below.

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<sup>136</sup> See Ex. 26B, January 19, 2024 email from Kaitlin Banner to Honey Morton, *et al.*, with Plaintiffs' comments attached in redline format.

<sup>137</sup> See Ex. 26C, January 30, 2024 email from Honey Morton to Kaitlin Banner, *et al.*, with attached final version of Educational Services policy, No. 4110.7G, effective January 26, 2024 (noting the submission was being made pursuant to Paragraph 58).

<sup>138</sup> The findings in Paragraphs 50(a) to (h) relate only to the inclusion of the specifically mandated language in the MOA. This report addresses specific findings related to *implementation* of the newly added MOA provisions in the narrative relevant to specific Settlement Agreement requirements.

On December 20, 2023, within the 90-day period required by the Settlement Agreement, the DOC, the See Forever Foundation, and OSSE entered into a Memorandum of Agreement (MOA) that defines “school day” as at least six hours.<sup>139</sup>

- b. Defendants shall include a provision that states that if a student turns twenty-two (22) years of age during the Summer Term, the student shall remain eligible for special education and related services through the end of the Summer Term;**

**Status of Compliance with Paragraph 50(b):** The evidence shows Defendants have complied with this requirement. This finding is explained below.

The December 20, 2023 MOA described in the preceding narrative related to Paragraph 50(a) includes a provision recognizing that if a student turns 22 years of age during the Summer term, the student remains eligible for Special Education and related services through the end of the Summer term.<sup>140</sup>

- c. In addition to Defendants’ obligations under paragraph 106, Defendants shall include a provision that states that if a student turns age twenty-two (22) and is nearing graduation, but the student’s IDEA eligibility has ended, at the discretion of the LEA at the DOC Facilities, the student may be permitted to continue their education at the High School at the DOC Facilities until graduation;**

**Status of Compliance with Paragraph 50(c):** The evidence shows Defendants have complied with this requirement. This finding is explained below.

The December 20, 2023 MOA described in the preceding narrative related to Paragraph 50(a) includes a provision that states that if a student turns 22 years old and is nearing graduation, but the student’s IDEA eligibility has ended, at the discretion of the LEA at DOC

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<sup>139</sup> See Ex. 27, Memorandum of Agreement between the District of Columbia Department of Corrections (DOC), the See Forever Foundation and District of Columbia Office of State Superintendent of Schools (OSSE) Related to Educational Services for Pretrial Residents Incarcerated at DOC Detention Facilities, [emphasis added], effective December 20, 2023, § III.C.1.a. The Third-Party Auditor recommends that the title of MOA be modified as it can be read to limit the scope of the MOA to educational services for inmates on pretrial status. *Id.* at 1. However, the MOA indicates that it is also intended to apply to sentenced misdemeanants. *Id.* § II.B. Additionally, although the MOA defines the Central Detention Facility (CDF) and the Correctional Treatment Facility (CTF) collectively as “DOC facilities”, *id.* at 1, on several occasions it can be read to limit its requirements to the Maya Angelou Academy at D.C. Jail, *see. e.g., id.*, §§ III.B and III.C.2.k. These references should also be corrected.

<sup>140</sup> *Id.* ¶ I, note 4.



Facilities, the student may be permitted to continue his or her education at the High School at DOC Facilities until graduation.<sup>141</sup>

- d. **Defendants shall include provisions that state that the District shall provide the space, staff, devices, technology, and/or tools necessary to effectuate the MOA;**

**Status of Compliance with Paragraph 50(d):** The evidence shows Defendants have complied with this requirement. This finding is explained below.

The December 20, 2023 MOA described in the preceding narrative related to Paragraph 50(a) includes a provision that states the Defendants shall provide space, staff, devices, technology and/or tools “necessary” to effect the MOA.<sup>142</sup>

- e. **Defendants shall include a provision requiring that all students receiving Virtual Instruction are receiving it on an individual rather than a shared device unless the shared device is a large, interactive monitor;**

**Status of Compliance with Paragraph 50(e):** The evidence shows Defendants have complied with this requirement. This finding is explained below.

The December 20, 2023 MOA described in the preceding narrative related to Paragraph 50(a) includes a provision stating that any students who are receiving Virtual Instruction shall receive it on an individual, rather than a shared device, unless the shared device is a large interactive monitor.<sup>143</sup>

- f. **Defendants shall include provisions regarding OSSE’s monitoring responsibilities as described in Section III of this Settlement Agreement and the obligations of both DOC and the LEA at the DOC Facilities to cooperate with OSSE to effectuate those monitoring responsibilities;**

**Status of Compliance with Paragraph 50(f):** The evidence shows Defendants have complied with this requirement. This finding is explained below.

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<sup>141</sup> *Id.* § I, note 5.

<sup>142</sup> *Id.* § III.B.1.a.-f.

<sup>143</sup> *Id.* § III.B.1.q.

The December 20, 2023 MOA described in the preceding narrative related to Paragraph 50(a) includes provisions regarding OSSE’s monitoring responsibilities as described in Section III of the Settlement Agreement<sup>144</sup> and the obligations of both the DOC and the LEA at the DOC Facilities to cooperate with OSSE to effectuate those responsibilities.<sup>145</sup>

Section III.A of the MOA explicitly requires that OSSE ensure education services are delivered in accordance with IDEA and applicable local law to eligible residents/scholars at DOC facilities through the following actions: 1) scheduling meetings with DOC and its education provider not fewer than four times a year (and more often if needed) to discuss delivery of special education services and coordination of activities consistent with the MOA; and 2) incorporating the DOC into OSSE’s system of IDEA Part B monitoring of LEAs. Additionally, the MOA specifically states that “OSSE shall monitor for IDEA compliance in accordance with the requirements set out in the *Charles H.* settlement agreement.”<sup>146</sup>

- g. Defendants shall include a provision requiring the LEA at the DOC Facilities to ensure that any missed instruction and services are addressed as described in paragraphs 66 and 71;**

**Status of Compliance with Paragraph 50(g):** The evidence shows Defendants have met this requirement in part; however, a revision is necessary to address a substantive aspect of this requirement. This finding is explained below.

This subsection provides that the MOA must ensure that any missed instruction or services are addressed as described in Paragraphs 66 and 71 of the Settlement Agreement.

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<sup>144</sup> See Settlement Agreement, § III. This section provides for quarterly monitoring, alternating between onsite monitoring and desktop monitoring as well as quarterly meetings involving representatives from the DOC, OSSE, and the LEA. It also requires that the monitoring include an evaluation of the students IEPs and records (for measurable academic goals and related service goals that are updated annually, progress monitoring measures and quarterly student progress reports), and address the following: 1) whether students are not receiving comparable instruction, (including specialized instruction and related services), relative to students who are receiving in-person, teacher facing instruction; and 2) whether related services are being delivered in accordance with the student’s IEP.

<sup>145</sup> See Ex. 27, *supra* note 139, § III.A.1.a. and A.2.

<sup>146</sup> *Id.* § III.A.2.

Paragraph 66 of the Settlement Agreement provides that the LEA must make available make-up instruction to cover the relevant subject matter and content of any cancelled or missed classes within a reasonable time frame except where the student has declined or refused instruction.<sup>147</sup>

Similarly, Paragraph 71 of the Settlement Agreement provides that the LEA must make available make-up related services to cover the relevant subject matter and content of any cancelled or missed related services within a reasonable time frame except where the student has declined or refused instruction.<sup>148</sup>

The December 20, 2023 MOA described in the preceding narrative related to Paragraph 50(a) includes a provision that the LEA at DOC Facilities must ensure that any missed related services are made up within a reasonable time frame.<sup>149</sup> While the revised MOA includes a provision that missed classes and instruction must be made up when a class or instruction is cancelled or missed, it does not specifically provide that such make-up class or instruction be conducted within a reasonable time frame.<sup>150</sup> This MOA provision should be revised to include the reasonable time frame requirement consistent with the Settlement Agreement.

- h. Defendants shall include a provision requiring that the LEA at the DOC Facilities provide all students with FAPE.**

**Status of Compliance with Paragraph 50(h):** The evidence shows Defendants have complied with this requirement. This finding is explained below.

The December 20, 2023 MOA described in the preceding narrative related to Paragraph 50(a) expressly acknowledges that its purpose is “to ensure that special education instruction and related services are provided to eligible students within the custody of DOC with the goal of

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<sup>147</sup> Settlement Agreement ¶ 66.

<sup>148</sup> Settlement Agreement ¶ 71.

<sup>149</sup> See Ex. 27, *supra* note 139, § III.B.1.s.

<sup>150</sup> *Id.* § III.B.1.r.

ensuring that required educational services are provided to these individuals pursuant to the Individuals with Disabilities Education Act (“IDEA”) [citation omitted] and implementing regulations of these laws.”<sup>151</sup> The MOA also states that MAA agrees to provide “special education instruction and related services that align with federal and District education requirements and the requirements outlined in each student’s Individualized Education Program.”<sup>152</sup> Further, the MOA recognizes that the DOC has contracted with MAA “to provide special education instruction and related services pursuant to FAPE that comply with the Individuals with Disabilities Education Act (IDEA).”<sup>153</sup> A detailed list of MAA responsibilities that support the delivery of free appropriate public education (FAPE) is included in the MOA.<sup>154</sup> Finally the MOA specifies that OSSE “is responsible for ensuring that [FAPE ] is made available to eligible children with disabilities.”<sup>155</sup>

**Paragraph 51:**

**Defendants shall amend the current MOA within ninety (90) days of the Effective Date to include the provisions required by paragraph 50, unless the currently operable MOA is replaced with a new MOA that complies with the requirements of paragraph 52 within ninety (90) days of the Effective Date. Defendants shall provide Plaintiffs’ counsel with a copy of the amended or new MOA.**

**Status of Compliance with Paragraph 51:** The evidence shows Defendants have complied with this requirement. The effective date of the Settlement Agreement is September 22, 2023. The MOA was fully executed within 90 days of the effective date of the Settlement Agreement. The Director of the DOC executed the agreement on December 15, 2023, OSSE’s

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<sup>151</sup> *Id.* § I.

<sup>152</sup> *Id.* § II.A.

<sup>153</sup> *Id.* § II.B.

<sup>154</sup> *Id.* § III.C.1(b) i. through xiv.

<sup>155</sup> *Id.* § II.C.

State Superintendent of Education executed it on December 13, 2023, and the Chief Executive Officer of the See Forever Foundation executed it on December 20, 2023.<sup>156</sup>

**Paragraph 52:**

**In any future MOA governing the delivery of special education and related services to eligible high school students at the DOC Facilities for the duration of this Settlement Agreement, Defendants shall ensure the inclusion of (i) provisions substantially similar to the current MOA provisions that concern the delivery of special education and related services, and (ii) the provisions in paragraph 50.**

**Status of Compliance with Paragraph 52:** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

**Paragraph 53:**

**In the event that there is no MOA at any time during the duration of this Settlement Agreement, Defendants shall ensure the policies governing the delivery of special education and related services to eligible high school students at the DOC Facilities include (i) provisions substantially similar to the current MOA provisions that concern the delivery of special education and related services, and (ii) the provisions in paragraph 50.**

**Status of Compliance with Paragraph 53:** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

## **2. Amendments to DOC Policies and Practices**

Paragraphs 54-58 of the Settlement Agreement require Defendants to make specified amendments to DOC policies and procedures to conform to certain Settlement Agreement requirements. The Third-Party Auditor's findings concerning the Defendants' performance relative to these requirements are set forth below.

**Paragraph 54(a-b):**

**Defendants shall make the following amendments to DOC policies and procedures:**

- a. Defendants shall amend applicable DOC policies and procedures to specify that DOC staff shall ensure that, absent a legitimate safety or security concern, students will be made available for instruction and related services sessions regardless of the student's housing location. Defendants shall amend DOC policies and procedures to specify that absent a legitimate safety or security concern, all students, including students in Restrictive Housing, shall be permitted to attend in-person instruction, and provided an escort if necessary. Defendants shall amend applicable DOC policies and**

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<sup>156</sup> *Id.* § XIII.

**procedures to provide that DOC staff shall document each instance when a student who needs an escort is not escorted to scheduled in-person instruction, related services, or services offered under Sections Vand VI.**

**Status of Compliance with Paragraph 54 (a):** The evidence shows that Defendants have satisfied this requirement, in part. However, as explained below, additional policy amendments are needed to satisfy the requirements of this subsection.<sup>157</sup>

Sections 11.B.3.c.1. and 2. of the revised Educational Services Policy, No. 4119.7G issued in final form by the DOC on January 26, 2024, in relevant part states:

DOC shall work collaboratively with the special education provider to ensure the provision of education services to eligible pretrial Detainees and/or sentenced inmates housed at DOC facilities and attending the High School Diploma program pursuant to their IEPs. This includes but is not limited to:

- 1) Ensuring, absent a legitimate safety or security concern, all eligible students will be made available for instruction and related services sessions regardless of the student's housing location.
- 2) Ensuring students attending the High School Diploma program, including students in restrictive housing, provided there are no safety or security concerns, are escorted to their educational program in accordance with their prescribed schedule in a timely manner.<sup>158</sup>

In the Third-Party Auditor's view, requiring the DOC as an agency to work collaboratively with the special education provider to ensure the specific Settlement Agreement requirements listed above are satisfied is not what was intended by the requirements in this subsection. Rather, these requirements specify that it is the practices of *DOC staff* that must be addressed by the required policy amendments. The duty to implement the required practices rests with DOC staff and the policies applicable to the DOC staff who must implement these specific requirements should be

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<sup>157</sup> See also the narrative related to Defendants' performance relative to Paragraph 48, *supra* at 49-52. It appears from interviews with correctional managers at both facilities that the determination of what constitutes a legitimate safety or security concern is left to the discretion of the correctional line staff. More precise standards and procedural safeguards should be required in instances in which a correctional officer decides a safety or security concern should prevent a student from participating in instruction or related services sessions.

<sup>158</sup> See Ex. 26C, *supra* note 137, § 11.B.3.c.1. and 2.

amended to clarify these obligations in the same manner that the required documentation of missed escort services is addressed by the revised Educational Services policy.<sup>159</sup>

- a. **Defendants shall amend DOC policies and procedures to identify the designated individual(s), by position, at the DOC Facilities responsible for (i) ensuring that classroom instruction and sessions are made available to all students; and (ii) addressing any complaints from students, student representatives, or education staff that DOC staff did not make a student available or limited a student's educational time.**

**Status of Compliance with Paragraph 54(b):** This requirement has been satisfied.<sup>160</sup>

Section 11 of the revised Educational Services Policy, No. 4119.7G, issued in final form by the DOC on January 26, 2024, incorporates these requirements.<sup>161</sup>

**Paragraph 55(a-h):**

**Defendants shall amend DOC policies and procedures regarding education technology as necessary to effectuate the following:**

- a. **That there are enough working Education Tablets for every student enrolled in the High School at the DOC Facilities, plus sufficient additional Education Tablets to ensure that students are provided as soon as reasonably possible with a replacement Education Tablet when necessary due to functional issues that make their Education Tablet unavailable for instruction or related services;**

**Status of Compliance with Paragraph 55(a):** This requirement has been satisfied

insofar as the amendment of the DOC Educational Services policy. Section 11 c.(9) of the revised Educational Services Policy, No. 4119.7G, issued in final form by the DOC on January 26, 2024, incorporates these requirements.<sup>162</sup> Nevertheless, as explained in the narrative related to Paragraphs 48 and 60(a),<sup>163</sup> policy and procedures related to the duties of the correctional staff and their supervisors must be clarified to ensure that the tablet assigned to each student is

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<sup>159</sup> Section 15.d. of the revised Educational Services policy states: “[i]n the event that a student who is on the escort list is not taken to class, the correctional officer will document that the student was not taken to class.” If there are other DOC policies that address the obligation of correctional officers to document missed escorts, they should be amended as well. *Id.* § 15.d.

<sup>160</sup> The findings related to Paragraph 55(a)-(h) relate only to whether applicable policies were amended and not to whether they have been implemented. Findings related to implementation are found in the applicable sections of this report.

<sup>161</sup> *Id.* § 11.4.c.4. and 5.

<sup>162</sup> *Id.* § 11.4.c.10 and 15.h.

<sup>163</sup> *See supra* at 49 and *infra* at 69-70.

issued to and collected from that student on a daily basis and charged as required.<sup>164</sup> The failure to do so has contributed to significant limitations in student access to functional educational tablets on a consistent basis.<sup>165</sup>

**b. The availability of technology necessary to provide Virtual Instruction and Virtual Services;**

**Status of Compliance with Paragraph 55(b):** The Third-Party Auditor makes no finding on this policy requirement at this time. Section 11 of the revised Educational Services Policy, No. 41 19.7G, issued in final form by the DOC on January 26, 2024, provides that the DOC will provide the “special education provider with the ability and authorization to implement its secure school network into designated learning areas.”<sup>166</sup> It also states that “DOC IT will conduct regular connectivity checks of the intranet connection to ensure reliable connectivity throughout CDF and CTF.”<sup>167</sup> Further investigation is necessary to determine whether other DOC policies and any applicable procedures require amendment to incorporate the requirements of this subsection.

**c. That each student who is not attending in-person classes or who will otherwise need an Education Tablet is offered a working Education Tablet prior to the beginning of the School Day, to which the student will have access for the entirety of the School Day and after the School Day as needed to complete assigned tasks;**

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<sup>164</sup> Section 15.h. of the Educational Services policy addresses these responsibilities of the correctional staff, stating: “[o]perational staff assigned to distribute, retrieve, store, and inventory education mobile learning device[s] and/or tablets per current post-orders.” *Id.* § 15.h. Significantly, Section 15.k. requires training for correctional staff on “the distribution, care, and logistics of mobile learning management devices, the impact of education on recidivism, federal and DC education requirements, and unit rules/expectations.” *Id.* § 15.k. This is a helpful requirement as long as the policy and procedures have been established to hold the staff accountable for performing these duties and for participating in this training, which should be mandatory. As explained above, *supra* at 51-52, as of January 12, 2024, none of the correctional officer posts in the dedicated education units at the CTF or on So-1 had post orders available reflecting these duties.

<sup>165</sup> See also the narrative related to ¶¶ 59 and 60(b) regarding the connectivity challenges associated with use of the tablets.

<sup>166</sup> *Id.* § 11.c.16.

<sup>167</sup> *Id.* § 11.c.17.



**Status of Compliance with Paragraph 55(c):** This requirement has been satisfied insofar as the amendment of the DOC Educational Services policy. Section 11 of the revised Educational Services Policy, No. 4119.7G, issued in final form by the DOC on January 26, 2024, incorporates these requirements.<sup>168</sup> Nevertheless, as explained in the narrative related to Paragraph 55(a),<sup>169</sup> policy and procedures concerning the duties of the correctional staff and their supervisors related to the implementation of this requirement must be clarified.

- d. **That each student will be permitted to receive an Education Tablet on any given day unless the student's possession of the Education Tablet jeopardizes any person's health or safety, or if the student has used the Education Tablet inappropriately. If the Education Tablet has been removed for inappropriate use, the student may be restricted from receiving an Education Tablet for up to thirty (30) days. The removal of a student's tablet does not alter Defendants' obligations to provide education consistent with the student's IEP;**

**Status of Compliance with Paragraph 55(d):** This requirement has been satisfied insofar as the amendment of the DOC Education policy. Section 11 of the revised Educational Services Policy, No. 4119.7G, issued in final form by the DOC on January 26, 2024, incorporates these requirements.<sup>170</sup> Nevertheless, as explained in the narrative related to Paragraph 55(a),<sup>171</sup> in the preceding subsection, policy and procedures concerning the duties of the correctional staff and their supervisors related to the implementation of this requirement must be clarified.

- e. **That Maya Angelou Public Charter School is able to provide internet access to classroom spaces in DOC Facilities—hard-wired or hot spot internet access, at Defendants' discretion—for limited educational purposes such as credit recovery, instructional support, and related services. This provision shall not be construed to require Defendants to provide any internet access, directly or indirectly, in classroom spaces in DOC Facilities;**

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<sup>168</sup> *Id.* § 11.4.c.11.

<sup>169</sup> *See supra* at 60-61.

<sup>170</sup> *Id.* § 11.4.c.12.

<sup>171</sup> *See supra* at 61.

**Status of Compliance with Paragraph 55(e):** The evidence shows this requirement has been satisfied. Section 11 of the revised Educational Services Policy, No. 4119.7G, issued in final form by the DOC on January 26, 2024, incorporates this requirement.<sup>172</sup>

- f. **That an Education Tablet coordinator within DOC’s Division of Education, Case Management Programs, or other qualified DOC staff member, is designated to oversee the provision of the Education Tablets, to address any functionality and/or connectivity issues, and to coordinate with the students and/or the LEA at the DOC Facilities regarding any information technology issues at the High School in the DOC Facilities;**

**Status of Compliance with Paragraph 55(f):** The evidence shows this requirement has been satisfied in part. Section 15 of the revised Educational Services Policy, No. 4119.7G, issued in final form by the DOC on January 26, 2024, incorporates some, but not all of the requirements in this subsection.<sup>173</sup> The policy as amended requires the Tablet Coordinator to “prepare and maintain [the] mobile device inventory and distribution lists[,]”<sup>174</sup> and “monitor the inventory, damage and distribution documentation at least weekly to ensure that students are receiving their assigned devices and that devices are being repaired and replaced in a timely manner.”<sup>175</sup> In addition, Section 11 of the policy amendment requires an unspecified DOC staff member to conduct regular checks of the intranet connection to ensure reliable connectivity throughout CDF and CTF.<sup>176</sup> The policy is silent with respect to responsibility for coordination with the LEA or equivalent.

- g. **That at least weekly visual inspections of Education Tablets are conducted to ensure they are functioning properly and to promptly repair or replace any Education Tablets that are not functioning properly; and**

**Status of Compliance with Paragraph 55(g):** This requirement has been satisfied.

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<sup>172</sup> *Id.* § 11.4.c.15. The revised policy states that the DOC will “[p]rovid[e] the special education provider with the ability and authorization to implement its secure school network into designated learning spaces.” *Id.*

<sup>173</sup> *Id.* § 15.h.1. and 3.

<sup>174</sup> *Id.* § 15.h.1.

<sup>175</sup> *Id.* § 15.h.3.

<sup>176</sup> *Id.* § 11.4.c.17. This provision states that “DOC IT” will conduct the regular connectivity checks.

As noted in the narrative related to the preceding subsection, Section 15 of the revised Educational Services Policy, No. 4119.7G, issued in final form by the DOC on January 26, 2024, states that the Tablet Coordinator “shall monitor the inventory, damage and distribution documentation at least weekly to ensure that students are receiving their assigned devices and that devices are being repaired and replaced in a timely manner.”<sup>177</sup>

- h. That regular checks of the intranet connection are conducted to ensure reliable connectivity throughout CDF and CTF.**

**Status of Compliance with Paragraph 55(h):** The evidence shows this requirement has been satisfied. As noted in the narrative related to Paragraph 55(b),<sup>178</sup> Section 11 of the revised Educational Services Policy, No. 4119.7G, issued in final form by the DOC on January 26, 2024, provides that “DOC IT will conduct regular connectivity checks of the intranet connection to ensure reliable connectivity throughout CDF and CTF.”<sup>179</sup>

**Paragraph 56:**

**Defendants shall amend DOC policies and procedures to prioritize, to the extent possible during the term of the Settlement Agreement, the applications for security clearance of newly hired or contracted educational staff and Service Providers, so long as the staff and Service Providers have submitted the required paperwork for clearance.**

**Status of Compliance with Paragraph 56:** The evidence shows this requirement has been satisfied. Section 9 of the revised Educational Services Policy, No. 4119.7G, issued in final form by the DOC on January 26, 2024, incorporates this requirement.<sup>180</sup>

**Paragraph 57:**

**Defendants shall amend any DOC policies and procedures regarding student housing assignments to ensure that all students enrolled in the High School at the DOC Facilities are screened on a monthly basis to determine their eligibility for housing in CTF, and whenever possible and appropriate, eligible students are housed in CTF.**

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<sup>177</sup> *Id.* § 15.h.3.

<sup>178</sup> *See supra* at 62-63.

<sup>179</sup> *Id.* § 11.c.17.

<sup>180</sup> *Id.* § 9.e.2.

**Status of Compliance with Paragraph 57:** It does not appear this requirement has been satisfied. However, if the Defendants have made the required modification, the Third-Party Auditor requests that they submit the relevant policies and procedures for the Third-Party Auditor's review.

**Paragraph 58:**

**Within one hundred and twenty (120) days of the Effective Date, Defendants shall amend policies and practices to include provisions as required by paragraphs 54-57 and provide Plaintiffs' counsel with a copy of the amended policies and practices. If Defendants' position is that the current policies and procedures contain the substantive requirements in paragraphs 54-57, Defendants shall within the same 120-day time period provide a copy of the policy or procedure to Plaintiffs and identify the language in the policy or procedure which contains the substantive requirement.**

**Status of Compliance with Paragraph 58:** This requirement has been satisfied in part. As explained above in the narrative related to Paragraphs 54-57, the evidence shows that with some exceptions, the defendants have amended certain DOC policies as required, but further progress is needed as specified above.

**C. Implementation of Amended Policies, Practices, and Procedures**

**1. Educational and Related Services Technology**

Paragraphs 59-61 of the Settlement Agreement require Defendants to implement necessary infrastructure and policy changes to enable students to access the intranet and use educational tablets for educational and related services purposes. Specific requirements related to the operation of and access to educational technology are also included in these provisions. The Third-Party Auditor's findings concerning the Defendants' performance relative to these requirements are set forth below.

**Paragraph 59:**

**Defendants shall implement all necessary infrastructure and policy changes to enable students to access the intranet and Education Tablets for educational and related services purposes, regardless of the student's housing placement at the DOC Facilities. There are limited exceptions to this obligation. Defendants need not undertake any infrastructure or policy changes to provide intranet or tablet access within the Intake Unit in CDF, the Mental Health**

**Unit in CDF, safe cells in CDF, or the chronic illness medical infirmary unit in CTF. In addition, Defendants need not undertake infrastructure or policy changes to provide intranet access to students in the limited mobility and dialysis suite in CTF. The lack of intranet or tablet access in these units does not alter Defendants' obligation to provide education consistent with students' IEPs.**

**Status of Compliance with Paragraph 59:** This requirement has not been satisfied.

The basis for this finding is explained below.

The evidence shows that the Defendants have not implemented all necessary infrastructure and policy changes to enable students to access the intranet and educational tablets for educational and related services purposes, regardless of the student's housing placement at the DOC Facilities. Students as well as MAA and DOC staff have told the Third-Party Auditor that the connectivity necessary to support the use of tablets is a recurring issue in SMUB, So-1, C4B, and to a much lesser extent in C4C.<sup>181</sup> Students in these units report that they cannot rely on the DOC's intranet connections and have virtually no ability to connect to the intranet in their cells. This means that while MAA students can rely currently on the laptops and wi-fi connections provided by their MAA teachers for related services sessions in speech and occupational therapy, many students cannot use their tablets to communicate with their teachers, complete assignments, and participate in credit recovery courses offered through the Edgenuity on-line curriculum.

The Third-Party Auditor's examination of this issue has identified multiple factors that have contributed to the limitations in connectivity that render many of the educational tablets issued to students in SMUB, So-1, and C4B consistently unreliable. DOC IT management reports that prior to the onset of the pandemic, the DOC contracted with American Prison Data Systems ("APDS") for a limited number of educational tablets, software support and

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<sup>181</sup> Inconsistent information has been provided to the Third-Party Auditor about whether there are connectivity issues experienced by students in E Building.

maintenance on the tablets themselves. The tablet program expanded during the pandemic, but reportedly without an assessment of the infrastructure necessary to support the expansion. Shortcomings in connectivity led APDS to hire a subcontractor to install access points in housing units at both facilities. The access points function like a bridge and rely on Comcast — the provider selected by APDS.

DOC IT management reports that no maintenance has ever been performed on the access points and many are in disrepair. Moreover, the software available on the tablets has expanded beyond the initial educational programs that were installed, and now includes, among other programs, radio, video games, and movies, which the existing infrastructure cannot readily accommodate.<sup>182</sup> According to DOC IT management, it is not technologically possible to maintain connectivity to the intranet in a typical cell. Assuming this is accurate, the assumption that students can work on Brightspace or Edgenuity assignments in their cells is misplaced.

During interviews with the Third-Party Auditor, DOC IT management identified three key factors that are responsible for the shortcomings in connectivity experienced by MAA students in their attempts to use educational tablets:

- **Lack of Capacity**: There has been no assessment of the number of access points needed to support the educational tablet program and no maintenance on the access points that were installed during the pandemic;
- **Shortcomings in the Reliability of the Comcast Circuit**: This is described as a problem that has increased in severity during the last two or three years; and
- **User Issues**: The failure of users to reboot the tablets and the attempted use of tablets in cells.

In an effort to address these issues, the Defendants elected to procure a connectivity assessment with ShawnTech Communications, a company that reportedly has substantial

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<sup>182</sup> These entertainment programs are typically loaded on the Tablets by the Tablet Coordinator. She removes these programs if there are concerns about how the student is maintaining their tablet.

expertise in assessment and remediation of the infrastructure and connectivity challenges that the Defendants are confronting. Despite multiple requests, the Third-Party Auditor has been unable to secure a copy of the Shawn Tech scope of work; however, DOC managers and staff have confirmed that ShawnTech would be conducting this assessment. On February 6, 2024, in response to her inquiries, the Third-Party Auditor was informed that ShawnTech representatives would be on-site later in the week to conduct the assessment. Because of the need to finalize this report, the Third-Party Auditor has not had an opportunity to determine whether the assessment has occurred, and if so, whether findings and remedial recommendations have been issued.

As an adjunct to the ShawnTech assessment, DOC IT management has reported that they intend to conduct surveillance to assess the capacity needed to support the expanded content of the tablets. Based on the results of the assessment and surveillance, the Defendants expect to develop a remediation plan, which they recognize must include maintenance of the access points. The DOC also intends to replace the Comcast Circuit and currently is negotiating with OCTO to connect to DC-Net, which is viewed as a much more reliable provider, and to phase out Comcast. As of February 5, 2024, the DOC was waiting for a cost estimate from OCTO.

In combination, these initiatives are expected to mitigate the limitations in connectivity that students have experienced when using educational tablets at both the CDF and the CTF.

**Paragraph 60(a-d):**

**Defendants shall ensure the satisfaction of the following within forty-five (45) days of the Effective Date:**

- a. **Defendants shall ensure that there are sufficient working Education Tablets to allow students to access Virtual Instruction and Virtual Services;**

**Status of Compliance with Paragraph 60(a):** This requirement has been satisfied in part. The reasons for this finding are explained below.

Students enrolled in the MAA program and inmates in various other special program housing units at both facilities are issued educational tablets by the DOC's Tablet Coordinator. They use the tablets to communicate with their MAA counselors who provide counseling services required by their IEPs. In much more limited circumstances, MAA management reports that students also use the educational tablets for virtual instruction. According to the DOC's Tablet Coordinator, as of December 12, 2023, the DOC had a total of 800 operable educational tablets.<sup>183</sup> Of that sum, in addition to the tablets that have been distributed to MAA students, an inventory of 50 educational tablets are maintained as backup equipment for students in the MAA program. APDS will stop providing software support and maintenance on these tablets next year. The Defendants are in the process of deciding how to respond to this circumstance.

The Tablet Coordinator has developed an inventory control system as part of her effort to ensure she can provide a sufficient number of tablets to meet the needs of MAA students.<sup>184</sup> Notwithstanding her dedicated efforts to implement the system she has developed, the evidence indicates that the tablets are not being properly controlled by the correctional staff. Many

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<sup>183</sup> The DOC reportedly had 1,100 tablets, but approximately 300 were damaged and are inoperable.

<sup>184</sup> According to the Tablet Coordinator, each weekday she checks the daily inmate census to determine whether there are new admissions to C4B, C4C, SMUB or So-1 who need a tablet. For these new admissions and any others to whom she issues a tablet, the Tablet Coordinator assigns a user login number, and documents that she has issued the tablet in a tablet assignment log. *See* Ex. 28A, Sample Page from APDS Education Tablet Assignment Log. A separate tablet assignment log is maintained for each housing unit. Among other log entries, she notes the name and DCDC No. of the inmate to whom the tablet has been issued, the inventory control number of the tablet, the date of issuance, and the condition of the tablet. Every time the log is updated, the Tablet Coordinator posts the updated log on the charging cart that is maintained for the tablets in each housing unit. She also delivers a copy to the correctional staff assigned to the housing unit to inform them about which inmate has been assigned to which particular tablet. (Each of the tablets are marked with a visible inventory control number.) According to the Tablet Coordinator, the correctional staff had been instructed to distribute tablets at 8:00 a.m. and collect them at 11 p.m. daily. *See* Ex. 28B, at 1, Sample, APDS Tablet Log Instructions. A recent time change indicates that distribution is now expected at 9:00 a.m. *Id.* at 2. The Tablet Coordinator telephones the correctional staff on every housing unit in which inmates have been issued tablets each morning to determine whether the tablets were collected at 11 p.m. the previous evening and reissued that morning as well as to inquire about the condition of the tablets. Depending on the responses the Tablet Coordinator receives, she may go to specific housing units to check on whether the correctional staff has properly filled out the Tablet Distribution Check-In Log, which requires the officers to record, among other information, whether the tablets were issued, collected, charged or damaged. *See* Ex. 28C, Sample, Tablet Distribution Check-In Log.



students report that their tablets have been lost or stolen.<sup>185</sup> Both MAA staff and correctional officers report that they often see students with multiple tablets in their cells. Some students have told the Third-Party Auditor that they do not want the tablets because they cause too many problems with other inmates who want to access the radios, movies and games that have been installed on at least some of the tablets. Moreover, DOC staff report that the tablets are damaged in efforts to access the battery, which can serve as a make-shift lighter.<sup>186</sup>

The evidence suggests that the educational tablets have become a coveted commodity. Nevertheless, students, MAA staff, and some DOC staff report that at least some correctional staff members do not control access to the tablets. Staff report, and the Third-Party Auditor has observed, that charging carts are at times left open and unsupervised,<sup>187</sup> and on some housing units the correctional staff neither routinely issue nor collect the tablets, leaving it to the students to take them in and out of the charging stations. Unless access to the tablets is better supervised and controlled by the correctional staff, the requirements in this subsection cannot be satisfied.

- b. Defendants shall ensure that all students, subject to the limitations in paragraph 59, can access the intranet at a speed sufficient to participate in Virtual Instruction and Virtual Services;**

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<sup>185</sup> See, e.g., Ex. 28D, January 17, 2024 email from Shalena Johnson to Ryana Sutton, *et al.* (stating that the majority of MAA students on a list of 25 were issued three or more tablets and told her the tablets had been lost, confiscated or stolen). MAA Daily Reports list the need for tablets for specific students frequently, and both MAA and DOC staff report many are not newly admitted or newly transferred students; they are students whose tablets have been lost, stolen or destroyed.

<sup>186</sup> See Ex. 28E, photographs taken by Grace M. Lopes on December 19, 2023 at the CTF showing some of the damaged tablets that the Tablet Coordinator collected.

<sup>187</sup> See Ex. 28F, photograph taken by Grace M. Lopes on February 5, 2024 of the charging cart in C4C, which was left open and accessible to all students in the day room. These carts function as charging stations. It is the Third-Party Auditor's understanding that all of the housing units have similar charging carts except So-1. In So-1, the tablets are charged by the correctional staff in the control bubble, using individual charging devices. However, students report that sometimes the individual chargers are left on the tier and tablets are charged on the tier, giving everyone who passes by, such as detail inmates, access to the tablets.

**Status of Compliance with Paragraph 60(b):** The evidence shows this requirement has not been satisfied. The basis for this finding is detailed in the narrative related to Paragraph 59.<sup>188</sup>

- c. **Defendants shall continue to allow Maya Angelou Public Charter School to provide internet access to classroom spaces in DOC Facilities—hard-wired or hot spot internet access, at Defendants’ discretion—for limited educational purposes such as credit recovery, instructional support, and related services. This provision shall not be construed to require Defendants to provide any internet access, directly or indirectly, in classroom spaces in DOC Facilities; and**

**Status of Compliance with Paragraph 60(c):** The evidence shows that this requirement has been satisfied insofar as instructional support and related services. MAA provides hard-wired internet access in C4B for instruction and uses mobile hot spots in other areas of the CTF and CDF to provide instructional support and related services. However, MAA does not provide internet access to support student text messaging to teachers, the Brightspace program, or the program used for credit recovery. These functions are only available to students through the educational tablets.

- d. **Defendants shall ensure that the LEA at the DOC Facilities is providing all students receiving Virtual Instruction with that instruction on an individual rather than a shared device unless the shared device is a large, interactive monitor.**

**Status of Compliance with Paragraph 60(d):** The evidence shows this requirement is being satisfied in part. Virtual instruction is provided through the educational tablets and not a shared device.

**Paragraph 61:**

**Defendants shall allow the reasonable use of technology, including learning tools such as interactive whiteboards with screen sharing capabilities, by the LEA at the DOC Facilities. Defendants shall permit Service Providers to use the LEA at the DOC Facilities’ technology if consistent with DOC policies. This provision shall not be construed to require Defendants to provide any technology or learning tools, directly or indirectly.**

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<sup>188</sup> See *supra* at 67-69.

**Status of Compliance with Paragraph 61:** The evidence shows this requirement is being satisfied. In fact, MAA recently procured, and is in the process of activating, two Promethean Boards to support its educational program at the DOC, and the DOC has permitted the use of this technology.

## **2. Instructional Practices**

Paragraphs 62-66 of the Settlement Agreement require Defendants to implement specific instructional practices to ensure that students receive instruction consistent with their IEPs. This Section requires that Defendants ensure the LEA providing educational services to class members has a sufficient number of staff positions funded and available to provide students with IEP-required instructional services, and includes specific provisions governing independent student work. Also required are certain record-keeping practices related to attendance and reporting of instructional and related services hours. The Third-Party Auditor's findings concerning the Defendants' performance relative to these requirements are set forth below.

### **Paragraph 62:**

**Defendants shall ensure that instruction is provided to all students in accordance with their IEPs regardless of housing placement at the DOC Facilities.**

**Status of Compliance with Paragraph 62:** The evidence shows that Defendants did not meet this requirement during this reporting period. This finding is explained below.

The evidence shows that the Defendants have not been providing all students with the instruction required by their IEPs regardless of housing placement. According to the Defendants' Monthly Status Reports, the percent of all students who received the number of hours of instruction consistent with their IEPs was only 67 percent in October 2023, 65 percent in November 2023, and 72 percent in December 2023. When analyzed by housing units, the reported data show that far fewer students on restricted housing units are receiving their required

hours of instruction than their counterparts in non-restrictive housing units. Indeed, the Defendants' Monthly Reports indicate that during the Fourth Quarter 2023, only 53 percent of students on restrictive housing units were provided instruction consistent with their IEPs, compared with 75 percent on non-restrictive housing units. Significantly, for this same period, the data reported by the Defendants also show that one quarter of the students housed on non-restrictive units, 25 percent, did not receive instruction in accordance with their IEPs. This matter is addressed in more detail in the Background Section of this report and in the findings related to Paragraph 45.<sup>189</sup>

**Paragraph 63:**

**Defendants shall ensure that the LEA at the DOC Facilities has a sufficient number of qualified staff positions funded and available to be filled to provide all students in CTF and CDF with required instruction, including specialized instruction, and related services as provided in this Settlement Agreement. Defendants will employ best efforts to coordinate with the LEA at the DOC facility, including any contracted providers, in order to ensure funded vacancies are filled.**

**Status of Compliance with Paragraph 63:** The Third-Party Auditor makes no findings related to Defendants' performance relative to this requirement at this time. It is the Third-Party Auditor's understanding that the MAA staffing model, which is based on an approximate enrollment of 45 students, requires 32 positions, 24 teaching positions and eight administrative positions, and these positions are funded for this School Year.<sup>190</sup> As of January 18, 2024, MAA was recruiting to fill six vacancies.<sup>191</sup> Assuming these vacancies are filled, the Third-Party Auditor has not had an opportunity to consider whether current funding levels are sufficient to support the staffing necessary to address the escalating enrollment trends described in this

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<sup>189</sup> See *supra* at 28-42.

<sup>190</sup> MAA management reports that recruitment of skilled and experienced staff who can work effectively and in the MAA tradition with the student population in the correctional environment has been challenging.

<sup>191</sup> The vacancies include four special education teachers/case managers, one Math teacher, and one Art teacher.

report.<sup>192</sup> The Third-Party Auditor will address this matter, and the other requirements in this subsection, in a future report.

**Paragraph 64(a)-(d):**

**The Parties disagree over when Independent Student Work constitutes specialized instruction. Plaintiffs' position is that Independent Student Work is specialized instruction only when it is provided during Teacher-Facing Instruction. Defendants' position is that Independent Student Work is specialized instruction also when it is provided outside of Teacher-Facing Instruction, if it is appropriately individualized and the student can contact an instructor via electronic messaging or via interactive two-way video conference to receive any needed support within a reasonable time. This disagreement notwithstanding, Plaintiffs shall not seek dispute resolution or file a motion seeking to enforce Defendants' obligation to provide specialized instruction consistent with each Settlement Class Member's IEP based on Defendants' use of Independent Student Work provided that each of the conditions in subparagraphs a–d is satisfied:**

- a. Defendants make the following changes to the system used for Independent Student Work:
  - i. Within forty-five (45) days of the Effective Date, the District ensures that the text-based messaging system is regularly monitored during the School Day to ensure students receive prompt responses, and that all messages are responded to before the end of the school day in which they are received; and

**Status of Compliance with Paragraph 64(a)(i):** The evidence shows this requirement has been satisfied, in part. The DOC's Tablet Coordinator is responsible for daily monitoring of the text-based messaging system. She reports that if a message from a student to a teacher appears to her to be time-sensitive, but the teacher has not responded, she may contact the teacher via email. This is not sufficient to meet the requirements of this subsection, which would require the Tablet Coordinator to take steps to ensure *all messages* – and not just those deemed time sensitive – are responded to before the end of the school day in which they are received.

- ii. Beginning at the start of the Fall 2023 academic term, Defendants implement technology for students doing Independent Student Work to engage with an instructor via interactive two-way videoconference within a reasonable timeframe.

**Status of Compliance with Paragraph 64(a)(ii):** The evidence shows this requirement has not been satisfied. As explained above,<sup>193</sup> because of limitations in their daily access to a

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<sup>192</sup> See *supra*, Figures 5 and 7.

<sup>193</sup> See *supra*, Figures 16 and 17.

classroom for the full school day in all of the housing units at the CDF and in SMUB, and because of shortcomings in their access to face-to-face instruction in E4B, students enrolled in the MAA program who are confined in these housing units regularly receive assignments that constitute independent student work. In these circumstances, the technology is not regularly available for them to engage with an instructor in interactive two-way videoconferences.<sup>194</sup>

- b. Every quarter beginning with the second calendar quarter after the Effective Date, in consultation with Plaintiffs' counsel, the LEA at the DOC Facilities, and the Third-Party Auditor, Defendants shall review student-level data to assess how and to what extent specialized instruction is being delivered to students via Independent Student Work. If Plaintiffs' counsel so request, but no more than twice per calendar year, Defendants agree to convene a meeting with Plaintiffs' counsel, the LEA at the DOC Facilities, and the Third-Party Auditor to discuss any concerns raised by Plaintiffs' counsel about the provision of Independent Student Work. Any meetings held pursuant to this paragraph shall be held at the same time as the Parties' quarterly meeting with the Third-Party Auditor under paragraph 138.**

**Status of Compliance with Paragraph 64(b):** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

- c. The purpose of the meetings described in subparagraph b shall be to assess the use of Independent Student Work. For the duration of this Settlement Agreement, Plaintiffs shall not seek dispute resolution or file a motion seeking to enforce Defendants' obligation to provide specialized instruction consistent with each Settlement Class Member's IEP based on Defendants' delivery of Independent Student Work provided that Defendants provide no less than ninety percent (90%) of each student's required specialized instruction hours via Teacher-Facing Instruction. The Parties agree that this subparagraph does not impose any independently enforceable obligation on Defendants but is instead intended to advance the Parties' preference for in-person instruction as set forth in paragraph 46 while also ensuring the LEA at the DOC Facilities has the needed flexibility to deliver instruction in the manner reasonably calculated to enable the student to make progress appropriate in light of the student's circumstances.**

**Status of Compliance with Paragraph 64(c):** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

- d. Defendants continue to report hours in the same method as they have been since February 2022 (see ECF No. 107-1).**

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<sup>194</sup> It is the Third-Party Auditor's understanding that a videoconferencing function could be added to the educational tablets. However, reliable functionality would be contingent on remediation of the limitations in connectivity described elsewhere in this report.

**Status of Compliance with Paragraph 64(d):** The evidence shows Defendants met this requirement during this reporting period. This finding is explained below.

Since the effective date of the Settlement Agreement, Defendants have continued to report hours of instruction and related services in the same manner as previously reported. Status reports, which included a Table titled “Summary of IEP Hours Received,” were submitted on October 10, 2023 (reporting hours for September 2023 and revised October 12, 2023);<sup>195</sup> November 10, 2023 (reporting hours from October 2023),<sup>196</sup> December 8, 2023 (reporting hours from November 2023),<sup>197</sup> and January 10, 2024 (reporting hours from December, 2023).<sup>198</sup> The Summary IEP Hours Table that is part of each report continues to include, by individual student, the following data:

- IEP requirements for Specialized Instruction Outside General Education;
- IEP requirements for Specialized Instruction General Education;
- Total Hours of Specialized Instruction Hours Received by Week and whether Teacher-facing;
- Total School Days in Restrictive Housing;
- Specialized Instruction Hours Received in Restrictive Housing (teacher-facing and non-teacher facing);
- Behavioral Support Services Outside General Education (hours per month);
- Behavioral Support Services General Education (hours/month);
- Behavioral Support Services (hours/month) (by IEP required and received);
- Occupational Therapy (hours/month) (by IEP required and received);
- Speech Pathology (hours/month) (by IEP required and received);
- Consultation Services/Speech-Language Pathology (hours/month) (by IEP required and received);
- Consultation Services/Occupational Therapy (hours/month) (by IEP required and received); and
- Consultation Services Behavioral Supports (hours/month) (by IEP required and received).

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<sup>195</sup> Defendants’ October 10, 2023 Status Report and October 12, 2023 Clarifications and Revisions to Hours Chart to add related services hours.

<sup>196</sup> Defendants’ November 10, 2023 Status Report.

<sup>197</sup> Defendants’ December 8, 2023 Status Report.

<sup>198</sup> Defendants’ January 10, 2024 Status Report.

Each monthly report also includes a document titled “Clarifications,” which identifies any days school was not in session, changes in enrollment status that occurred during the month, new enrollments during the month, new IEPs received or missing, and any instances when a student missed services due to hospitalization in the community. Both MAA management and the OSSE Director of Special Education report that the logic used to calculate hours received and hours required has not changed relative to practices that preceded the effective date of the Settlement Agreement.<sup>199</sup>

On January 3, 2024, the Third-Party Auditor contacted Defendants’ counsel, recommending that Defendants consider changes to the Monthly Hours Table. The Third-Party Auditor suggested that the Table include two additional columns reflecting the enrollment date and the disenrollment date,<sup>200</sup> and later suggested that Defendants add a “Notes Column” that would include the notes reflected in the “Clarification” document. This would enhance the readability of the data reported in the Table as well as promote efficiencies in data analysis because the information would be contained to the Table and reference to the Clarifications document would not be required. Counsel for Defendants indicated a willingness to consider making these changes to the Monthly Hours Table.<sup>201</sup>

**Paragraph 65:**

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<sup>199</sup> MAA management reports that hours received are calculated for the monthly reports through the attendance collection process described in the Background Section of this report, *supra*, 11-25, and in the narrative related to ¶ 65, *infra* at 80, note 207. According to MAA management, hours that the student attended instruction, and hours for which the student was offered instruction but refused to attend, are considered as hours received. Hours in which the student was unavailable for reasons such as medical, legal visits or court, however, are not considered as hours received. Rather, they are considered as hours to be made up in accordance with Paragraph 66, *infra*.

<sup>200</sup> See Ex. 29A, January 3, 2024 email correspondence from Grace M. Lopes to Honey Morton.

<sup>201</sup> See Ex. 29B, January 4, 2024 email correspondence from Honey Morton to Grace M. Lopes. The Third-Party Auditor also inquired as to the reason why all individuals who are enrolled or disenrolled during the month are not consistently included on the Table. Ms. Morton explained that the only individuals not included in the chart are those who enroll and disenroll in the same month and receive no services, and that she would inquire whether they could be included in the chart. *Id.* Thereafter, on January 5, 2024, the Third-Party Auditor responded to an inquiry Ms. Morton made in her January 4, 2024 response and pointed out discrepancies related to the temporal unit of measurement in the heading used in the Table for Consultation Services/Occupational Therapy and Parent Counseling. See Ex. 29C, January 5, 2024 email correspondence from Grace M. Lopes to Honey Morton.



**Defendants shall ensure that DOC and/or the LEA at the DOC Facilities document each instance in which a student does not attend class, and that such documentation includes the date and the identity of the student.**

**Status of Compliance with Paragraph 65:** The evidence shows Defendants met this requirement during the reporting period. This finding is explained below.

Interviews with both MAA and DOC staff have confirmed that class attendance is being taken by MAA teachers and reported to the DOC's Education Administrator. A review of supporting documentation provided by both MAA staff and the Education Administrator confirms this is the case.

Class attendance is collected in multiple ways. Except for restricted housing, class attendance is collected by each MAA teacher for each class s/he conducts using a designated form which reflects the date and time of the class, teacher and course name, each student's name, and whether the student is present, absent, tardy, and, if absent, the reason for the absence.<sup>202</sup> On restrictive housing units, staff use a "Restrictive Housing Sign-in Form" that includes the student's name, housing unit, whether they are present, absent or tardy, and whether student work was distributed or collected. The form includes notes that reflect the reason for nonattendance.<sup>203</sup>

Class attendance data is entered by MAA administrative staff into a program on the PowerSchool platform, from which a monthly student attendance report can be produced.<sup>204</sup> The PowerSchool report on attendance includes the following information by individual student: the month, date and days of the week school was held; whether the student was present or absent; the total number of days during the month that the student was enrolled; and the total number of

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<sup>202</sup> See Ex. 4, *supra* note 17.

<sup>203</sup> See Ex 30A, Restricted Housing Sign-in Form.

<sup>204</sup> See Ex 30B, Sample Monthly Student Attendance Report Form with Instructions.

days the student was present.<sup>205</sup> In addition, the report reflects the total number of days all students were enrolled and the total number of days all students were present.<sup>206</sup> MAA staff report that the data from these sources is used to calculate the hours of instruction received that is reflected in the monthly reports.<sup>207</sup>

Attendance is also reported in the daily reports that MAA management transmits to DOC's Education Administrator. These MAA Daily Reports represent anecdotal summaries presented in narrative format. They do not reflect uniform reporting of standardized fields related to the delivery of instruction in each housing unit, but they often include attendance data. The Third-Party Auditor completed a structured review of 31 daily reports covering the period between September 25, 2023 and December 6, 2023.<sup>208</sup> While there was wide variation in which particular units were included in a particular daily report, the reports usually include at least summary attendance information relating to C4C and C4B, SMUB and So-1, among other housing units. The Third-Party Auditor's structured review included the following: whether student attendance was reported; whether student absences were reported, and if so, the number of students reported absent; and whether the reasons for student absences were reported.<sup>209</sup>

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<sup>205</sup> See Ex. 30C, September 2023 MAA Monthly Student Attendance Audit Report; Ex. 30D, October 2023 MAA Monthly Student Attendance Audit Report; Ex. 30E, November 2023, MAA Monthly Student Attendance Audit Report; Ex. 30F, December 2023 MAA Monthly Student Attendance Audit Report.

<sup>206</sup> *Id.*

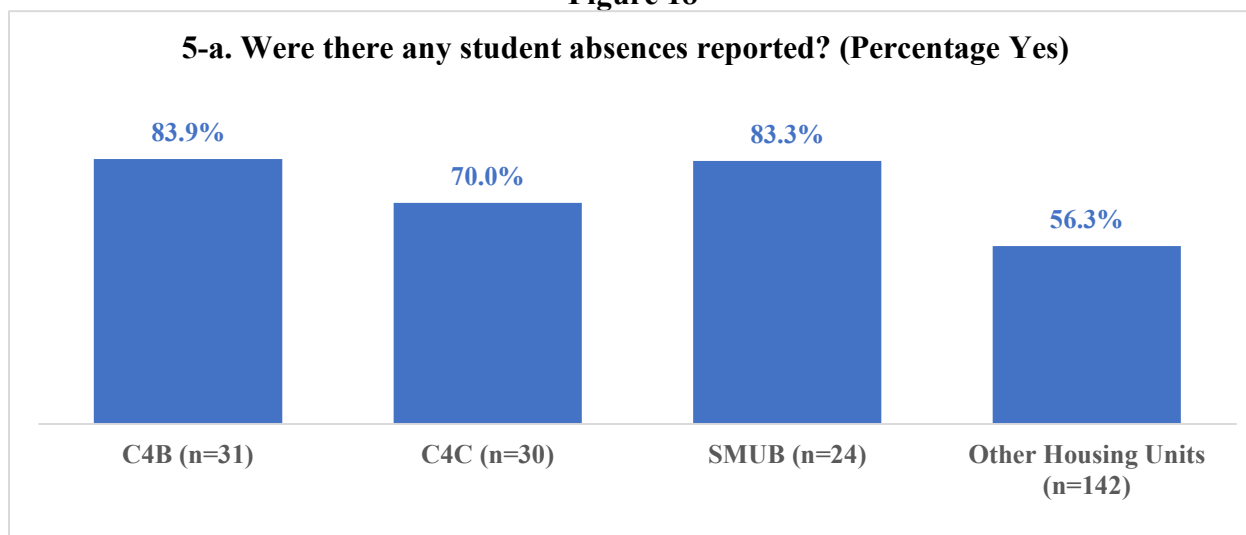
<sup>207</sup> In calculating the hours of instruction received, the Defendants credit the hours during which the student was in attendance as well as the hours the student refused to attend. MAA management has explained that the rationale for this is that the student had the opportunity to attend instruction, but declined to do so, and therefore make-up hours are not required.

<sup>208</sup> At the time the review was initiated, the Third-Party Auditor did not have access to all of the MAA Daily Reports submitted by MAA management to the DOC Education Administrator during this period and for this reason the review was limited to the only reports that were available, covering 31 school days. Subsequently the Third-Party Audit obtained virtually all of the reports submitted during the review period, but because these reports were not received until the latter part of January, they could not be included in the structured review. The Third-Party Auditor is now on the MAA distribution list and receives the reports daily.

<sup>209</sup> See Ex. 30G, Daily Report Audit Tool form. This tool was developed for the structured review.

The results of the audit revealed that student absences in certain housing units are being reported through the daily report, although not with the specificity reflected in the attendance records that are filled out for classes conducted in the housing units. As reflected in Figure 18, below, eighty-four percent of the daily reports reviewed noted absences on C4B, seventy percent noted absences on C4C, eighty-three percent noted absences on SMUB, and fifty-six percent noted absences on other housing units combined.<sup>210</sup>

**Figure 18**



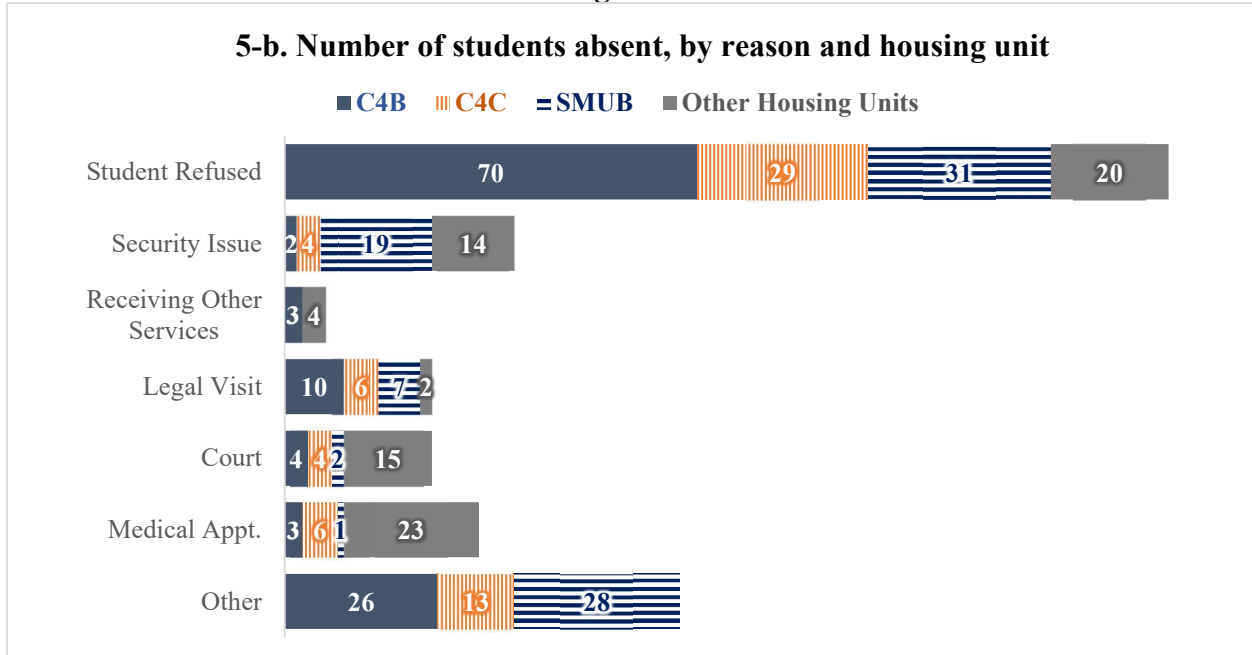
n=the total number of MAA Daily Reports reviewed that referenced the housing unit. The total number of reports reviewed was 31.

The structured review also collected data on the number of students who were absent from class by housing unit, as well as the reason for the absence if it was documented. As reflected in Figure 19 below, across all units, student refusal was by far the most often cited reason for a student's absence. Security issues were also frequently cited, and included descriptions such as a student not permitted to leave cell for behavioral reason and insufficient correctional staffing. Examples of "other" reasons include unit in quarantine status, MAA staff

<sup>210</sup> See Ex. 30H, Summary Tables, Daily Reports Review Results. The lower number of absences being reported on other housing units is in part due to the fewer number of students assigned to those units and to the absence of any reference to those housing units in many daily reports.

not permitted to leave prior unit, students elected to participate in recreation time in lieu of school, students moving units, lack of tethers and leg irons, and disruptive behavior on the unit.

**Figure 19**



**Paragraph 66:**

**Defendants shall ensure that the LEA at the DOC Facilities makes available make-up instruction to cover the relevant subject and content of cancelled or missed class(es) within a reasonable amount of time for each student, except where the student has declined or refused such instruction.**

**Status of Compliance with Paragraph 66:** The Third-Party Auditor makes no finding related to Defendants’ performance relative to this requirement at this time because she has received conflicting information regarding these practices, which she has not had an opportunity to reconcile. This matter will be addressed in a future report.

**3. Related Services Practices**

**Paragraph 67:**

**Defendants shall ensure that related services are provided to all students in accordance with their IEPs regardless of housing placement at the DOC Facilities. Defendants may schedule the location of a student’s related services based on a student’s housing so that the provision of services is not delayed or impacted by the student’s housing placement.**

**Status of Compliance with Paragraph 67:** The evidence shows Defendants did not meet this requirement during this reporting period. This finding is explained below.

As more fully explored in the Findings related to Paragraph 45,<sup>211</sup> Defendants are not providing the hours of related services required by student IEPs, although Defendants' performance varies relative to the type of related service that is required. According to the Defendants' monthly Status Reports, during October 2023, 85 percent of students (35 of 41 students) whose IEPs provided for behavioral health supports received them.<sup>212</sup> Delivery of behavioral health supports dropped to 80 percent during November 2023 (40 of 50 students), but during December 2023, 86 percent of students (38 of 44 students) received their IEP-required behavioral health supports.<sup>213</sup>

Defendants also did not meet the requirements of this subsection insofar as both speech pathology and occupational therapy services. According to Defendants' monthly Status Reports, during October 2023, zero percent of students (zero of four) received their IEP-required level of speech pathology services, during November 2023, 17 percent of students (one of six) received their IEP-required level of speech pathology services, and during December 2023, 20 percent of students (one of five) received their IEP-required level of speech pathology services.<sup>214</sup> The monthly Status Reports also indicate that insofar as occupational therapy services, 100 percent of students (one of one) received their IEP-required level of services during October 2023, 67 percent of students (two of three) received their IEP-required level of services during November

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<sup>211</sup> See *supra* at 28-42.

<sup>212</sup> See Ex. 24, *supra* note 88, Summary Tables, IEP Hours Required vs. Received, Behavioral Support.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

2023, and during December 2023, 50 percent of students (one of two) received their IEP-required level of services.<sup>215</sup>

**Paragraph 68:**

**Defendants shall ensure that all related services are provided in locations with necessary privacy and confidentiality safeguards.**

**Status of Compliance with Paragraph 68:** The evidence shows Defendants did not meet this requirement during this reporting period. This finding is explained below.

Related services, especially those involving behavioral support services, are not provided in locations with necessary privacy and confidentiality safeguards; this is especially true for students assigned to restrictive housing units. This limitation was specifically noted by the OSSE monitor during the onsite monitoring which occurred on October 24 and 25, 2023, leading OSSE to recommend “that DOC explore the use of separate physical space, including investment in security measures, to support the delivery of related services that require confidentiality, including behavioral support services.”<sup>216</sup>

The lack of confidential private space for the delivery of related services for behavioral health supports has been observed by the Third-Party Auditor on multiple occasions and confirmed during interviews the Third-Party Auditor has conducted with MAA behavioral support providers as well as MAA management and class members. For students assigned to restrictive housing units, behavioral support services are often delivered through a cell door, within earshot of correctional officers and other inmates.<sup>217</sup> Even on the housing units

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<sup>215</sup> *Id.*

<sup>216</sup> See Ex. 33A, *infra* note 227, Memorandum dated November 29, 2023 from Victoria Glick to Thomas Faust.

<sup>217</sup> Speech pathology and occupational therapy services are delivered virtually in all of the housing units through a Webex platform that is accessed by MAA staff using MAA hot spots. MAA staff report that in order to maintain connectivity, these sessions are often conducted at tables in the housing unit dayrooms with students using headphones. In SMUB, the tables in the open area are used for this purpose. While the defendants have made a very small room with a door, (which is the size of a small storage closet), adjacent to the tables in SMUB available for this purpose, MAA staff report that connectivity is very poor in that area, and it is often filled with supplies and other items. See Appendix B for a photograph of this area.

designated for the MAA program, when correctional officer staffing is inadequate, some related services are provided in the dayroom while others may be present.<sup>218</sup> In these circumstances, the related services provider generally will meet with the student in the dayroom area at the table farthest from others. Providers have reported that they need more space for confidential meetings with students, but with appropriate security precautions.

**Paragraph 69:**

**Defendants shall ensure that the LEA at the DOC Facilities provides all related services available in-person whenever practicable and appropriate. When related services are not provided in-person, Defendants shall ensure that students are provided with these services via Virtual Services.**

**Status of Compliance with Paragraph 69:** The evidence shows this requirement has been satisfied. This finding is explained below.

Essentially, there are three types of related services provided for students at the CDF and CTF: behavioral support services, speech therapy, and occupational therapy. Of these three, behavioral support is the type of related service most often included in student IEPs. These services are provided in-person, by MAA staff. Staff include two counselors (social workers with behavioral health training and experience) and a part-time psychologist.<sup>219</sup> MAA staff have access to the students' IEPs and provide both group and individual counseling. The counseling staff are assigned to specific housing units designated for MAA students and also travel to other housing units throughout CDF and CTF to meet with students enrolled in the MAA program.

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<sup>218</sup> This is only a concern on C4B when a second officer is not present. Typically, in C4B, related services providers meet with students in the MAA offices adjacent to the classrooms on the upper tier. However, in C4C this option is not available. A second office adjacent to the dayroom in C4C could be available for this purpose assuming security concerns are addressed; however, the key to the office has been missing since at least early November 2023. On C2A related services are provided in the dayroom for sessions with students for behavioral support services; however, there are rooms adjacent to the dayroom that could be used for delivery of related services if appropriate security measures are instituted. It does not appear that there have been any issues on E4B regarding access to appropriate space.

<sup>219</sup> The psychologist also supports the program MAA operates for the Department of Youth Rehabilitation Services at the Youth Services Center and the New Beginnings Youth Development Center.

These staff members provide IEP-required behavioral health supports and also conduct in-person check-ins with other students, individual therapy sessions, and check-ins with students on their caseloads.

As described in the Background Section of this report,<sup>220</sup> both speech pathology and occupational therapy services are provided through a contract between MAA and Sterling Speech Associates. These services are provided virtually, using a Webex platform and MAA staff facilitate the sessions on their laptop computers, which rely on MAA-issued hot spots or the hard-wired internet connection available to the staff in C4B. According to See Forever executive staff and MAA management, these related services are provided virtually because it is difficult to find speech and occupational therapy providers who are willing to come to the CDF and CTF. Sessions in Speech and Occupational Therapy are scheduled monthly by the MAA Vice Principal who coordinates with the contract providers on scheduling matters. As explained in the narrative related to Paragraphs 45 and 67, these related services are not being provided consistent with student IEPs in a significant number of cases.<sup>221</sup>

**Paragraph 70:**

**Defendants shall ensure that DOC and/or the LEA at the DOC Facilities document each instance in which a student does not attend related services and such documentation includes the date and the identity of the student.**

**Status of Compliance with Paragraph 70:** The Third-Party Auditor is unable to issue a finding related to the Defendants' performance relative to this requirement at this time because she has not had an opportunity to examine attendance records for related services.

The Third-Party Auditor has interviewed See Forever and MAA management, the Owner of Sterling Speech Associates (MAA's contract provider), and related services providers to

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<sup>220</sup> See *supra* at 18.

<sup>221</sup> The Third-Party Auditor expects to explore the reasons for this shortcoming during the next reporting period.



understand how attendance is tracked by related services providers. According to the interviewees, attendance at related services sessions is tracked and recorded by each specific related service provider (both MAA and contractual service providers) in “Special Programs.”<sup>222</sup>

It is the Third-Party Auditor’s understanding that a student is credited with attending a session if the student actually attends or refuses to attend, since the student has had an opportunity to attend but chose not to do so. A student is designated as absent when the student is unable to attend due to factors such as discipline, court, illness or other similar reasons unrelated to the refusal to participate. MAA staff report that occasionally when they are scheduled to facilitate a virtual related service session with one of the providers available through the Sterling contract, they are not permitted on the particular housing unit. This results in the student missing the scheduled session. In these circumstances, the student’s unavailability to participate is reported as an absence.

In some cases, the contract provider does not know why a student did not attend the scheduled session. The contract provider is required to remain on the Webex session for a minimum of 15 minutes after the scheduled start time to allow for unavoidable delays on the part of the student. Contract providers record attendance and an attendance log for each student is submitted to MAA along with the provider’s monthly invoices. Data provided by MAA and the contract provider serve as the basis for the hours reported in the Defendants’ Monthly Status Reports.

**Paragraph 71:**

**Defendants shall ensure that the LEA at the DOC Facilities delivers missed services within a reasonable amount of time for each student in the event of a related services cancellation by the provider or if the student has not received related services, except where the student has declined or refused such services.**

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<sup>222</sup> Special Programs is a new website operated by OSSE. DCPS and MAA report that the transition to Special Programs has been challenging and many issues related to data reporting have been experienced on a District-wide basis.

**Status of Compliance with Paragraph 71:** The Third-Party Auditor is unable to issue a finding related to Defendants' performance relative to this requirement at this time because she has not had an opportunity to review Defendants' performance. She expects to do so in a future reporting period.

#### **4. DOC Transfer of Students to Classrooms and Related-Service Sessions**

Paragraphs 72-74 of the Settlement Agreement address requirements related to student availability for in-person instruction and related services sessions. The Third-Party Auditor's findings concerning the Defendants' performance relative to these requirements are set forth below.

**Paragraph 72:**

**Defendants shall ensure that for all students who are permitted to attend instruction and related services sessions in person, an escort is made available, as necessary, to transport the students to the designated locations for all scheduled instruction and related services in a timely manner. The availability of an escort does not guarantee a student's attendance.**

**Status of Compliance with Paragraph 72:** The evidence shows this requirement has not been satisfied on a consistent basis during this reporting period. As described above,<sup>223</sup> shortcomings in correctional officer staffing levels in the restricted housing units have, at times, prevented staff from releasing students from their cells and escorting them to the So-1 classroom area and the area used for instruction in SMUB.

**Paragraph 73:**

**Defendants shall ensure that the individual(s) designated under paragraph 74 shall (i) monitor DOC staff conduct and capacity to ensure that students are available on time for all classroom instruction and related-service sessions, and raise issues with the chain of command when appropriate; and (ii) address any complaints from students, student representatives, Service Providers, or educational staff that DOC staff did not make a student available or limited a student's educational or related-service time.**

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<sup>223</sup> See *supra* note 81.

**Status of Compliance with Paragraph 73:** The evidence shows this requirement has been satisfied during this reporting period. The DOC’s Education Administrator, a highly-regarded and experienced professional, generally reviews the MAA Daily reports and follows up, if appropriate through the DOC chain of command, on the key issues related to student availability for all classroom instruction that are identified.<sup>224</sup> Moreover, the Education Administrator meets weekly with MAA management to resolve issues related to program operation, including the timely availability of students for instruction. The Education Administrator engages directly with students, addressing their inquiries and complaints as well as inquiries received from their representatives.

Notwithstanding the Education Administrator’s demonstrable commitment to implementation of the Settlement Agreement’s requirements, her office does not have the current capacity necessary to support the DOC-centered initiatives associated with this lawsuit. During an interview in early November, 2023, in response to the Third-Party Auditor’s inquiry, the Education Administrator reported that at least two staff positions had been added to her administrative unit to help support the compliance effort: an education manager and a compliance specialist. However, as of January 30, 2024, the compliance specialist position had not been posted and, while an individual had been recently selected, the education manager was

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<sup>224</sup> The Education Administrator reports that she reviews all daily MAA reports and documents any responsive action she takes on the bottom of the report. *See, e.g.*, Ex. 31A, October 3, 2023 Daily MAA Report with DOC Response (The report lists multiple students assigned to housing units on the CDF side who were visited at their cell doors by the teaching staff in lieu of attending classes. The documented DOC response, which was presumably entered by the Education Administrator, states: “Review housing placement outside of CTF.” While this is a recurrent and serious issue, there is evidence that the Education Administrator continues to actively monitor and make efforts to correct, if needed, housing unit assignments made by other DOC staff that interfere with the delivery of classroom instruction); *See, e.g.*, Ex. 31B, November 13, 2023 MAA Daily Report with DOC Response (noting MAA related services provider went to SMUB to conduct psychological testing for two students, but was unable to do so because only one correctional officer was present on the unit; the documented DOC response states: “Communicate to Operations CTF supervisors regarding SMUB. We cannot delay school or services due to lack of staffing. We must put the appropriate officers on post to ensure school functionality at 100%”).

not yet on board. It is not possible to sustain the performance necessary to implement the requirements in this case without additional skilled support.

**Paragraph 74:**

**Defendants shall ensure that the Education Administrator for Education, Case Management and Programs, or other qualified DOC staff member, reviews on a weekly basis DOC's records concerning student unavailability for classroom instruction and related-service sessions. Defendants shall ensure that the Education Administrator for Education, Case Management and Programs, or other qualified DOC staff member, receives and takes all necessary steps to address complaints from students, student representatives, Service Providers, or educational staff regarding student unavailability for classroom instruction and related-service sessions.**

**Status of Compliance with Paragraph 74:** The Third-Party Auditor makes no finding related to this requirement at this time. As described in the narrative related to Paragraph 73, the evidence shows that the Education Administrator receives complaints regarding student unavailability for classroom instruction and related services sessions and continues to take steps to address the complaints. However, these issues persist, particularly in restricted housing units.<sup>225</sup> Because the Third-Party Auditor has not had an opportunity to determine whether the Education Administrator has taken “all necessary steps” to address this issue, as required, she will investigate this further and address this matter in a future report.

## **5. DOC Security Clearance Process**

Paragraph 75 of the Settlement Agreement requires Defendants to prioritize processing applications for security clearances of newly hired or contracted educational staff and service

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<sup>225</sup> See, e.g., Ex. 32A, December 1, 2023 MAA Daily Report with DOC Response (noting that because there was only one officer available in So-1, the afternoon class session was delayed; the DOC response states: SO1 Issues to Operations. Must be addressed immediately.”); Ex. 32B, December 4, 2023 MAA Report with DOC Response (noting class was not conducted due to flooding on tier and in the adjacent classroom; the DOC response states: “Called [Deputy Warden] Williams about the flooding. He stated that it was cleaned up and expedited and should not have cause[d] delay with school the whole day.”); Ex. 32C, February 6, 2024 email correspondence from Kiana Sweatt to Russell Waller, *et al.*, transmitting February 6, 2024 MAA Daily Report (reporting that when teaching staff went to So-1 for the morning session, there was only one assigned officer, so they were asked to wait or return later; the teachers left, but when they returned they waited 45 minutes to be told that one student had refused to attend class; they visited the remaining students at their cell doors and gave them assignments).

providers. The Third-Party Auditor's findings concerning the Defendants' performance relative to this requirement is set forth below.

**Paragraph 75:**

**Defendants shall prioritize, to the extent possible during the term of the Settlement Agreement, the applications for security clearance of newly hired or contracted educational staff, and Service Providers, so long as the staff and Service Providers have submitted the required paperwork for clearance.**

**Status of Compliance with Paragraph 75:** The Third-Party Auditor makes no finding concerning Defendants' performance relative to this requirement. Preliminary inquiries suggest that this requirement was satisfied during this reporting period; however, the Third-Party Auditor has not had an opportunity to interview the manager responsible for processing these applications nor reviewed the relevant records. She expects to do so and report on her findings in a future reporting period.

**6. Funding for the LEA at DOC Facilities**

Paragraphs 76-79 of the Settlement Agreement require Defendants to take specified measures related to funding of the education program at the DOC and to engage in a consultative process to determine whether students are receiving instruction and related services in accordance with their IEPs, and if indicated, to identify strategies to promote improvement. The Third-Party Auditor's findings concerning the Defendants' performance relative to these requirements are set forth below.

**Paragraph 76:**

**Defendants agree to make \$165,672.43 available to Maya Angelou PCS for the hiring of additional teachers and staff at the Maya Angelou PCS Academy at the DOC Facilities no later than sixty (60) days after the Effective Date.**

**Status of Compliance with Paragraph 76:** The evidence shows this requirement was satisfied during the reporting period. MAA officials have confirmed receipt of this payment.

**Paragraph 77:**

**Defendants agree to advocate to the Uniform Per Student Funding Formula Working Group that it propose to the Council of the District of Columbia that the Uniform Per Student Funding Formula give an increased weight to incarcerated students for Fiscal Year 2024 and all Fiscal Years through termination of this Settlement Agreement.**

**Status of Compliance with Paragraph 77:** The Third-Party Auditor makes no finding related to Defendants' performance relative to this requirement with respect to Fiscal Year 2024 at this time. It is the Third-Party Auditor's understanding that as of November 13, 2023, an adequacy assessment had been undertaken to inform the Defendants' advocacy for Fiscal Year 2025. The Third-Party Auditor has not had an opportunity to further explore the Defendants' performance relative to this requirement, but will do so and report on her findings in her next report.

**Paragraph 78:**

**For Fiscal Year 2024, and for all Fiscal Years through the termination of this Settlement Agreement, Defendants agree to seek budget enhancements to cover the LEA at the DOC Facilities' reasonable anticipated costs for the upcoming academic year.**

**Status of Compliance with Paragraph 78:** The Third-Party Auditor makes no finding related to Defendants' performance relative to this requirement with respect to Fiscal Year 2024 at this time. It is the Third-Party Auditor's understanding that budget enhancements were sought and obtained for Fiscal Year 2024. However, the Third-Party Auditor has not had an opportunity to confirm these representations through a comparative review of the related budget data. The Third-Party Auditor expects to do so and report all findings in her next report.

**Paragraph 79:**

**Every quarter beginning with the second calendar quarter after the Effective Date, in consultation with Plaintiffs' counsel, the LEA at the DOC Facilities, and the Third-Party Auditor, Defendants shall review student-level data to determine whether students are receiving instruction and related services in accordance with their IEPs. If it is determined that students are not receiving instruction and related services in accordance with their IEPs, Defendants will confer with Plaintiffs' counsel, the LEA at the DOC Facilities, and the Third-Party Auditor to identify possible means to increase the delivery of instruction and related services.**

**Status of Compliance with Paragraph 79:** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

**Section III. Monitoring by OSSE**

Paragraph 80(a)-(d) of the Settlement Agreement require Defendants to monitor the High School at DOC facilities in a specific manner and at regular intervals, report on the results of the monitoring activities, and ensure corrective actions are developed and implemented. The Third-Party Auditor's findings concerning Defendants' performance relative to these requirements are set forth below.

**Paragraph 80(a)-(g):**

**OSSE shall monitor the High School at the DOC Facilities consistent with the following:**

- a. **OSSE shall convene meetings with DOC and the LEA at the DOC Facilities at least quarterly to provide oversight of DOC's and the LEA at the DOC Facilities' compliance with the IDEA and MOA. If there is a dispute between DOC and the LEA at the DOC Facilities significantly affecting the delivery of special education and related services, including a dispute over an interpretation of the MOA, OSSE shall escalate the issue through the appropriate channels, including, if warranted, to the City Administrator for resolution;**

**Status of Compliance with Paragraph 80(a):** The evidence shows Defendants met this requirement during the reporting period. This finding is explained below.

Representatives from the DOC, OSSE and MAA met on November 29, 2023, for the first quarterly meeting as required by this subsection. Attendees from the DOC included Tabbitha Burnett, the Education Administrator and Andrew Mazzuchelli, the Interim Deputy General Counsel. The MAA representatives were both executives at the See Forever Foundation: Clarisse Mendoza Davis, the Chief Executive Officer and Felecia Hayward, the Deputy Chief of Secure Programs. OSSE was represented by its Director of Special Education, Victoria Glick, and Alison Losey, the Educational Specialist for Correctional Facilities who also serves as OSSE's Compensatory Services Outreach Coordinator. At her own request, the Third-Party

Auditor also attended the meeting. The meeting covered topics including the status of the required amendments to the MOA, scheduling future quarterly meetings,<sup>226</sup> and time frames for submission by MAA of information for the December 2023 status report.

During the quarterly meeting, OSSE representatives reported about initial on-site monitoring activities, which were completed on October 24 and 25, 2023, and included a review of the student intake process, classroom observations on the education housing units, visits to the units in the CDF, and student and staff interviews. OSSE's Director of Special Education, Victoria Glick, indicated that a report, in memorandum form and summarizing monitoring activities and findings, would be sent to the DOC's Director, and that OSSE would be issuing recommendations concerning the delivery of services in restrictive housing, noting that OSSE staff would be available to provide technical assistance to the DOC on this issue. Director Glick also noted that outstanding findings from a December 2022 monitoring report were expected to be resolved well before the one-year deadline for corrective action lapsed. The promised memorandum was transmitted to DOC Director Faust on November 29, 2023.<sup>227</sup>

- b. **At least two (2) times per year while school is in session, OSSE shall engage in desktop monitoring tailored to address the circumstances unique to a correctional education setting, including using (i) all provisions relating to the correctional setting in the OSSE monitoring tool, and (ii) a record review of a sample of at least twenty (20) percent of students in each of the DOC Facilities (CDF and CTF) and this should be a representative sample from across each housing category (including general housing, restrictive housing, protective custody, special medical units, pre-detention hearing unit, etc.);**

**Status of Compliance with Paragraph 80(b):** The Third-Party Auditor is unable to issue a finding related to this requirement at this time. The OSSE Monitor who performed the monitoring has advised the Third-Party Auditor that the desktop monitoring was completed

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<sup>226</sup> The participants agreed that the meetings for calendar year 2024 would be the third Wednesdays in March and June, September 18, and the second Wednesday in December.

<sup>227</sup> See Ex. 33A, Memorandum to Thomas Faust from Victoria Glick, dated November 29, 2023. As far as the Third-Party Auditor can determine, there has not been a dispute between the DOC and MAA that required escalation to the City Administrator for resolution since September 22, 2023.



during the week of January 8, 2024, and that the related report and findings would be forthcoming.<sup>228</sup>

- c. **OSSE shall engage in on-site monitoring at least two (2) times per year while school is in session. On-site monitoring shall include interviews with LEA Staff and DOC employees, and one (1) student for every six (6) students in each of the DOC Facilities (CDF and CTF) and this should be a representative sample from across each housing category (including general housing, restrictive housing, protective custody, special medical, pre-detention hearing, etc.).**

**Status of Compliance with Paragraph 80(c):** The evidence shows that Defendants met this requirement during the current reporting period. This finding is explained below.

OSSE completed onsite monitoring of the educational program at the CTF and CDF on October 24 and October 25, 2023. According to OSSE’s Monitor, MAA managers and staff, and the monitoring report submitted to the DOC Director in memorandum form,<sup>229</sup> instructional observations were completed on the three education units (C4B, C4C and SMUB) and the units not dedicated exclusively to the education program. In addition, student interviews were conducted with students assigned to six different units (*i.e.*, C4B, C4C, SMUB, and E building at the CTF and So-1 and SW2 at the CDF), representing both education and non-education units. The Intake Interview process was also observed for students housed in multiple housing units at the CDF, and conversations were conducted with See Forever staff<sup>230</sup> present at both the CTF and/or CDF (*i.e.*, the MAA Principal, Guidance Counselor, two therapists, a program coordinator, and teachers). Some additional DOC and See Forever staff were “interviewed”

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<sup>228</sup> This is consistent with representation made by the Defendants in their January 2024 Status Report. *See* Defendants’ January 10, 2024 Status Report at 4. *See also* Ex. 33B, January 16, 2024 email correspondence from Alison Losey to Janet Maher (noting the desktop review was completed the previous week, but that there may be a delay in issuing the monitoring report because the findings could not be entered into the appropriate system, and explaining that in terms of FAPE responsibilities, the DOC “is a ‘new agency’ so it’s not yet entered into the reporting system.”).

<sup>229</sup> Ex. 33A, *supra* note 227.

<sup>230</sup> In this report, the Third-Party Auditor has distinguished between See Forever staff (*i.e.*, those who work for the central office at See Forever) versus MAA staff (those who work at MAA, the school operated by the See Forever Foundation at the CDF and CTF). The OSSE monitoring report does not make this distinction, referring to all as See Forever staff. To promote clarity, they are referred to here as MAA staff.

virtually on October 26, 2023, October 30, 2023, and November 2, 2023, including the DOC Contract Administrator, the MAA Special Education Coordinator/Vice Principal, the MAA Instructional Coach, an MAA therapist (provider of related services), an MAA General Education Teacher, and an MAA Special Education Teacher.<sup>231</sup>

Among other findings, OSSE concluded that education service delivery was taking place on all education units where eligible students were present, including project-based learning and direct student instruction.<sup>232</sup> The monitoring report noted that the DOC had established structures and procedures to serve as the state public agency, including oversight activities; that See Forever, as the education provider, had a cadre of administrators and teachers with experience in providing education services in correctional settings; and, that teachers had developed functional relationships with their students.<sup>233</sup>

However, OSSE found that providing education on the restrictive housing units at both the CDF and CTF “presented a formidable barrier to the delivery of instruction in groups larger than three students.”<sup>234</sup> OSSE observed a maximum of three students at one time being permitted to participate outside their cells in the restrictive housing units and also observed that some instruction was occurring through cell door meal slots. OSSE found that this latter instructional method was particularly “difficult” due to the noise level and need for participants to crouch in order to communicate.<sup>235</sup> OSSE concluded that instruction can be received by students on restrictive housing units if conducted outside their cells, and recommended the DOC explore the use of additional physical space in order to permit as many as eight to 10 students on

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<sup>231</sup> See Ex. 33A, *supra* note 227, at 1-2.

<sup>232</sup> *Id.* at 3.

<sup>233</sup> See generally Ex. 33A, *supra* note 227

<sup>234</sup> *Id.* at 3.

<sup>235</sup> *Id.*

restrictive housing units to participate in out-of-cell instruction. In addition, OSSE recommended the DOC explore the use of separate physical space for the delivery of related services that require confidentiality, including behavioral support services.<sup>236</sup> Finally, insofar as required action, the report states that OSSE will deliver technical assistance to both the DOC and See Forever staff related to aligning resources to meet the educational needs of students in restrictive housing.<sup>237</sup>

- d. The monitoring activities in subparagraphs (b) and (c) shall be undertaken in alternating quarters;**

**Status of Compliance with Paragraph 80(d):** The evidence shows Defendants met this requirement during this reporting period. This finding is explained below.

As noted above, on-site monitoring occurred on October 24 and 25, 2023, with additional interviews conducted virtually on October 26, October 30, and November 2, 2023. A report related to the findings from the on-site monitoring was issued on November 29, 2023.<sup>238</sup> Desktop monitoring occurred during the week of January 8, 2024, within the three-month period following the on-site monitoring conducted in late October 2023.

- e. The monitoring activities in subparagraphs (b) and (c) shall include an evaluation of:**
- (i) Whether students' IEPs and records include measurable academic goals and related services goals that are updated annually; progress monitoring measures, i.e., the frequency and mode; and quarterly student progress reports in all areas of concern;**

**Status of Compliance with Paragraph 80(e)(i):** The Third-Party Auditor makes no finding related to this set of requirements at this time. The November 29, 2023 memorandum documenting the on-site monitoring conducted by OSSE during October 2023 does not address

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<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

monitoring activities related to these requirements,<sup>239</sup> and the results of the January 2024 desktop monitoring that OSSE conducted were not available as of January 28, 2024.<sup>240</sup> The monitoring tool provided by OSSE specifies that “[t]his tool is used as part of onsite and desktop file reviews”<sup>241</sup> and includes the following items, among others, for review: 1) whether the IEP contains a statement of the student’s present levels of academic achievement and functional performance,<sup>242</sup> and whether it includes a statement of measurable annual goals and related services goals,<sup>243</sup> 2) whether the IEP contains benchmarks or short-term objectives,<sup>244</sup> and 3) whether the student’s file includes quarterly reports on progress toward meeting the annual goals.<sup>245</sup>

- ii. **Whether students who are not receiving in-person Teacher-Facing Instruction are receiving comparable instruction, including specialized instruction, and related services as students who are receiving in-person Teacher-Facing Instruction; and**

**Status of Compliance with Paragraph 80(e)(ii):** The Third-Party Auditor makes no finding related to this requirement at this time. OSSE’s November 29, 2023 monitoring report does not squarely address this requirement. The Third-Party Auditor recognizes that this requirement has significant implications for the educational experience of class members incarcerated at the CDF and CTF, especially because of the increasing number of students who receive little if any teacher-facing instruction on restrictive housing units at both facilities, in

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<sup>239</sup> See generally Ex. 33A, *supra* note 227.

<sup>240</sup> Defendants have reported that the results of the desktop monitoring will be available in February 2024. See Defendants’ January 10, 2024 Status Report at 4.

<sup>241</sup> In interviews with the Third-Party Auditor, OSSE’s Director of Special Education and the Education Specialist, Correctional Facilities, stated that the monitoring tool was not used during on-site monitoring but was used for desktop monitoring. This is not consistent with the specific provision in the monitoring tool quoted above. The Third-Party Auditor will follow up with OSSE staff regarding this discrepancy.

<sup>242</sup> This monitoring tool was produced in response to the Third-Party Auditor’s request. See Ex. 33C, OSSE IDEA Part B Student Compliance Monitoring Tool SY 2020-2021, Item 21.

<sup>243</sup> *Id.* Items 24 and 25.

<sup>244</sup> *Id.* Item 33.

<sup>245</sup> *Id.* Item 26.

E4B at the CTF, as well as in other housing units at the CDF. The Third-Party Auditor has not had the opportunity to explore this matter with OSSE's Director of Special Education and the OSSE Educational Specialist who conducted the on-site monitoring and will defer making this finding until she has an opportunity to do so.

**iii. Whether related services are being delivered in accordance with the students' IEPs**

**Status of Compliance with Paragraph 80(e)(iii):** The Third-Party Auditor makes no finding related to this requirement at this time. The monitoring tool that OSSE has reported it is implementing includes a specific item addressing whether related services were delivered in accordance with the IEP.<sup>246</sup> However, OSSE's November 29, 2023 monitoring report does not squarely address this requirement, and as noted above,<sup>247</sup> the results of the January 2024 desktop monitoring conducted by OSSE are not yet available. Like the requirements in the preceding subsection, the Third-Party Auditor has not had the opportunity to explore this matter with OSSE's Director of Special Education and the OSSE Educational Specialist who conducted the on-site monitoring. It should be noted that data comparing the receipt of related services to the hours for related services specified in student IEPs are included in the Monthly Hours report produced by the Defendants and it is the Third-Party Auditor's understanding that OSSE participates in the development of those reports.

**f. The results of the monitoring shall be made available to Plaintiffs' counsel and the Third-Party Auditor, subject to the same terms of confidentiality contained in the December 6, 2022 Protective Order entered by the Court (ECF No. 157);**

**Status of Compliance with Paragraph 80(f):** The evidence shows that Defendants met this requirement during this reporting period. Defendants provided both Plaintiffs' counsel and

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<sup>246</sup> *Id.* Item 36.

<sup>247</sup> See narrative related to ¶ 80(e)(i), *supra* at 98.

the Third-Party Auditor with copies of the OSSE on-site monitoring report conducted during October/November 2023. A copy of the report was transmitted to the Third-Party Auditor on November 30, 2023 and to counsel for the Plaintiffs on December 8, 2023.

- g. OSSE shall collect evidence on an ongoing basis of correction of noncompliance identified during monitoring activities. OSSE will identify instances where the LEA has failed to implement corrective actions within one (1) year, i.e., the timeframe for long-standing noncompliance, and in instances where correction is not made, will provide the LEA with targeted technical assistance and direct supports to ensure correction. OSSE will provide a written report to Plaintiffs' counsel and the Third-Party Auditor of any instances where the LEA fails to correct noncompliance within sixty (60) days of the due date of correction.**

**Status of Compliance with Paragraph 80(g):** The Third-Party Auditor makes no finding related to this requirement at this time. The reason for this is explained below.

In response to a request from the Third-Party Auditor, on November 30, 2023, OSSE's Director of Special Education transmitted a memorandum to her addressing the status of open findings of noncompliance related to the educational program at the CDF and CTF. These findings related to issues identified by OSSE during monitoring activities that were undertaken in December, 2022.<sup>248</sup> The memorandum describes the routine monitoring process OSSE conducts as part of its IDEA monitoring responsibilities and explains that findings of noncompliance may be made at either the student or LEA level, requiring different corrective action based upon each specific finding.

According to the memorandum, after a finding of noncompliance is made, the LEA is notified and required to correct it or identify errors within an initial correction period. All remaining findings of noncompliance are reported to the LEA through the DC Corrective Action Tracking System ("DC CATS"). The memorandum explains that corrective actions should be implemented as soon as possible but no later than one year from the date the finding is submitted

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<sup>248</sup> See Ex. 33D, November 30, 2023 Memorandum from Victoria Glick, Director of Special Education, Division of K-12 Systems and Supports, to Grace M. Lopes, Third-Party Auditor.

to the LEA. In the context of the DOC's special education program, the memorandum notes that some findings may be based upon student records that were developed before the student enrolled in the DOC special education program, but may still be the responsibility of the DOC program to correct.

According to the memorandum, there were 19 noncompliance findings related to four students identified during the December 2022 monitoring exercise, and OSSE expected that all would be corrected by December 1, 2023, which is within the one-year period.<sup>249</sup> The memorandum also reported that on April 23, 2023, OSSE issued a monitoring report including a finding of noncompliance required to be corrected by December 19, 2023, which had been corrected.

During a January 2024 interview with the OSSE Monitor responsible for conducting monitoring at the CDF and CTF, the Third-Party Auditor was informed that all findings of non-compliance from the December 2022 monitoring activities had been corrected. Thereafter, on January 15, 2024, the Third-Party Auditor requested that the OSSE Monitor provide her with documentation related to the corrective action that was completed. In response, on January 16, 2024, the OSSE Monitor indicated that the system was not designed for external reporting but that she would follow up with colleagues to explore a solution.<sup>250</sup> However, as of January 30, 2024, this documentation was not forthcoming and thus a finding cannot be made at this time.

#### **Section IV. Training on the Provision of Special Education and Related Services**

Paragraph 81 of the Settlement Agreement requires Defendants to conduct initial and annual in-person training of DOC and LEA staff concerning policies, procedures and/or practices

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<sup>249</sup> *Id.*

<sup>250</sup> *See* Ex. 33B, *supra* note 228.

addressed in the Settlement Agreement. The Third-Party Auditor's findings concerning the Defendants' performance relative to this requirement are set forth below.

**Paragraph 81:**

**Defendants shall conduct in-person training of DOC staff and LEA Staff at least once per year on the policies, procedures, and/or practices addressed in this Settlement Agreement. Defendants shall provide initial training within sixty (60) days of the Effective Date. Defendants shall incorporate any changes to policies, procedures, and/or practices into ongoing training and onboarding of DOC staff and LEA Staff.**

**Status of Compliance with Paragraph 81:** The evidence shows this requirement was satisfied during this reporting period.

The DOC Education Administrator developed a PowerPoint presentation to use for the in-person training required by this subsection at some point after November 8, 2023.<sup>251</sup>

Thereafter a one-hour training was delivered by the Education Administrator to a total of 42 MAA and DOC staff and managers between November 14 and November 20, 2023.<sup>252</sup> The Education Administrator has reported that the PowerPoint was used in conjunction with the Settlement Agreement during the training sessions.

**Section V. Contempt Relief for Class Members**

Section V of the Settlement Agreement contains multiple provisions intended to ensure the "prompt provision" of compensatory services to all Settlement Class Members who are entitled to such relief pursuant to the February 16, 2022 order.<sup>253</sup> This cohort, which is part of

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<sup>251</sup> See Ex. 34A, Department of Corrections, Charles H. Settlement Training, PowerPoint Presentation by Tabbitha Burnett. The circumstances related to the development of these training materials, which were compiled at the last minute and only in response to the Third-Party Auditor's November 8, 2023 inquiries, underscore the reasons why further support will be needed for the Education Administrator who plays a key role in implementation of the Settlement Agreement's requirements.

<sup>252</sup> See Ex. 34B, Charles H. Settlement Agreement, Training Sign-In Sheets.

<sup>253</sup> The February 16, 2022 Order held the Defendants in contempt of the June 16, 2021 Preliminary Injunction and required individualized plans to rectify the hours deficit for each student enrolled during the targeted time frame, implementation of a fully operational remote learning system, and the extension of IDEA eligibility beyond a student's 22<sup>nd</sup> birthday for the amount of time necessary to ensure that the student receive the education that they should have received if the Defendants had complied with the preliminary injunction.



the compensatory relief subclass, is comprised of all students incarcerated at the CDF and CTF who were enrolled in the Inspiring Youth Program (“IYP”) operated by DCPS between September 1, 2021 and January 31, 2022.

As set forth in greater detail below, this section of the Settlement Agreement requires the Defendants to issue award letters to these members of the subclass and includes requirements for the content of the award letters. Timelines and processes for conducting outreach to these subclass members are also specified and identify the circumstances under which Plaintiffs’ counsel shall be engaged in outreach efforts. Finally, this section establishes parameters for tolling the award eligibility period.

The Third-Party Auditor’s findings concerning Defendants’ performance relative to these requirements are set forth below.

**Paragraph 82(a-g):**

**Defendants shall ensure the prompt provision of Compensatory Services awarded in response to the Court’s Order of February 16, 2022 (ECF No. 101) (“Contempt Order”) to all Settlement Class Members entitled to such relief as set forth in subparagraphs (a)–(g):**

- (a) **Award Letters:** Within thirty (30) days of the Effective Date, Defendants shall:
- i. **Re-issue the letters labeled “Independent Services Authorization Letters” to all Settlement Class Members who were issued such letters by DCPS following the Court’s Order of February 16, 2022, (ECF Nos. 124-1, 124-2, and 124-3) and have not received all the services to which they are entitled;**

**Status of Compliance with Paragraph 82(a)(i):** The Third-Party Auditor cannot issue a finding concerning the Defendants’ compliance with the requirements established in this subsection at this time because copies of the Independent Services Authorization Letters and relevant background records, including DCPS enrollment records, have not been available to her. As explained in the Methodology Section of this report,<sup>254</sup> the Third-Party Auditor anticipated these records would be provided to her by late November 2023 through the Quickbase database;

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<sup>254</sup> See *supra* at 6-10.

however, access to the Quickbase database was not available until at least January 17, 2024<sup>255</sup> – too late for the Third-Party Auditor to review for this report.

On November 3, 2023, in response to the Third-Party Auditor’s request, the Defendants provided the Third-Party Auditor with a spreadsheet listing the names and student identification numbers (“USIs”) for a total of 170 members of the compensatory relief subclass.<sup>256</sup> According to the spreadsheet, 48 of these subclass members were enrolled in IYP between September 1, 2021 and January 31, 2022 and thus eligible for relief under the February 16, 2022 Order. The Third-Party Auditor has reviewed the 170 award letters the Defendants have produced and verified that an award letter was addressed to each of the 48 subclass members reported to have been enrolled in IYP during the relevant time period.

Defendants reported that the award letters were mailed on October 21, 2023,<sup>257</sup> and the mailing date has been confirmed by both the OSSE staff member responsible for mailing the letters as well as her supervisor. As noted above, absent access to the Quickbase database, not only has the Third-Party Auditor been unable to review the Independent Services Authorization Letters, she also has been unable to review the related IYP enrollment data and records related to the services delivered to this cohort and related to any services that have not yet been delivered.

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<sup>255</sup> As of February 10, 2024, the Third-Party Auditor had not received any update about the status of the database from OSSE. While it is possible it was operational by January 17, 2024, consistent with the last projection OSSE provided, the Third-Party Auditor has not had an opportunity to verify its status.

<sup>256</sup> In comparing the lists of class members with the award letters, the Third-Party Auditor identified several discrepancies among the lists, which will require further review. These discrepancies included duplicate USI numbers among class members with different names, different USI numbers for an individual with the same name, an individual who was listed twice with two different USI numbers, and an individual with one USI number who was listed under two names on the class list. The Third-Party Auditor notified OSSE’s Director of Special Education about the discrepancies, and she indicated she was aware of the discrepancies, attributing them to how students report their names or how the names are entered into the system. *See* Ex.35A, December 4, 2023 email correspondence from Grace M. Lopes to Victoria Glick and December 7, 2023 email correspondence from Victoria Glick to Grace M. Lopes. The Third-Party Auditor notified OSSE’s Director of Special Education about additional discrepancies on December 11, 2023. *See* Ex. 13, *supra* note 32, December 11, 2023 email correspondence from Grace M. Lopes to Victoria Glick.

<sup>257</sup> *See* Defendants’ November 10, 2023 Status Report.

This is a priority matter which the Third-Party Auditor expects to focus on during the next reporting period.<sup>258</sup>

- ii. **Re-issue the letters labeled “Compensatory Education Services Authorization Letters” to all Settlement Class Members who were identified to receive such letters from Maya Angelou PCS Academy following the Court’s Order of February 16, 2022, (ECF No. 133-11) and have not received all the services to which they are entitled; and**

**Status of Compliance with Paragraph 82(a)(ii):** The Third-Party Auditor cannot issue a finding concerning the Defendants’ compliance with the requirements established in this subsection at this time because copies of the Compensatory Education Services Authorization Letters and relevant background records, including DCPS enrollment records and any relevant MAA records of service delivery, have not been available to her. As explained in the Methodology Section of this report,<sup>259</sup> the Third-Party Auditor anticipated these records would be provided to her by late November 2023 through the Quickbase database; however, access to the Quickbase database was not available until at least January 17, 2024<sup>260</sup> – too late for the Third-Party Auditor to review for this report. This is a priority matter which the Third-Party Auditor expects to focus on during the next reporting period.<sup>261</sup>

- iii. **Issue Compensatory Service Award letters to all Settlement Class Members who were identified to receive an Individual Accelerated Learning Plan from Maya Angelou PCS Academy (ECF No. 117-1) but left the DOC Facilities before the student’s learning plan was completed. Such letters shall be issued in an amount equivalent to the value of the remaining learning as per their Individual Accelerated Learning Plan. For purposes of Contempt Relief, any Settlement Class Member who graduates from High School on or before the Effective Date shall be considered to have completed their Individual Accelerated Learning Plan.**

**Status of Compliance with Paragraph 82(a)(iii):** The Third-Party Auditor is unable to issue findings related to this requirement due to the unavailability of the Quickbase database, a

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<sup>258</sup> See *infra* Section V.

<sup>259</sup> See *supra* at 6-10.

<sup>260</sup> See *supra* note 255.

<sup>261</sup> See *infra* Section V.

matter which is addressed in detail in the Methodology Section of this report.<sup>262</sup> Without access to the database, she has not been able to determine which students had Independent Accelerated Learning Plans, whether the plans were completed, and the value of any uncompleted components in the plans. This is a priority matter which the Third-Party Auditor expects to focus on during the next reporting period.<sup>263</sup>

- b. **Content of Newly Issued Letters:** The letters issued under subparagraph (a) above shall include: (1) a statement of the hours awarded per service, (2) a statement that the issuer guarantees to pay providers for those services at the OSSE reimbursement rates applicable at the time the services are provided, including, if applicable, time spent participating in mandatory DOC training as provided for in paragraph 95, (3) an explanation of deadlines and tolling of awards pursuant to paragraphs 83-87, (4) an explanation that the award may be converted to an Educational Expense Award pursuant to paragraph 88, and (5) the contact information for Plaintiffs' counsel. The letters shall also include notice to the Settlement Class Member that their personally identifiable information and education records related to the student's contempt relief, both protected under the Family and Educational Rights and Privacy Act (FERPA), will be shared with Plaintiffs' counsel and the Third-Party Auditor who are required to keep it confidential and provide the student with the right to opt out of any information sharing required by the settlement. Opting out of information sharing shall have no effect on the Settlement Class Member's opportunity to receive and use their award. All letters provided under this paragraph shall be dated within five (5) business days of the date of mailing or hand delivery at the DOC Facilities.

**Status of Compliance with Paragraph 82(b):** Assuming the requirements of subparagraph (a) are satisfied, the evidence shows Defendants will have met this requirement.<sup>264</sup> The basis for this finding is set forth below.<sup>265</sup>

The Third-Party Auditor has reviewed the letters addressed to each member of the compensatory relief subclass identified by the Defendants in the spreadsheet produced on November 3, 2023. The letters include the following information:

- 1) The hours awarded by service type (*i.e.*, Specialized Instruction, Behavior Support Services, Occupational Therapy and Speech/Language Therapy);

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<sup>262</sup> See *supra* at 6-10.

<sup>263</sup> See *infra* Section V.

<sup>264</sup> In making this finding, the Third-Party Auditor is specifically not finding that the hours calculation reflected in each award letter for each class member is correct. In order to make any finding about the Defendants' award calculations, the Third-Party Auditor will need access to the Quickbase database and the underlying records upon which the calculations are based. This has not been possible due to the unavailability of the database.

<sup>265</sup> See Ex 35B (redacted award letter dated October 20, 2023, with attachments).

- 2) Statements that “[p]roviders will be paid for services based upon the OSSE reimbursement rate applicable at the time the service is delivered” and “[p]roviders will additionally be reimbursed for time spent participating in mandatory training to access the District of Columbia Jail, as applicable;”
- 3) An explanation of deadlines and circumstances under which awards may be tolled pursuant to Paragraphs 83 to 87 of the Settlement Agreement;<sup>266</sup>
- 4) A statement that class member may convert compensatory service awards to educational expense awards, including an attachment to the letter titled Education Expense Awards Guidance; and
- 5) Contact information for Plaintiffs’ counsel.<sup>267</sup>

In addition, as required by this subsection, the award letters also include notice to the class members that DCPS and OSSE are required by the Settlement Agreement to share some of the class members’ personal information and education records with the Third-Party Auditor and class counsel, who are obligated to keep the information confidential. As required by this subsection, the letter advises class members that they have the right to refuse to permit information sharing with the Third-Party Auditor and class counsel, specifying that a “Resolution Specialist” should be contacted in the event a class member does not want their information shared.<sup>268</sup> Contact information for the Resolution Specialist is included in the letter.<sup>269</sup>

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<sup>266</sup> Each of the award letters include a specific expiration date reflected in the table on page one of the award letter, under the heading “Expiration Date (3-year Award Eligibility Period)” and, page two of the letters includes the following statement: “[i]f you are unable to access this award because you are detained or incarcerated outside the District of Columbia prior to the expiration of your award, the three-year timeline for award eligibility will pause and resume upon your release for up to seven years from the date of this letter.” *See, e.g.,* Ex. 35B, *supra* note 265.

<sup>267</sup> *Id.*

<sup>268</sup> *Id.*

<sup>269</sup> The letter does not specifically provide that opting out of information sharing will have no effect on the class member’s opportunity to receive and use the award. The Third-Party Auditor does not read this provision in the subparagraph to constitute part of the required content of the letter although it is probably advisable to include it in any additional outreach.

As noted above, the Defendants have reported that the award letters, which are dated October 20, 2023, were mailed one day later, on October 21, 2023, within the mandated five-day period.<sup>270</sup> This is consistent with the representations made to the Third-Party Auditor by the OSSE staff member and manager responsible for mailing the letters.

- c. **Settlement Class Members at the DOC Facilities:** Within fifteen (15) days of re-issuing the letters under paragraph 82(a) above, Defendants shall begin to provide face-to-face individual outreach to all Settlement Class Members at the DOC Facilities entitled to the Compensatory Services awarded by the Court who have not yet received the services, to apprise them of the availability of such services, the opportunity to convert the award to an Educational Expense Award under paragraph 88, and to provide the contact information for Plaintiffs' counsel. Defendants shall assist with identifying providers and arranging for the receipt of the Compensatory Services at the DOC Facilities by those providers. Defendants shall document all outreach attempts, including the name and position of the person conducting the outreach, the date of the outreach, the name of the Settlement Class Member, and whether the Settlement Class Member accepted or declined to receive the services. For Settlement Class Members declining the services, Defendants shall make good-faith efforts to document such by asking the student to sign a form confirming the decision to decline services. If the student refuses, Defendants will record the date on which the Settlement Class Member declined the services and refused to sign. For Settlement Class Members accepting the services, Defendants shall document the receipt of the services based on invoices submitted by providers for services rendered, including the date(s) received and the providers. Defendants shall complete the outreach in this paragraph within sixty (60) days of the Effective Date.

**Status of Compliance with Paragraph 82(c):** As explained below, the Defendants began face-to-face outreach to Settlement Class members incarcerated at the CDF and CTF within the 15-day deadline established in this subsection. However, the Third-Party Auditor is unable to issue findings related to each of the other requirements reflected in this subsection due to the unavailability of the Quickbase database, a matter which is addressed in detail in the Methodology Section of this report.<sup>271</sup>

Interviews conducted by the Third-Party Auditor with DOC, OSSE and MAA staff and managers, as well as with class members incarcerated at the CDF and CTF, establish that the

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<sup>270</sup> Defendants' November 10, 2023 Status Report.

<sup>271</sup> See *supra* at 6-10.

Defendants began face-to-face outreach at both DOC facilities on November 1, 2023. According to the Defendants' November 21, 2023 status report,<sup>272</sup> "the District" met with a total of 50 class members incarcerated at DOC facilities. Interviews with District representatives and class members indicate that on the morning of November 1, 2023, class members at the CDF were either brought into an empty housing unit to meet with OSSE's representatives in small groups or, in instances when that was not possible, the representatives spoke with class members in a cellblock dayroom, hallway or through cell doors. At the CTF, OSSE staff have reported that the meetings were conducted during the afternoon and mainly through cell doors except on C4B and C4C, where they met with students after school.

According to OSSE representatives who conducted the outreach, the October 20, 2023 award letters were hand-delivered to each class member with whom they met on November 1, 2023, and the representatives referred to a PowerPoint to review the information in the letters. Follow-up face-to-face outreach activities involving six additional class members were conducted on November 9 and 17, 2023.<sup>273</sup> Additional outreach regarding award selection was conducted by an OSSE representative at the CTF and CDF on January 22, 2024. OSSE staff report that class members who made award selections were asked to sign award selection forms. It is the Third-Party Auditor's understanding that these forms, which had not been uploaded to Quickbase as of January 29, 2024, will ultimately be available to her through Quickbase.

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<sup>272</sup> See Ex. 35C, Defendants' Status Report on Outreach and Monitoring, transmitted to the Third-Party Auditor and class counsel on November 21, 2023 pursuant to the requirements in ¶ 89, at 1 (requiring, *inter alia*, reporting on outreach activities to Plaintiffs' counsel at 60-day intervals); Defendants' Status Report, December 8, 2023 Status Report regarding ¶ 82 at 4-5; and Defendants' January 10, 2024 Status Report regarding ¶ 82 at 5.

<sup>273</sup> *Id.* at 1 (noting that "the District" met with one class member at Saint Elizabeths Hospital on November 9, 2023 and five of the six class members who were unavailable during the November 1, 2023 outreach visit on November 17, 2023; the status of the one additional class member, who was unavailable on November 1 and 17 and subsequently reported to have been released, has not yet been confirmed by the Third-Party Auditor). Defendants' January 10, 2024 Status Report regarding ¶ 82 at 5. Interviews establish that an OSSE representative conducted this additional outreach.

A major concern related to the outreach activities required by this subsection is that many class members incarcerated at the CDF and CTF have expressed confusion to DOC and MAA staff, as well as to the Third-Party Auditor, about the compensatory awards, the educational expense awards, and the related processes, timelines and tolling requirements. Accordingly, on November 27, 2023, the Third-Party Auditor informed counsel for both parties of these concerns.<sup>274</sup> The Third-Party Auditor explained that she was notifying counsel of this issue before the issuance of her first report because she thought “students would benefit much sooner from more guidance tailored to their particular circumstances so that they [could] make the best-informed decisions possible relative to their rights under the Settlement Agreement.”<sup>275</sup>

Thereafter, on December 11, 2023, in correspondence to Defendants’ counsel, Plaintiffs’ counsel raised concerns about the accuracy of information regarding compensatory awards that they claim class members incarcerated at the CDF and CTF had received from OSSE and requested that Defendants take certain specified remedial action.<sup>276</sup> On December 18, 2023, counsel for the Parties met with the Third-Party Auditor to discuss these issues and possible solutions that might facilitate the ability of Plaintiffs’ counsel to meet with class members in order to explain their rights to compensatory awards and educational expense awards. Nearly one month later, on January 17, 2024, Defendants’ counsel transmitted a written proposal for resolving these concerns to Plaintiffs’ counsel; however, as of February 10, 2024, it does not appear Plaintiffs’ counsel has responded to the proposal.

In the Third-Party Auditor’s view, the Parties must work together in a coordinated and expedited fashion to promote a better understanding of the meaning and scope of the

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<sup>274</sup> Ex. 35D, November 27, 2023 email from Grace M. Lopes to Honey Morton, *et al.*

<sup>275</sup> *Id.*

<sup>276</sup> Ex. 35E, December 11, 2023 correspondence from Kaitlin Banner to Honey Morton.



compensatory and educational expense awards as well as the processes implicated in selecting and receiving the awards. By its nature, the incarcerated population is transient and the best opportunity to clarify the rights of class members to the awards they are entitled to is now. Recommendations for promoting a better understanding among class members of their rights to compensatory awards under the Settlement Agreement are included in the Recommendations Section of this Report.<sup>277</sup>

- d. **Settlement Class Members in the Community:** Within fifteen (15) days of re-issuing the letters under paragraph 82(a) above, Defendants shall begin to provide outreach to all Settlement Class Members residing in the community who are entitled to Compensatory Services awarded in response to the Court's Contempt Order, and who have not yet received these services, to apprise them of the availability of such services, the opportunity to convert the award to an Educational Expense Award under paragraph, and to provide the contact information for Plaintiffs' counsel. Defendants shall use good-faith efforts to obtain a current telephone number for these Settlement Class Members, including by searching DOC and available education records. Defendants shall make three (3) attempts to reach each Settlement Class Member by telephone, when a telephone number is available. If Defendants are unable to contact the Settlement Class Member by telephone, Defendants shall use good-faith efforts to determine if a Settlement Class Member is enrolled in school or other educational programming in the District of Columbia, including searching DCPS and OSSE records. If Defendants determine that the Settlement Class Member is enrolled in school or an educational program and are unable to reach the Settlement Class Member by other means, Defendants shall make at least one (1) contact to the school or program the Settlement Class Member is attending to facilitate contact with the Settlement Class Member. If the Settlement Class Member wishes to redeem their Compensatory Services, Defendants shall assist the Settlement Class Member with identifying providers, contacting providers, and arranging the services with those providers. For Settlement Class Members declining the services, Defendants shall document such by recording the date on which the Settlement Class Member declined the services and using good-faith efforts to obtain written confirmation from the student of the declination, which may be obtained via mail, email, or text message. For Settlement Class Members accepting the services, Defendants shall document the receipt of the services based on any invoices received from providers for services rendered, including the date(s) received and the providers. Defendants shall complete the outreach in this paragraph within ninety (90) days of the Effective Date.

**Status of Compliance with Paragraph 82(d):** It is the Third-Party Auditor's understanding that these records will become available to her through the Quickbase database. For this reason, the Third-Party Auditor is unable to issue findings related to this requirement at

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<sup>277</sup> See *infra* Section V.

this time due to the unavailability of the Quickbase database, a matter which is addressed, in detail, in the Methodology Section of this report.<sup>278</sup>

- e. **Settlement Class Members in Correctional Facilities Other Than the DOC Facilities:** Within thirty (30) days of the Effective Date, Defendants shall search DOC records, and as appropriate, use State and Federal prisoner location databases (i.e., publicly available state prisoner location databases and the Bureau of Prison's (BOP's) Inmate Locator System) to determine the location of the Settlement Class Members residing in correctional facilities other than the DOC Facilities who are entitled to Compensatory Services awarded in response to the Court's Contempt Order and who have not yet received these services. Defendants shall use State prisoner location databases when (1) DOC records show that a Settlement Class Member was transferred to the custody of law enforcement in a specific State, in which case Defendants shall search the database for that State; and (2) DOC records show that a Settlement Class Member was transferred to federal custody but the federal inmate locator lacks information as to a Settlement Class Member's location, in which case Defendants shall search prisoner location databases for the state corrections agencies in Virginia and Maryland. Within forty-five (45) days of the Effective Date, Defendants shall begin to provide outreach to such Settlement Class Members whose location can be determined through best efforts to apprise them of the availability of such services, the option to convert the award to an Educational Expense Award under paragraph 88, and to provide the contact information for Plaintiffs' counsel. Defendants shall make at least two (2) attempts to contact the Settlement Class Member including at least one (1) outreach letter, that is distinct from the award letter issued under subparagraph (a), but providing information similar to that required under subparagraph (b), and one (1) telephone call or email to the appropriate personnel of the facility at which the Settlement Class Member is believed to reside. Defendants shall document all outreach attempts, including who conducted the outreach, the date of the outreach, the name of the Settlement Class Member, and whether the Settlement Class Member declined to receive the Compensatory Services. For Settlement Class Members declining the services, Defendants shall document such by recording the date on which the Settlement Class Member declined the services and using good-faith efforts to obtain a written confirmation from the Settlement Class Member of the declination, which may be obtained by mail or email. For Settlement Class Members accepting the services, Defendants agree to contact the facility about the possibility of arranging services. If the facility agrees, Defendants shall undertake good-faith efforts to assist the Settlement Class Member with identifying providers, contacting providers, and arranging services with those providers, throughout the Award Eligibility Period. If the facility refuses to allow Defendants to arrange services or fails to respond, Defendants shall inform Plaintiffs' counsel in writing of the facility's refusal or lack of response within five (5) business days of the refusal or, if no response is received, within five (5) business days of the initial outreach. If Plaintiffs' counsel are able to obtain the facility's agreement to allow for the delivery of services, Plaintiffs' counsel shall inform Defendants, and Defendants shall then assist the Settlement Class Member in the delivery and receipt of those services consistent with this paragraph. Defendants shall have no further obligation towards that Settlement Class Member under this paragraph unless and until Plaintiffs' counsel notify Defendants in writing that a facility is willing to work with Defendants. For Settlement Class Members accepting the services in facilities that agree to the provision of services, Defendants shall document the receipt of the services, including the date(s) received and the

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<sup>278</sup> See *supra* at 6-10.

providers. Defendants shall complete its outreach under this paragraph within one hundred and twenty (120) days of the Effective Date.

**Status of Compliance with Paragraph 82(e):** It is the Third-Party Auditor's understanding that these records will become available to her through the Quickbase database. For this reason, the Third-Party Auditor is unable to issue findings related to this requirement at this time due to the unavailability of the Quickbase database, a matter which is addressed, in detail, in the Methodology Section of this report.<sup>279</sup>

- f. For any Settlement Class Member (1) whose location is unknown, (2) for whom Defendants are aware that they do not have accurate contact information, or (3) for whom Defendants receive information during outreach that indicates a Settlement Class Member's contact information is inaccurate, Defendants shall notify Plaintiffs' counsel in writing within ten (10) business days of determining that the location is unknown or contact information is inaccurate. If Plaintiffs' counsel subsequently provides Defendants with updated contact information for the Settlement Class Member, Defendants shall resume their outreach in accordance with paragraph 82 using that updated information. Defendants are only required to notify Plaintiffs' counsel of unknown or inaccurate information one (1) time and conduct this additional outreach based on updated information one (1) time.

**Status of Compliance with Paragraph 82(f):** It is the Third-Party Auditor's understanding that these records will become available to her through the Quickbase database. For this reason, the Third-Party Auditor is unable to issue findings related to this requirement at this time due to the unavailability of the Quickbase database, a matter which is addressed, in detail, in the Methodology Section of this report.<sup>280</sup>

- g. If any Settlement Class Member cannot be reached using the outreach methods described in subparagraphs c, d, and e despite their location being known, Defendants shall inform Plaintiffs' counsel in writing within ten (10) business days of their last outreach attempt. If Plaintiffs' counsel are able to contact the Settlement Class Member and so inform Defendants in writing, and provide accurate contact information for the Settlement Class Member, Defendants shall assist the Settlement Class Member consistent with subparagraphs c, d, and e. Defendants are only required to conduct this additional outreach one (1) time in accordance with paragraph 82.

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<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

**Status of Compliance with Paragraph 82(g):** It is the Third-Party Auditor's understanding that these records will become available to her through the Quickbase database. For this reason, the Third-Party Auditor is unable to issue findings related to this requirement at this time due to the unavailability of the Quickbase database, a matter which is addressed, in detail, in the Methodology Section of this report.<sup>281</sup>

**Paragraph 83:**

**Defendants agree that a Settlement Class Member's eligibility to redeem their Compensatory Services or Educational Expense Award will not expire by virtue of the Settlement Class Member turning twenty-two (22) years of age.**

**Status of Compliance with Paragraph 83:** It is the Third-Party Auditor's understanding that these records will become available to her through the Quickbase database. For this reason, the Third-Party Auditor is unable to issue findings related to this requirement at this time due to the unavailability of the Quickbase database, a matter which is addressed, in detail, in the Methodology Section of this report.<sup>282</sup>

**Paragraph 84:**

**A Settlement Class Member shall have the right to receive the Compensatory Services and/or Educational Expense Award(s) described in this Section for up to three (3) years after the date of their Compensatory Services Award Letter(s) issued under paragraph 82(a) except as provided in paragraphs 85 and 86. This is the Award Eligibility Period.**

**Status of Compliance with Paragraph 84:** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

**Paragraph 85(a-e):**

**The following applies to any Settlement Class Member who, at the time of being issued their Compensatory Services Award letter under paragraph 82(a), (1) is incarcerated in a correctional facility other than the DOC Facilities, or (2) is incarcerated in the DOC Facilities and subsequently transferred to another correctional facility with time remaining in their Award Eligibility Period:**

- a. In both scenarios described above, during the Settlement Class Member's initial period of incarceration in a facility other than the DOC Facilities, the Settlement Class**

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<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

**Member's Award Eligibility Period shall be tolled. The Settlement Class Member's Award Eligibility Period shall only begin to run, or resume running, upon release.**

**Status of Compliance with Paragraph 85(a):** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

- b. After being released, if the Settlement Class Member is subsequently reincarcerated in a correctional facility other than the DOC Facilities, any time remaining in the Settlement Class Member's Award Eligibility Period shall be tolled for up to seven (7) years while the Settlement Class Member is reincarcerated.**

**Status of Compliance with Paragraph 85(b):** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

- c. The periods of re-incarceration described in subparagraph (b) shall toll the Award Eligibility Period even if the Settlement Class Member is released and reincarcerated multiple times, provided that the combined amount of all tolling for periods of reincarceration does not exceed seven (7) years.**

**Status of Compliance with Paragraph 85(c):** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

- d. Once a Settlement Class Member's Award Eligibility Period has been tolled as a result of re-incarceration for a combined total of seven (7) years, the Settlement Class Member's Award Eligibility Period will resume and continue to run regardless of whether the Settlement Class Member remains incarcerated, or is released and later reincarcerated.**

**Status of Compliance with Paragraph 85(d):** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

- e. A Settlement Class Member's partial use of an Educational Expense Award while incarcerated does not waive or otherwise impact the tolling of the Award Eligibility Period.**

**Status of Compliance with Paragraph 85(e):** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

**Paragraph 86(a-d):**

**For any Settlement Class Member who is in DOC custody during their Award Eligibility Period, the time they are in DOC custody shall toll their Award Eligibility Period as set forth in subparagraphs a-d:**

- a. **The Settlement Class Member's Award Eligibility Period shall be tolled for any period during which they are in DOC custody and unable to redeem their Compensatory Services because the services the Settlement Class Member is entitled to are unavailable in DOC custody.**

**Status of Compliance with Paragraph 86(a):** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

- b. **If Compensatory Services are available to the Settlement Class Member while they are in DOC custody, the Award Eligibility Period shall be reduced by one (1) week for each week in which Defendants made available to the Settlement Class Member the tutoring and services provided for in their Compensatory Services Award Letter.**

**Status of Compliance with Paragraph 86(b):** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

- c. **If a Settlement Class Member refuses the tutoring or services that Defendants have made available, Defendants shall document the refusal pursuant to paragraph c. After three (3) refusals, Defendants may pause the scheduling of additional tutoring services. At least once within thirty (30) days of pausing the services, the Compensatory Education Outreach Coordinator or other qualified DOC staff member will inform the Settlement Class Member of their right to restart services.**

**Status of Compliance with Paragraph 86(c):** It is the Third-Party Auditor's understanding that these records will become available to her through the Quickbase database. For this reason, the Third-Party Auditor is unable to issue findings related to this requirement at this time due to the unavailability of the Quickbase database, a matter which is addressed, in detail, in the Methodology Section of this report.<sup>283</sup>

- d. **The Award Eligibility Period shall be tolled for any Settlement Class Member who has graduated or who has converted their award to an Educational Expense Award.**

**Status of Compliance with Paragraph 86(d):** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

**Paragraph 87:**

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<sup>283</sup> See *supra* at 6-10.

If redeeming their Compensatory Services or Educational Expense Award more than three (3) years after receiving their Compensatory Services Award Letter, the Settlement Class Member shall establish that tolling should extend their Award Eligibility Period and for how long. The Settlement Class Member shall provide documentation from an official source sufficient to show the dates of all periods of incarceration during which the Settlement Class Member believes tolling applies.

**Status of Compliance with Paragraph 87:** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

**Paragraph 88:**

Defendants shall provide all Settlement Class Members the opportunity to convert all or part of their Compensatory Services to an Educational Expense Award.

**Status of Compliance with Paragraph 88:** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

**Paragraph 89:**

Within forty-five (45) days of the Effective Date, Defendants shall provide Plaintiffs' counsel with a copy of all letters issued under paragraphs 82(a), 82(d), and 82(e). Within sixty (60) days of the Effective Date and every sixty (60) days thereafter, Defendants shall provide a report to Plaintiffs' counsel and the Third-Party Auditor of all additional documented outreach attempts to Settlement Class Members under paragraph 82 and the status of receipt of Compensatory Services and/or Educational Expense Awards. Defendants shall provide such reports until all services have been delivered, converted, and/or declined or until this Settlement Agreement has expired, whichever comes first.

**Status of Compliance with Paragraph 89:** The evidence shows that except for the status of receipt of compensatory services and educational expense awards, the Defendants satisfied all requirements in this subsection. Copies of all award letters were provided to Plaintiffs' counsel and the Third-Party Auditor on October 31, 2023. Thereafter, on November 21, 2023, the Defendants submitted a Status Report on Outreach and Monitoring to Plaintiffs' Counsel and the Third-Party Auditor. The Status Report summarizes outreach conducted to compensatory relief subclass members in DOC custody, in the community, and in other correctional facilities and provides a numerical breakdown for the compensatory awards selected, the educational expense awards selected, the combination of compensatory and

educational expense awards selected as well as the number of class members who had made selections and the number who were undecided. Defendants provided an update in their December 8, 2023 Status Report, which included a list of the 170 subclass members targeted for outreach and the status of their respective award selections.<sup>284</sup> An additional update regarding outreach activities was included in the January 10, 2024 Status Report.<sup>285</sup> None of the updates expressly address the issuance or receipt of specific awards; however, it is the Third-Party Auditor's understanding that as of January 29, 2024 no awards had been issued.

#### **Section VI. Compensatory Services for Class Members**

Section VI of the Settlement Agreement requires Defendants to provide class members with compensatory services for instruction and/or related services that were missed between the following time periods: March 24, 2020 and August 31, 2021 and/or February 1, 2022 through September 22, 2023. This section requires Defendants to notify eligible compensatory relief subclass members, in writing, of their right to receive Compensatory Services based upon enrollment in the education program at the CDF and CTF during the relevant time periods. The Section also includes requirements for the content of award letters, and directs specific outreach efforts to apprise eligible members of the subclass of the availability of services and the opportunity to convert a Compensatory Services award to an Education Expense award. The section describes the circumstances under which the eligibility award period may be tolled. Finally, the Section includes descriptions of specific programs that must be made available to class members who meet certain requirements.

The Third-Party Auditor's findings concerning the Defendants' performance relative to the requirements in Section VI are set forth below.

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<sup>284</sup> Defendants' December 8, 2023 Status Report at 5-7.

<sup>285</sup> Defendants' January 10, 2024 Status Report at 5-7.



**Paragraph 90:**

Defendants shall provide Compensatory Services to each Settlement Class Member for instruction and/or related services missed from March 24, 2020 through August 31, 2021 and/or February 1, 2022 through the Effective Date (“the applicable time periods”). Defendants shall offer each Settlement Class Member who missed instruction or related services during any part of the applicable time periods Compensatory Services regardless of whether the Settlement Class Member has graduated, earned a GED, or otherwise aged out of IDEA eligibility.

**Status of Compliance with Paragraph 90:** It is the Third-Party Auditor’s understanding that these records will be available to her through the Quickbase database. The Third-Party Auditor is unable to issue findings related to this requirement at this time due to the unavailability of the Quickbase database, a matter which is addressed in detail in the Methodology Section of this report.<sup>286</sup>

**Paragraph 91:**

For Settlement Class Members who were at the DOC Facilities between March 24, 2020 and August 31, 2021, Defendants shall calculate Compensatory Services for these Settlement Class Members with the assumption that no instruction or related services were received during that period. This assumption is made to simplify award calculations under this Settlement Agreement and is not an admission by Defendants concerning the number of hours any Settlement Class Member received during that time. For these Settlement Class Members, Defendants shall calculate the instructional component of each Settlement Class Member’s Compensatory Services by multiplying the number of School Days in the School Year(s) and Summer Term(s) that the Settlement Class Member was enrolled by six (6) hours per day, and award 60% of that total.

**Status of Compliance with Paragraph 91:** It is the Third-Party Auditor’s understanding that records upon which the calculations required by this subsection are based will be available to her through the Quickbase database. The Third-Party Auditor is unable to issue findings related to this requirement at this time due to the unavailability of the Quickbase database, a matter which is addressed in detail in the Methodology Section of this report.<sup>287</sup>

Interviews with DCPS staff, and with OSSE’s Director of Special Education who had a central role in award calculations for this cohort of subclass members, indicate that in calculating

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<sup>286</sup> See *supra* at 6-10.

<sup>287</sup> *Id.*

these awards, the Defendants assumed that no instruction or related services were received during this period and that the calculations that were utilized relied upon the formula required by this subsection. However, the Third-Party Auditor has been unable to verify the accuracy of this information due to the unavailability of the primary data.

**Paragraph 92:**

**For Settlement Class Members who were at the DOC Facilities between February 1, 2022 and the Effective Date, Defendants shall calculate the instructional component of each Settlement Class Member's Compensatory Services as follows: (1) multiply the number of School Days in the School Year(s) and Summer Term(s) that the Settlement Class Member was enrolled during that time period by six (6) hours per day; (2) subtract from that product the sum of all Teacher-Facing Instruction hours and 50% of non-Teacher-Facing Instruction hours as calculated from the District's monthly summary charts submitted to the Court for the same period; and (3) award 40% of that total. The sources for the data for the second step in the calculation and sample calculations utilizing such are provided in Exhibit 3.**

**Status of Compliance with Paragraph 92:** It is the Third-Party Auditor's understanding that the records upon which the calculations required by this subsection are based will be available to her through the Quickbase database. The Third-Party Auditor is unable to issue findings related to this subsection at this time due to the unavailability of the Quickbase database, a matter which is addressed in detail in the Methodology Section of this report.<sup>288</sup>

Interviews with OSSE's Director of Special Education, who had a central role in the individual award calculations, indicate that the formula prescribed in this subsection was utilized. However, the Third-Party Auditor has not been able to verify the accuracy of this information due to the unavailability of the primary records.

**Paragraph 93:**

**Defendants shall compensate Settlement Class Members for all hours of missed related services on a 1:1 basis, meaning Defendants shall determine an award for each Settlement Class Member by crediting 100% of missed related service hours during the applicable time periods.**

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<sup>288</sup> *Id.*

**Status of Compliance with Paragraph 93:** It is the Third-Party Auditor’s understanding that the records upon which the calculations required by this subsection are based will be available to her through the Quickbase database. The Third-Party Auditor is unable to issue findings related to this requirement at this time due to the unavailability of the Quickbase database, a matter which is addressed in detail in the Methodology Section of this report.<sup>289</sup>

Interviews with OSSE’s Director of Special Education, who had a central role in these award computations, indicate that in calculating individual awards for this cohort, subclass members were credited with one hundred percent of missed related services during the applicable time frames. However, the Third-Party Auditor has not been able to verify the accuracy of this information due to the unavailability of the Quickbase database.

**Paragraph 94:**

**Defendants shall state in all Compensatory Service Award Letters that the reimbursement shall be at the applicable OSSE rates at the time the award is redeemed.**

**Status of Compliance with Paragraph 94:** The evidence shows Defendants met this requirement with respect to the 170 Compensatory Services Award Letters that were dated October 20, 2023 and mailed the following day. This finding is explained below.

The Third-Party Auditor has reviewed the letters addressed to each class member included on the compensatory relief subclass list. The letters specifically state that “[p]roviders will be paid for services based upon the OSSE reimbursement rate applicable at the time the service is delivered.”

**Paragraph 95:**

**Defendants shall pay compensatory education providers, who deliver services at the DOC Facilities, at the applicable OSSE rate for the service to be delivered for the time the provider spends participating in all required in-person DOC training, but such payment for training shall only be rendered after the provider delivers an equivalent number of hours of services**

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<sup>289</sup> *Id.*

to one or more Settlement Class Members in the DOC Facilities under Section V or VI of this Settlement Agreement.

**Status of Compliance with Paragraph 95:** It is the Third-Party Auditor's understanding that the payment records will be available to her through the Quickbase database. Accordingly, the Third-Party Auditor is unable to issue findings related to this requirement at this time due to the unavailability of the Quickbase database, a matter which is addressed in detail in the Methodology Section of this report.<sup>290</sup>

The award letters state that providers "will be paid for services based upon the OSSE reimbursement rate applicable at the time the service is delivered" and "will additionally be reimbursed for time spent participating in mandatory training to access the District of Columbia Jail, as applicable."<sup>291</sup> However, until the Third-Party Auditor has access to the relevant records and conducts any follow-up interviews that are indicated, she will be unable to determine whether this requirement is being met.

**Paragraph 96:**

**Defendants shall provide each Settlement Class Member with the option to receive either Compensatory Services or an Educational Expense Award, equivalent to the monetary value of the services under the Compensatory Service Award Letter(s) at the time redeemed. Settlement Class Members may convert their awards from Compensatory Services to an Educational Expense Award at any time during the Award Eligibility Period. The amount of Compensatory Services converted to an Educational Expense Award will equal no less than the full remaining amount of Compensatory Services the student is awarded but has not yet received. Educational Expense Awards may be used only for educational expenses. For the purposes of this Settlement Agreement, educational expenses shall include those listed as presumptively approved educational expenses and attached as Exhibit 4. Other educational expenses shall be approved under this Settlement Agreement, subject to a due diligence review by the Compensatory Services Outreach Coordinator, to ensure that the request is for a bona fide educational expense.**

**Status of Compliance with Paragraph 96:** It is the Third-Party Auditor's understanding that these records will be available to her through the Quickbase database. The Third-Party Auditor is unable to issue findings related to the requirements in this subsection at

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<sup>290</sup> See *supra* at 6-10.

<sup>291</sup> The DOC requires that contractors, volunteers and others participate in a 40-hour orientation training.

this time due to the unavailability of the database, a matter which is addressed in detail in the Methodology Section of this report.<sup>292</sup>

The award letters state that a student may convert their compensatory services award to an educational expense award. However, until the Third-Party Auditor has access to the database and can conduct any interviews that are indicated, she will be unable to verify that this requirement is being met.

**Paragraph 97:**

**Defendants shall utilize the following process to inform Settlement Class Members of their Compensatory Services:**

- a. **Award Letters:** Within forty-five (45) days of the Effective Date, Defendants shall determine the Compensatory Services to be awarded each Settlement Class Member under paragraphs 91-93 and 106-109. Within ten (10) business days of the determination, Defendants shall mail each Settlement Class Member a letter setting forth the specifics of the Settlement Class Member's Compensatory Services and offering the Settlement Class Member a choice between Compensatory Services or an Educational Expense Award. Such letter shall be sent by first class mail, postage paid, to the current address(es) of the Settlement Class Member as determined using good-faith efforts to obtain a current address, including:
  - i. If the student is in the community, their last known home address;

**Status of Compliance with Paragraph 97(a)(i):** It is the Third-Party Auditor's understanding that records reflecting the last known home address of subclass members who are residing in the community will be available to her through the Quickbase database. The Third-Party Auditor is unable to issue findings related to the requirements in this subsection at this time due to the unavailability of the database, a matter which is addressed in detail in the Methodology Section of this report.<sup>293</sup>

Interviews with OSSE staff indicate that the letters were mailed to the last known home address for subclass members in the community. However, until the Third-Party Auditor can review the underlying address data and compare it to the addresses on the letters that were

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<sup>292</sup> *Id.*

<sup>293</sup> *Id.*

mailed to community members in this cohort, a finding related to this subsection cannot be made.

- ii. **If the student is in the community and enrolled in a District of Columbia school or other educational program, contacting their current school or program; and**

**Status of Compliance with Paragraph 97(a)(ii):** It is the Third-Party Auditor's understanding that the enrollment data for members of the subclass residing in the community will be available to her through the Quickbase database. The Third-Party Auditor is unable to issue findings related to this requirement at this time due to the unavailability of the Quickbase database, a matter addressed in detail in the Methodology Section of this report.<sup>294</sup>

- iii. **If the student is incarcerated at a facility other than the DOC Facilities, searching DOC records and using State and Federal prisoner location databases (i.e., publicly available state prisoner location databases and BOP Inmate Locator System), as set forth under paragraph 82(e).**

**Status of Compliance with Paragraph 97(a)(iii):** It is the Third-Party Auditor's understanding that data related to the required searches and incarceration status/location of subclass members will be available to her through the Quickbase database. The Third-Party Auditor is unable to issue findings related to this requirement at this time due to the unavailability of the Quickbase database, a matter addressed in detail in the Methodology Section of this report.<sup>295</sup>

- b. **Content of Issued Letters:** The letter shall provide the following and shall be dated within five (5) business days of the date of mailing:
  - i. **Telephone and email contact information for the Compensatory Services Outreach Coordinator as set forth under paragraph 111;**

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<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

**Status of Compliance with Paragraph 97(b)(i):** Assuming the Settlement Class Members referred to in Paragraphs 91 and 92 were correctly identified, the evidence shows Defendants have met this requirement.<sup>296</sup> This finding is explained below.

The Third-Party Auditor reviewed the letters addressed to each subclass member included on the compensatory relief subclass list that was produced by the Defendants. The letters identify a Resolution Specialist and include the Specialist's name, phone number and email address.<sup>297</sup> In addition, each letter states: “[p]lease contact the Resolution Specialist named below if you have questions or need assistance.”<sup>298</sup> As noted above,<sup>299</sup> Defendants have reported that the award letters were mailed on October 21, 2023, which is within five days of October 20, 2023, the date of the letter.

**ii. A statement of the hours awarded per service and the current total dollar value of the award;**

**Status of Compliance with Paragraph 97(b)(ii):** Assuming the Settlement Class Members referred to in Paragraphs 91 and 92 were correctly identified, the evidence shows Defendants have met this requirement. This finding is explained below.

The Third-Party Auditor reviewed the letters addressed to each subclass class member included on the compensatory relief subclass member list. Each letter includes a statement of the hours awarded by service type (Specialized Instruction, Behavior Support Services, Occupational Therapy and Speech/Language Therapy) and the current dollar value of the award.

**iii. A statement that the District guarantees to pay providers for those services at the OSSE reimbursement rates applicable at the time the services are provided,**

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<sup>296</sup> The findings for Paragraph 97(b)(i) through 97(b)(xi) are limited to whether the specific content requirement set forth in each subparagraph is reflected in the award letters. The findings should not be interpreted to mean that the hours awarded by type or the value of the services are correct or that the letters were sent to all eligible subclass members.

<sup>297</sup> See Ex 35B, *supra* note 265.

<sup>298</sup> *Id.*

<sup>299</sup> See *supra* at 108.

**including, if applicable, time spent participating in mandatory DOC training as provided in paragraph 95;**

**Status of Compliance with Paragraph 97(b)(iii):** Assuming the Settlement Class Members referred to in Paragraphs 91 and 92 were correctly identified, the evidence shows Defendants have met this requirement.

The Third-Party Auditor reviewed the letters addressed to each subclass member identified on the compensatory relief subclass list. Each letter includes the following statements: “[p]roviders will be paid for services based upon the OSSE reimbursement rate applicable at the time the service is delivered” and “[p]roviders will additionally be reimbursed for time spent participating in mandatory training to access the District of Columbia Jail, as applicable.”<sup>300</sup>

**iv. An explanation of deadlines and tolling of awards pursuant to paragraphs 100-104;**

**Status of Compliance with Paragraph 97(b)(iv):** Assuming the Settlement Class Members referred to in Paragraphs 91 and 92 were correctly identified, the evidence shows Defendants have met this requirement. This finding is explained below.

The Third-Party Auditor reviewed the letters addressed to each subclass member included on the compensatory relief subclass list. Each specifies an expiration date in the table on page one of the award letter under the heading “Expiration Date (3-year Award Eligibility Period).” Page two of each letter includes this statement: “[i]f you are unable to access this award because you are detained or incarcerated outside the District of Columbia prior to the expiration of your award, the three-year timeline for award eligibility will pause and resume upon your release for up to seven years from the date of this letter.”<sup>301</sup>

**v. An explanation of the choice between Compensatory Services and Educational Expense Awards;**

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<sup>300</sup> See Ex 35B, *supra* note 265.

<sup>301</sup> *Id.*



**Status of Compliance with Paragraph 97(b)(v):** Assuming the Settlement Class Members referred to in Paragraphs 91 and 92 were correctly identified, the evidence shows Defendants have met this requirement. This finding is explained below.

The Third-Party Auditor reviewed the letters addressed to each subclass class member included on the compensatory relief subclass list. Notification that the class member may convert his or her compensatory services award to an educational expense award is included in each letter along with a reference to the Education Expense Award Guidance, which was included as an attachment to the letters.<sup>302</sup> Nevertheless, as detailed in the narrative related to Paragraph 82(c),<sup>303</sup> many class members have expressed significant confusion about the awards.

**vi. A statement of the Settlement Class Member's eligibility for the educational and support programs outlined in paragraphs 106-109;**

**Status of Compliance with Paragraph 97(b)(vi):** Assuming the Settlement Class Members referred to in Paragraphs 91 and 92 were correctly identified, the evidence shows Defendants have met this requirement. This finding is explained below.

Each of the letters included a section titled "Program Enrollment Eligibility (As of 10/20/23)." In some of the letters, the entry for this field was "n/a." In others, students were notified of options such as the following: "Extended Enrollment in the D.C. Jail Education Program while at the DC Jail" and "Enrollment in a DCPS-supported External diploma program (based on eligibility criteria for external program). This program includes personalized learning plan, and transportation costs."

**vii. Notice to the Settlement Class Member that their personally identifiable information and education records related to the student's Compensatory Services**

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<sup>302</sup> As detailed *infra* at 152, pursuant to ¶ 122 of the Settlement Agreement, the Defendants were required to provide a draft of the Education Expense Award Guidance to class counsel. They did so on October 2, 2023 and incorporated into the final version each of the suggested edits submitted by Plaintiffs' counsel on October 16, 2023.

<sup>303</sup> See *supra* at 110.

**Award, both protected under FERPA, will be shared with Plaintiffs' counsel and the Third-Party Auditor, who are required to keep it confidential, and provide the student with the right to opt out of any information sharing required by the settlement. Opting out of information sharing shall have no effect on the Settlement Class Member's opportunity to receive and use their award;**

**Status of Compliance with Paragraph 97(b)(vii):** Assuming the Settlement Class Members referred to in Paragraphs 91 and 92 were correctly identified, the evidence shows Defendants have met this requirement. This finding is explained below.

As noted in the narrative related to Paragraph 82(b),<sup>304</sup> the award letters include notice to the class members that DCPS and OSSE are required by the Settlement Agreement to share some of their personal information and their education records with the Third-Party Auditor and class counsel, who are obligated to keep the information confidential. As required by this subsection, the letter advises class members that they have the right to refuse to permit information sharing with the Third-Party Auditor and class counsel, specifying that a "Resolution Specialist" should be contacted in the event a class member does not want their information shared.<sup>305</sup> Contact information for the Resolution Specialist is included in the letter.<sup>306</sup>

**viii. The contact information for Plaintiffs' counsel;**

**Status of Compliance with Paragraph 97(b)(viii):** Assuming the Settlement Class Members referred to in Paragraphs 91 and 92 were correctly identified, the evidence shows Defendants have met this requirement. This finding is explained below.

Each of the letters that were mailed contained contact information for Plaintiffs' counsel: Terris Pravlick, McMillian, the School Justice Project and Washington Lawyers Committee for Civil Rights and Urban Affairs, including each entity's telephone number and email address.

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<sup>304</sup> See *supra* at 108.

<sup>305</sup> *Id.*

<sup>306</sup> The letter does not state that opting out of information sharing will have no effect on the class member's opportunity to receive and use the award. The Third-Party Auditor does not read this provision to constitute part of the required content of the letter although it probably makes sense to include it in any additional outreach.

- ix. **A current catalog of compensatory service providers that provides details similar to the April 2022 DCPS Family Guide to Independent Services;**

**Status of Compliance with Paragraph 97(b)(ix):** Assuming the Settlement Class Members referred to in Paragraphs 91 and 92 were correctly identified, the evidence shows Defendants have met this requirement. This finding is explained below.

Each of the letters that were mailed included a five-page document titled “Independent Service Provider Directory.”<sup>307</sup> The directory lists 31 providers, including their contact information, specifying the services each delivers.

- x. **The guidance on Educational Expense Awards under paragraph 122; and**

**Status of Compliance with Paragraph 97(b)(x):** Assuming the Settlement Class Members referred to in Paragraphs 91 and 92 were correctly identified, the evidence shows Defendants met this requirement. This finding is explained below.

As noted above, each of the letters that were mailed included the Education Expense Award Guidance Document that incorporated suggested edits from class counsel.<sup>308</sup> The Guidance included information on how to use the Education Expense award and described various types of authorized educational expenses. It also provided information on exceptions to the three-year period within which to use the award.

- xi. **A description of the dispute resolution process described in paragraphs 118 and 122.**

**Status of Compliance with Paragraph 97(b)(xi):** Assuming the Settlement Class Members referred to in Paragraphs 91 and 92 were correctly identified, the evidence shows Defendants met this requirement. This finding is explained below.

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<sup>307</sup> See Ex 35B, *supra* note 265.

<sup>308</sup> *Id.*

Each of the letters that were mailed included this statement: “[d]isputes regarding awards may be addressed to the Resolution Specialist identified below. An independent auditor may resolve any dispute that can not otherwise be resolved.”

- c. **Settlement Class Members in the Community and in Correctional Facilities Other than the DOC Facilities:** Within thirty (30) days of the mailing of the letter, Defendants shall call each Settlement Class Member in the community and those incarcerated in facilities other than the DOC Facilities for whom a telephone number can be identified using the methods described in paragraph 82(d) and 82(e) to explain their Compensatory Services Award Letter and the option to convert their Compensatory Services to an Educational Expense Award, and answer questions about the award letters. For Settlement Class Members in the community, Defendants shall find contact information using good-faith efforts and shall document responses and provide assistance using the procedures in paragraph 82(d). For Settlement Class Members in correctional facilities other than the DOC Facilities, Defendants shall find contact information using good-faith efforts and shall document responses and provide assistance using the procedures in paragraph 82(e).

**Status of Compliance with Paragraph 97(c):** It is the Third-Party Auditor’s understanding that these records will be available to her through the Quickbase database. The Third-Party Auditor is unable to issue findings related to this requirement at this time due to the unavailability of the Quickbase database, a matter which is addressed in detail in the Methodology Section of this report.<sup>309</sup>

- d. **Settlement Class Members at the DOC Facilities:** Within fifteen (15) days of the mailing of the letter, Defendants shall begin in-person visits between an outreach coordinator and any Settlement Class Member residing at the DOC Facilities to explain their Compensatory Services Award Letter and the option to convert their Compensatory Services to an Educational Expenses Award and answer questions about the award letters. Defendants shall complete the outreach under this paragraph within thirty (30) days. Defendants shall document responses and provide assistance using the procedures in paragraph 82(c).

**Status of Compliance with Paragraph 97(d):** It is the Third-Party Auditor’s understanding that these records will be available to her through the Quickbase database. The Third-Party Auditor is unable to issue findings related to this requirement at this time due to the

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<sup>309</sup> See *supra* at 6-10.

unavailability of the Quickbase database, a matter which is addressed in detail in the Methodology Section of this report.<sup>310</sup>

As discussed in more details in the findings related to Paragraph 82(c), based on interviews conducted by the Third-Party Auditor with DOC, OSSE and MAA staff and managers, as well as with class members incarcerated at the CDF and CTF, Defendants began face-to-face outreach at both DOC facilities on November 1, 2023. The outreach included hand-delivery of the October 20, 2023 award letters. The OSSE representatives who conducted the outreach referred to a PowerPoint to review the information in the letters. Class members at the CDF were either brought into an empty housing unit to meet with OSSE's representatives in small groups or, in instances when that was not possible, the representatives spoke with class members in a cellblock dayroom, hallway or through cell doors. OSSE staff reported that the meetings at the CTF were conducted during the afternoon and mainly through cell doors, except on C4B and C4C, where they met with students after school.

Defendants report that they met with 50 class members on November 1, 2023 and that follow-up face-to-face outreach activities involving six additional class members were conducted on November 9 and 17, 2023.<sup>311</sup> OSSE staff report that additional outreach regarding award selection was conducted by an OSSE representative at the CTF and CDF on January 22, 2024, and that class members who made award selections were asked to sign award selection forms. It is the Third-Party Auditor's understanding that these forms will ultimately be available to her through Quickbase.

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<sup>310</sup> See *supra* at 6-10.

<sup>311</sup> See Ex. 35C, *supra* note 272, at 1 (noting that "the District" met with one class member at Saint Elizabeths Hospital on November 9, 2023 and five of the six class members who were unavailable during the November 1, 2023 outreach visit on November 17, 2023; the status of the one additional class member who was unavailable on November 1 and 17 and subsequently reported to have been released has not yet been confirmed by the Third-Party Auditor). See Defendants' January 10, 2024 Status Report regarding ¶ 82 at 5. Interviews establish that an OSSE representative conducted this additional outreach.

- e. **Defendants shall document and communicate each Settlement Class Member's choice between Compensatory Services and the Educational Expense Award to the Parties and the Third-Party Auditor in the reporting under paragraph 143.**

**Status of Compliance with Paragraph 97(e):** The Third-Party Auditor is unable to issue findings related to the requirements in this subsection at this time due to the unavailability of the Quickbase database, a matter which is addressed in detail in the Methodology Section of this report.<sup>312</sup> It is the Third-Party Auditor's understanding that these records will be available to her through the database.

In their December 8, 2023 and January 10, 2024 Status Reports, the Defendants summarized the results of the outreach. According to both reports, 22 of the 170 class members selected compensatory services, 19 selected educational expense awards, five selected a combination of compensatory and education expense awards, 11 were undecided and 113 had not yet made a decision.<sup>313</sup> However, the Third-Party Auditor has not been able to verify the accuracy of this information due to the unavailability of the primary records.

- f. **For any Settlement Class Member (1) whose location is unknown, (2) for whom Defendants are aware that they do not have accurate contact information, or (3) for whom Defendants receive information during outreach that indicates a Settlement Class Member's contact information is inaccurate, Defendants shall notify Plaintiffs' counsel in writing within ten (10) business days of determining that the location is unknown or contact information is inaccurate. If Plaintiffs' counsel subsequently provides Defendants with updated contact information for the Settlement Class Member, Defendants shall resume their outreach pursuant to paragraph 97 using that updated information. Defendants are only required to notify Plaintiffs' counsel of unknown or inaccurate information one (1) time and conduct this additional outreach based on updated information one (1) time.**

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<sup>312</sup> See *supra* at 6-10.

<sup>313</sup> See Defendants' December 8, 2023 Status Report at 7; Defendants January 10, 2024 Status Report at 7. According to the January 10, 2024 Status Report, no additional class members had made a selection since the December 2023 Status Report was issued.

**Status of Compliance with Paragraph 97(f):** The Third-Party Auditor finds that Defendants met this requirement during this reporting period. The basis for this finding is explained below.

In the December 8, 2023 Status Report, Defendants reported to Plaintiffs' counsel and the Third-Party Auditor that as of December 6, 2023, of the 170 award letters that were mailed, 31 had been returned as undeliverable, and that "[a]t this time, the District has determined that it does not have any current address for eight class members." Attached to the Status Report was a list of these class members for Plaintiffs' counsel.<sup>314</sup> Defendants also reported that outreach efforts for class members in the community had begun. In Defendants' January 10, 2024 Status Report, Defendants reported that an additional seven award letters had been returned as undeliverable (totaling 38), but noted that Defendants were continuing efforts to try to locate the seven class members whose letters were returned, and would notify plaintiffs' counsel if their efforts were unsuccessful. Defendants reported in their January 10, 2024 Status Report that a list for Plaintiffs' counsel of unreachable class members in the community was being prepared.<sup>315</sup>

- g. If any Settlement Class Member cannot be reached despite their location being known, Defendants shall inform Plaintiffs' counsel in writing within ten (10) business days of their last outreach attempt. If Plaintiffs' counsel are able to contact the Settlement Class Member and so inform Defendants in writing, and provide accurate contact information for the Settlement Class Member, Defendants shall assist the Settlement Class Member consistent with this paragraph. Defendants are only required to conduct this additional outreach pursuant to paragraph 97 one (1) time.**

**Status of Compliance with Paragraph 97(g):** The requirements reflected in this paragraph are not ripe for reporting at this time. Defendants report that they are continuing their outreach efforts and have not yet identified class members whose locations are known yet the class member is unable to be reached. Updates will be provided as appropriate.

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<sup>314</sup> Defendants' December 8, 2023 Status Report at 5-6.

<sup>315</sup> Defendants' January 10, 2024 Status Report at 6-7.

- h. Within ten (10) days of the mailing, Defendants shall provide Plaintiffs' counsel with a copy of all letters issued under this paragraph.

**Status of Compliance with Paragraph 97(h):** The Third-Party Auditor finds that Defendants met this requirement. This finding is explained below.

Copies of the 170 award letters were provided to Plaintiffs' counsel by Defendants' counsel on October 31, 2023.<sup>316</sup>

**Paragraph 98:**

**If a Settlement Class Member chooses to redeem their award as Compensatory Services and is residing in the community or the DOC Facilities, then Defendants shall assist the Settlement Class Member in coordinating their compensatory services, including identifying providers, contacting providers, scheduling services, and facilitating payment to those providers to render Compensatory Services to the Settlement Class Member.**

**Status of Compliance with Paragraph 98:** It is the Third-Party Auditor's understanding that these records will be available to her through the Quickbase database. The Third-Party Auditor is unable to issue findings related to this requirement at this time due to the unavailability of the Quickbase database, a matter which is addressed in detail in the Methodology Section of this report.<sup>317</sup>

**Paragraph 99:**

**For each Settlement Class Member in a correctional facility other than the DOC Facilities who chooses to redeem their award as Compensatory Services, Defendants agree to make one (1) contact with appropriate personnel at the facility in which the Settlement Class Member resides about the possibility of arranging services within five (5) days of calling the Settlement Class Member pursuant to paragraph 97(c). If the facility agrees to allow the provision of services, Defendants shall undertake good-faith efforts to assist the Settlement Class Member with identifying providers, contacting providers, and arranging services with those providers, throughout the Award Eligibility Period. If the facility refuses to allow Defendants to arrange services or fails to respond, Defendants shall inform Plaintiffs' counsel in writing of the facility's refusal or lack of response within five (5) days of the refusal or initial outreach. If Plaintiffs' counsel are able to obtain the facility's agreement to allow for the delivery of services, Plaintiffs' counsel shall inform Defendants in writing and then Defendants shall assist the Settlement Class Member in the delivery and receipt of those services consistent with this**

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<sup>316</sup> An October 31, 2023 email from Honey Morton to class counsel transmitted copies of the letters, which were also provided to the Third-Party Auditor through the identical electronic link at that time.

<sup>317</sup> See *supra* at 6-10.



**paragraph. Defendants shall have no further obligations towards that Settlement Class Member under this paragraph until Plaintiffs' counsel notify Defendants in writing that a facility is willing to work with Defendants.**

**Status of Compliance with Paragraph 99:** It is the Third-Party Auditor's understanding that these records will be available to her through the Quickbase database. The Third-Party Auditor is unable to issue findings related to this requirement at this time due to the unavailability of the Quickbase database, a matter which is addressed in detail in the Methodology Section of this report.<sup>318</sup> .

**Paragraph 100:**

**Defendants agree that a Settlement Class Member's eligibility to redeem their Compensatory Services or Educational Expense Award will not expire by virtue of the Settlement Class Member turning twenty-two (22) years of age.**

**Status of Compliance with Paragraph 100:** It is the Third-Party Auditor's understanding that these records will be available to her through the Quickbase database. The Third-Party Auditor is unable to issue findings related to this requirement at this time due to the unavailability of the Quickbase database, a matter which is addressed in detail in the Methodology Section of this report.<sup>319</sup>

The award letters that were mailed to each class member on October 21, 2023 establish a three-year eligibility period, with an expiration date of October 20, 2026. The letters also specify that for a class member who is detained or incarcerated outside the District of Columbia prior to the expiration of their award, the three-year timeline for award eligibility will be paused and resumed upon their release for a period of up to seven years. However, without access to the database, the Third-Party Auditor cannot confirm that class members who have turned 22 years

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<sup>318</sup> See *supra* at 6-10.

<sup>319</sup> *Id.*

of age have remained eligible to receive their Compensatory Services or Educational Expense awards.

**Paragraph 101:**

A Settlement Class Member shall have the right to receive the services described in this Section for up to three (3) years after the date of their Compensatory Services Award Letter(s) issued under paragraph 97(a) except as provided in paragraphs 102 and 103. This is the Award Eligibility Period.

**Status of Compliance with Paragraph 101:** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

**Paragraph 102:**

The following applies to any Settlement Class Member who, at the time of being issued their Compensatory Services Award letter under paragraph 97(a), (1) is incarcerated in a correctional facility other than the DOC Facilities, or (2) is incarcerated in the DOC Facilities and subsequently transferred to another correctional facility with time remaining in their Award Eligibility Period:

- a. In both scenarios described above, during the Settlement Class Member's initial period of incarceration in a facility other than the DOC Facilities, the Settlement Class Member's Award Eligibility Period shall be tolled. The Settlement Class Member's Award Eligibility Period shall only begin to run, or resume running, upon release.
- b. After being released, if the Settlement Class Member is subsequently reincarcerated in a correctional facility other than the DOC Facilities, any time remaining in the Settlement Class Member's Award Eligibility Period shall be tolled for up to seven (7) years while the Settlement Class Member is reincarcerated.
- c. The periods of re-incarceration described in subparagraph (b) shall toll the Award Eligibility Period even if the Settlement Class Member is released and reincarcerated multiple times, provided that the combined amount of all tolling for periods of reincarceration does not exceed seven (7) years.
- d. Once a Settlement Class Member's Award Eligibility Period has been tolled as a result of re-incarceration for a combined total of seven (7) years, the Settlement Class Member's Award Eligibility Period will resume and continue to run regardless of whether the Settlement Class Member remains incarcerated, or is released and later reincarcerated.
- e. A Settlement Class Member's partial use of an Educational Expense Award while incarcerated does not waive or otherwise impact the tolling of the Award Eligibility Period.

**Status of Compliance with Paragraph 102(a) to (e):** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

**Paragraph 103:**

For any Settlement Class Member who is in DOC custody during their Award Eligibility Period, the time they are in DOC custody shall toll their Award Eligibility Period as set forth in subparagraphs (a)-(d):

- a. **The Settlement Class Member's Award Eligibility Period shall be tolled for any period during which they are in DOC custody and unable to redeem their Compensatory Services because the services that the Settlement Class Member is entitled to are unavailable in DOC custody.**

**Status of Compliance with Paragraph 103(a):** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

- b. **If Compensatory Services are available to the Settlement Class Member while they are in DOC custody, the Award Eligibility Period shall be reduced by one (1) week for each week in which Defendants made available to the Settlement Class Member the tutoring and services provided for in their Compensatory Services Award Letter.**

**Status of Compliance with Paragraph 103(b):** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

- c. **If a Settlement Class Member refuses the tutoring or services that Defendants have made available, Defendants shall document the refusal pursuant to paragraph 82(c).**

**Status of Compliance with Paragraph 103(c):** It is the Third-Party Auditor's understanding that these records will be available to her through the Quickbase database. The Third-Party Auditor is unable to issue findings related to this requirement at this time due to the unavailability of the Quickbase database, a matter which is addressed in detail in the Methodology Section of this report.<sup>320</sup>

- d. **The Award Eligibility Period shall be tolled for any such Settlement Class Member who has graduated or who has converted their award to an Educational Expense Award.**

**Status of Compliance with Paragraph 103(d):** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

**Paragraph 104:**

**If redeeming their Compensatory Services or Educational Expense Award more than three (3) years after receiving their Compensatory Services Award Letter, the Settlement Class Member shall establish that tolling should extend their Award Eligibility Period and for how long. The Settlement Class Member shall provide documentation from an official source**

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<sup>320</sup> See *supra* at 6-10.

sufficient to show the dates of all periods of incarceration during which the Settlement Class Member believes tolling applies.

**Status of Compliance with Paragraph 104:** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

**Paragraph 105:**

The Parties agree that any disputes regarding Compensatory Services after the termination of this Settlement Agreement pursuant to Section X shall be resolved pursuant to the process set forth in Paragraph 121.

**Status of Compliance with Paragraph 105:** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

**Paragraph 106:**

In addition to the Compensatory Services provided under paragraphs 90-96, for Settlement Class Members at the DOC Facilities who (1) are seeking a high school diploma or GED; (2) aged out of IDEA eligibility between March 24, 2020 and the Effective Date; and (3) were in the DOC Facilities for at least forty-five (45) days between March 24, 2020 and January 31, 2022, Defendants shall ensure, including through sufficient funding and oversight, that the LEA at the DOC Facilities offers the Settlement Class Member extended enrollment. Such extended enrollment shall include education and special education and related services consistent with the Settlement Class Member's most recent IEP and, if available, updated evaluations and assessments, until the Expiration Date or until the Settlement Class Member receives their high school diploma, whichever occurs first. Such extended enrollment, however, does not extend any Settlement Class Member's eligibility for services under the IDEA or create any right to extended enrollment in any school outside the DOC Facilities except to the extent any Settlement Class Member is entitled to services pursuant to paragraphs 107-109.

**Status of Compliance with Paragraph 106:** It is the Third-Party Auditor's understanding that these records will be available to her through the Quickbase database. The Third-Party Auditor is unable to issue findings related to this requirement at this time due to the unavailability of the Quickbase database, a matter which is addressed in detail in the Methodology Section of this report.<sup>321</sup>

**Paragraph 107:**

In addition to the Compensatory Services provided under paragraphs 90-96, for Settlement Class Members in the community under age twenty-four (24) who are (1) seeking a high school diploma or GED; (2) aged out of IDEA eligibility between March 24, 2020 and the Effective

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<sup>321</sup> See *supra* at 6-10.

Date; and (3) were in the DOC Facilities for at least forty-five (45) days between March 24, 2020 and January 31, 2022, Defendants shall offer students the option of enrollment in a DCPS Opportunity Academy, or assistance with enrollment in a District public charter school or District community-based organization that specializes in adult education with wraparound services coordinated through the DC ReEngagement Center (REC).

- a. Each Settlement Class Member who elects to enroll in an Opportunity Academy under this provision shall be provided the following supports developed and implemented in partnership with relevant District service agencies: (i) a comprehensive set of assessments to determine academic level, vocational interests, and instructional and behavioral support needs; (ii) development of a Personalized Learning Plan; (iii) implementation of the Personalized Learning Plan; and (iv) issuance of a Kids Ride Free card to cover public transportation costs to and from the Opportunity Academy. The Personalized Learning Plan will include services that are designed to meet the individual academic, social, and emotional needs of the Settlement Class Member and enable the Settlement Class Member to make appropriate progress. Creation of each Personalized Learning Plan will take into account a comprehensive set of assessments, the Settlement Class Member's education records, including the most recent IEP as relevant, and participation from the Settlement Class Member; and/or

**Status of Compliance with Paragraph 107(a):** It is the Third-Party Auditor's

understanding that these records will be available to her through the Quickbase database. The Third-Party Auditor is unable to issue findings related to this requirement at this time due to the unavailability of the Quickbase database, a matter which is addressed in detail in the Methodology Section of this report.<sup>322</sup>

- b. Each Settlement Class Member who elects to enroll in a District public charter school or community-based organization under this provision will, through the REC or other similar District entity, be (1) provided with individual counseling and support to remove barriers to selection, enrollment, and successful completion of an adult serving education program that meets their needs; and (2) assigned an individual re-engagement specialist who will work with the Settlement Class Member to connect them to resources, remove barriers, and navigate access to other critical services so they can earn a high school diploma or equivalency. Defendants shall also provide coverage of public transportation costs through issuance of a Kids Ride Free card to each Settlement Class Member for transportation to and from the District public charter school or community-based organization.

**Status of Compliance with Paragraph 107(b):** It is the Third-Party Auditor's

understanding that these records will be available to her through the Quickbase database. The Third-Party Auditor is unable to issue findings related to this requirement at this time due to the

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<sup>322</sup> *Id.*

unavailability of the Quickbase database, a matter which is addressed in detail in the Methodology Section of this report.<sup>323</sup>

**Paragraph 108:**

**In addition to the Compensatory Services provided under paragraphs 90-96 for Settlement Class Members in the community age twenty-four (24) and older who (1) have not received a diploma; (2) aged out of IDEA eligibility between March 24, 2020 and the Effective Date; and (3) were in the DOC Facilities for at least forty-five (45) days between March 24, 2020 and January 31, 2022, Defendants shall make available a DCPS-supported external diploma program to Settlement Class Members who can meet the program's eligibility criteria, including development and implementation of Personalized Learning Plans as described in paragraph 107(a) and coverage of registration and program fees and transportation costs to and from the program.**

**Status of Compliance with Paragraph 108:** It is the Third-Party Auditor's understanding that these records will be available to her through the Quickbase database. The Third-Party Auditor is unable to issue findings related to this requirement at this time due to the unavailability of the Quickbase database, a matter which is addressed in detail in the Methodology Section of this report.<sup>324</sup>

**Paragraph 109:**

**In addition to the Compensatory Services provided under paragraphs 90-96, for Settlement Class Members in the community seeking a post-secondary pathway program, who aged out of IDEA eligibility between March 24, 2020 and the Effective Date, and were in the DC Jail for at least forty-five (45) days between March 24, 2020 and January 31, 2022, Defendants shall offer enrollment in the REC, including assignment of a re-engagement specialist who will work one-on-one with each individual Settlement Class Member to connect them to resources, remove barriers, and navigate access to other critical services to get them back on track with their plans to pursue a career pathway.**

**Status of Compliance with Paragraph 109:** It is the Third-Party Auditor's understanding that these records will be available to her through the Quickbase database. The Third-Party Auditor is unable to issue findings related to this requirement at this time due to the

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<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

unavailability of the Quickbase database, a matter which is addressed in detail in the Methodology Section of this report.<sup>325</sup>

**Paragraph 110:**

**Defendants shall provide Plaintiffs' counsel with a copy of the Personalized Learning Plans developed for each Settlement Class Member under paragraphs 107(a) and 108 within ten (10) days of a request for each Settlement Class Member who consents in writing.**

**Status of Compliance with Paragraph 110:** It is the Third-Party Auditor's understanding that these records will be available to her through the Quickbase database. The Third-Party Auditor is unable to issue findings related to this requirement at this time due to the unavailability of the Quickbase database, a matter which is addressed in detail in the Methodology Section of this report.<sup>326</sup>

**VII. Delivery and Oversight of Contempt Relief and Compensatory Services Awards**

**A. Personnel**

Paragraphs 111-112 of the Settlement Agreement require the Defendants to designate at least one dedicated employee to act as a Compensatory Services Outreach Coordinator to oversee the administration of Contempt Relief, Compensatory Services and Educational Expense Awards and also specify certain responsibilities for this position. The Third-Party Auditor's findings concerning the Defendants' performance relative to these requirements are set forth below.

**Paragraph 111:**

**Within fifteen (15) days of the Effective Date, Defendants shall assign at least one dedicated Compensatory Services Outreach Coordinator to oversee the administration of Contempt Relief, Compensatory Services, and Educational Expense Awards including the supervision of all individuals providing outreach pursuant to paragraphs 82, 97, 98, and 99. Defendants shall ensure that the Compensatory Services Outreach Coordinator is assigned the responsibilities in this paragraph and paragraph 112 and provided with the requisite training.**

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<sup>325</sup> *Id.*

<sup>326</sup> *Id.*

**Status of Compliance with Paragraph 111:** The evidence shows the Defendants have met this requirement during this reporting period, assuming the position description for the employee assigned by OSSE to serve as the Compensatory Services Outreach Coordinator is consistent with the requirements of this subsection notwithstanding her other pre-existing duties. This finding is explained below.

Defendants have identified two District government employees to serve the function of Compensatory Services Outreach Coordinator. The Third-Party Auditor has interviewed the incumbents in both positions. During November 2023, DCPS hired an employee to fill the position of Specialist, Compensatory Education Outreach. According to the relevant position description, among other duties, this employee “is responsible for ensuring that special education legal settlement agreements are monitored and implemented in alignment with the requirements outlined in the agreement” and that “students from the settlement agreement class have access to their entitled award.”<sup>327</sup> The position description specifies that the Specialist “oversees the administration, communication, delivery of required supports and compensatory award administration,” “maintains a system for tracking all outreach efforts, award selections, and communications and activities related to facilitating requirements of the settlement agreement,” and completes “reimbursement invoice review and payment processing.”<sup>328</sup> The Third-Party Auditor’s interview with the Specialist confirmed that she is performing these duties related to those subclass members who were enrolled in the education program operated by DCPS at the CDF and CTF between March 24, 2020 and September 30, 2021.

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<sup>327</sup> Ex. 36, Position Description, District of Columbia Public Schools, Specialist, Compensatory Education Outreach.

<sup>328</sup> *Id.*



In addition, OSSE has designated an employee who has been serving in the position, Educational Specialist, Correctional Facilities, to also serve as the Compensatory Services Outreach Coordinator envisioned by the requirements of this subsection for all Settlement Class members who were not enrolled in the school operated by DCPS. This employee also maintains monitoring responsibility for the education programs operated by the Department of Youth Rehabilitation Services at the Youth Services Center and the New Beginnings Youth Development Center.

The OSSE Educational Specialist reported that she is responsible for outreach and compensatory and related service award coordination for class members who were enrolled at the school operated at the CDF and CTF between October 1, 2021 and the present. She is also responsible for conducting OSSE's onsite and desktop monitoring of the MAA special education program operated at the DOC. She reports that she is responsible for maintaining the outreach and award selection documentation, facilitating and tracking implementation of the awards, and that she will also oversee the processing of payments to service providers. Finally, she is also designated as the Resolution Specialist in all 170 award letters. The Third-Party Auditor has requested by not yet received a copy of her position description, which is necessary to verify her assigned duties are consistent with the duties required by this subsection.

Both the DCPS Specialist and the OSSE Specialist report that they hold weekly "check-ins" where information is shared and issues are resolved. Each individual appears highly qualified for their positions; however, it appears neither has the administrative support that is needed to manage the complex processes associated with the compensatory awards and the educational expense awards that the Settlement Agreement has established.

**Paragraph 112:**

The Compensatory Services Outreach Coordinator shall be responsible, either directly or through the supervision of others, for satisfying the duties described in this paragraph in a timely manner. The Compensatory Services Outreach Coordinator shall receive comprehensive training related to the requirements of the Settlement Agreement to ensure that:

- a. The outreach efforts set forth in paragraphs 82, 97, and 99 are conducted with fidelity such that each individual conducting outreach satisfies all relevant responsibilities under the Settlement Agreement, including creation of required documentation, assistance with identifying providers, and arrangements for receipt of Compensatory Services by providers;

**Status of Compliance with Paragraph 112(a):** The Third-Party Auditor is unable to issue findings regarding the required outreach efforts at this time due to the unavailability of the Quickbase database, a matter that is explained in the Methodology section of this Report. Updates will be provided as appropriate.

- b. The assistance efforts set forth in paragraph 98 are conducted with fidelity such that each individual providing such assistance satisfies all relevant responsibilities under the Settlement Agreement, including assistance with identifying and contacting providers, scheduling services, communicating with providers concerning their invoices, approving complete and correctly submitted provider invoices for payment by OCFO, and creation of required documentation;

**Status of Compliance with Paragraph 112(b):** The Third-Party Auditor is unable to issue findings at this time regarding assistance efforts due to the unavailability of the Quickbase database, a matter that is explained in the Methodology section of this Report. Updates will be provided as appropriate.

- c. The data entry into the data system developed under paragraph 113 is comprehensive and timely;

**Status of Compliance with Paragraph 112(c):** The Third-Party Auditor is unable to issue findings at this time regarding data entry into the data system due to the unavailability of the Quickbase database, a matter that is explained in the Methodology section of this Report. Updates will be provided as appropriate.

- d. The educational expenses selected by Settlement Class Members are timely processed as follows:
  - i. Approved or denied within ten (10) business days of a Settlement Class Member's selection or request, if all necessary information is provided, and that denials are processed as provided in paragraph 118;

**Status of Compliance with Paragraph 112(d)(i):** The Third-Party Auditor is unable to issue findings regarding educational expense awards at this time due to the unavailability of the Quickbase database, a matter that is explained in the Methodology section of this Report. Updates will be provided as appropriate.

- ii. **Arranged for or coordinated with appropriate providers, vendors, or suppliers;**

**Status of Compliance with Paragraph 112(d)(ii):** The Third-Party Auditor is unable to issue findings regarding arrangements with providers, vendors or suppliers at this time due to the unavailability of the Quickbase databas, a matter that is explained in the Methodology section of this Report. Updates will be provided as appropriate.

- iii. **As appropriate, made available for pick-up by the Settlement Class Member, as quickly as possible to ensure that the Settlement Class Member is not denied timely access to the educational expenses;**

**Status of Compliance with Paragraph 112(d)(iii):** The Third-Party Auditor is unable to issue findings regarding timely access to educational expense awards at this time due to the unavailability of the Quickbase database, a matter that is explained in the Methodology section of this Report. Updates will be provided as appropriate.

- iv. **When permitted by DOC facility policies, hand-delivered to Settlement Class Members at the DOC Facilities; and**

**Status of Compliance with Paragraph 112(d)(iv):** The Third-Party Auditor is unable to issue findings regarding this subsection at this time due to the unavailability of the Quickbase database, a matter that is explained in the Methodology section of this Report. Updates will be provided as appropriate.

- v. **As appropriate, in coordination with facilities other than the DOC Facilities, delivered to a Settlement Class Member located in that facility provided the item is permitted within the facility.**

**Status of Compliance with Paragraph 112(d)(v):** The Third-Party Auditor is unable to issue findings regarding this subsection at this time due to the unavailability of the Quickbase

database, a matter that is explained in the Methodology section of this Report. Updates will be provided as appropriate.

- e. **Provider invoices for education and related services delivered under a Compensatory Services Award Letter under Section V or VI are paid as provided in paragraphs 116 and 117; and**

**Status of Compliance with Paragraph 112(e):** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

- f. **Communications from Settlement Class Members or Plaintiffs' counsel relating to accessing Contempt Relief or Compensatory Services under this Settlement Agreement are acknowledged within three (3) business days.**

**Status of Compliance with Paragraph 112(f):** The Third-Party Auditor is unable to issue findings related to this subsection at this time due to the unavailability of the Quickbase database, a matter that is in the Methodology section of this Report. Updates will be provided as appropriate.

## **B. Data System**

Paragraphs 113-114 of the Settlement Agreement require Defendants to develop a comprehensive system for tracking all award determinations and letters, outreach efforts, award declinations, award conversions, award payment and reimbursement requests and determinations, award services provided, enrollment for educational and support programs and other key matters associated with implementation of the Settlement Agreement. The Third-Party Auditor's findings concerning the Defendants' performance relative to these requirements are set forth below.

### **Paragraph 113:**

**Defendants shall develop a system for tracking all award determinations and letters, outreach efforts, award declinations, award conversions, award payment and reimbursement requests and determinations, award services provided, enrollment for educational and support programs under paragraphs 106-109, and all communications and other activities related to the delivery of Contempt Relief and Compensatory Services, and related payments. Such data**

system shall contain all such information for each individual Settlement Class Member even if the data must be retrieved from separate databases. Such data system shall track all information in such a way as to provide a date for each activity (i.e., date of award letter, date of mailing of award letter).

**Status of Compliance with Paragraph 113:** The evidence shows Defendants have not met this requirement during this reporting period. The basis for finding is explained in the Methodology section of this report.<sup>329</sup>

**Paragraph 114:**

Defendants shall maintain the data in the tracking system in paragraph 113 until all Contempt Relief and Compensatory Services and Educational Expense Awards under Sections V and VI have expired and are no longer subject to any dispute resolution.

**Status of Compliance with Paragraph 114:** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

**C. Payment Processing and Dispute Resolution**

Paragraphs 115-121 of the Settlement address requirements concerning the processing of payments to vendors, including service providers; establish procedures for processing educational expense awards and related payments; and address dispute resolution processes associated with educational expense awards. The Third-Party Auditor's findings concerning the Defendants' performance relative to these requirements are set forth below.

**Paragraph 115:**

Defendants agree to expedite approval of purchases made through direct payments (i.e., any payment made by the District to a vendor or an individual) in accordance with paragraphs 116 and 117. Direct payments can only be made to vendors who are registered in the District's payment system, which is managed by the Office of the Chief Financial Officer (OCFO).

**Status of Compliance with Paragraph 115:** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

**Paragraph 116(a-b):**

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<sup>329</sup> See *supra* at 6-10.

For invoices from vendors, including Service Providers, who are registered in the OCFO payment system, the Compensatory Services Outreach Coordinator shall, within ten (10) business days of receipt of the invoice:

- a. Review, process, and approve the invoice for payment by OCFO; or

**Status of Compliance with Paragraph 116(a):** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

- b. If the invoice is missing necessary information or is otherwise incomplete, the Compensatory Services Outreach Coordinator will reject the invoice, and will provide the vendor with the reason for the rejection and information on how to correct the errors that led to the rejection. The vendor will be informed that they will need to resubmit the corrected invoice. Upon receipt of a corrected and complete invoice, the Compensatory Services Outreach Coordinator will approve the invoice for payment by OCFO within ten (10) business days.

**Status of Compliance with Paragraph 116(b):** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

**Paragraph 117(a-b):**

For invoices from vendors who are not registered in the OCFO payment system, the Compensatory Services Outreach Coordinator shall, within ten (10) business days of receipt of the invoice:

- a. Reject the invoice. The Compensatory Services Outreach Coordinator will attempt to contact the vendor by telephone and email, if necessary. The Compensatory Services Outreach Coordinator will provide the vendor with the reason for the rejection and registration instructions that include a link to information on how to contact OCFO directly with any additional questions. The Compensatory Services Outreach Coordinator will inform the vendor to resubmit the invoice after the vendor registration application is approved by OCFO.

**Status of Compliance with Paragraph 117(a):** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

- b. Once the vendor is in the OCFO payment system and has resubmitted any invoice, the invoice shall be treated in accordance with paragraph 116.

**Status of Compliance with Paragraph 117(b):** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

**Paragraph 118:**

If an education expense request is denied by the Compensatory Services Outreach Coordinator, Defendants shall provide a written denial stating the reason for the denial to the Settlement Class Member and Plaintiffs' counsel within ten (10) business days of the initial request. If the Settlement Class Member believes in good faith that the request should have been granted under the terms of this Settlement Agreement, the Parties shall negotiate in good

faith to resolve the dispute with the assistance of the Third-Party Auditor. If the Parties have not reached a resolution within five (5) days of bringing the dispute to the Third-Party Auditor, the Third-Party Auditor shall issue a written decision to the Parties within two (2) business days of the end of the negotiation period. The Third-Party Auditor's decision shall be final. If the Third-Party Auditor's decision results in the approval of a previously denied education expense, Defendants shall make payment under paragraphs 116-117, treating the date on which the Third Party Auditor provides Defendants with its decision as the date the Compensatory Services Outreach Coordinator received the education expense request.

**Status of Compliance with Paragraph 118:** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

**Paragraph 119(a-f):**

For reimbursement to Settlement Class Members for covered educational expenses, within twenty (20) business days of receipt of a request for reimbursement, the Compensatory Services Outreach Coordinator shall:

- a. Complete a comprehensive review of the request;

**Status of Compliance with Paragraph 119(a):** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

- b. Confirm supporting documentation and expenses are aligned with the terms of the Settlement Agreement;

**Status of Compliance with Paragraph 119(b):** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

- c. Contact the Settlement Class Member if documentation is incomplete or, if not approved, provide a rationale;

**Status of Compliance with Paragraph 119(c):** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

- d. Make good faith efforts to assist the Settlement Class Member in registering in the OCFO payment system, including providing registration instructions and information on how to contact OCFO directly with any additional questions. The Compensatory Services Outreach Coordinator will inform the Settlement Class Member to resubmit the reimbursement request after their registration application is finalized by OCFO in the payment system;

**Status of Compliance with Paragraph 119(d):** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

- e. Submit the invoice and documentation for second level approval; and

**Status of Compliance with Paragraph 119(e):** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

- f. Send to the Office of the Chief Financial Officer (OCFO) to initiate payment processing.

**Status of Compliance with Paragraph 119(f):** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

**Paragraph 120:**

The Settlement Class Member may seek pre-authorization from the Compensatory Services Outreach Coordinator for the payment of an expense for which the Settlement Class Member intends to seek reimbursement under paragraph 119. If no response to the pre-authorization request is provided within twenty (20) business days, the purchase of the educational expense and reimbursement thereof is deemed approved, and the Compensatory Services Outreach Coordinator shall issue the reimbursement pursuant to paragraph 119(d)-(f).

**Status of Compliance with Paragraph 120:** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

**Paragraph 121:**

The Parties agree that any disputes regarding Contempt Relief and Compensatory Service awards arising after the termination of this Settlement Agreement pursuant to Section X shall be mediated through the Special Education Mediation process offered by OSSE's Office of Dispute Resolution. Use of the Special Education Mediation process offered by OSSE's Office of Dispute Resolution under this paragraph does not create independent Due Process rights for any Settlement Class Member. If the dispute is not resolved through mediation after two (2) days of negotiation, an action may be brought against the District of Columbia in the Superior Court of the District of Columbia.

**Status of Compliance with Paragraph 121:** The requirements reflected in this subsection are not ripe for reporting at this time. Updates will be provided as appropriate.

**D. Monitoring and Compliance**

**Paragraph 122:**

Defendants shall provide guidance for Settlement Class Members outlining the procedure for selecting and the type of permissible educational expenses under the Educational Expense Awards. Defendants shall provide a draft of such guidance to Plaintiffs' counsel within ten (10) days of the Effective Date. Plaintiffs' counsel shall provide feedback on the guidance within ten (10) days of its provision. Within ten (10) days of receipt of the feedback, Defendants



**shall finalize and mail or hand deliver the guidance with the letters in paragraphs 82 and 97, after having considered Plaintiffs' feedback in good faith.**

**Status of Compliance with Paragraph 122:** This requirement has been satisfied. The basis for this finding is explained below.

Defendants provided a draft of the Education Expense Award Guidance to Plaintiffs' counsel for review and comment on October 2, 2023. Comments and suggested edits were submitted by Plaintiffs counsel on October 16, 2023. The final version that the Defendants mailed to subclass members on October 21, 2023, incorporated each of Plaintiffs' suggestions. Defendants transmitted a copy of the final version to Plaintiffs' counsel and the Third-Party Auditor on October 31, 2023.<sup>330</sup> Nevertheless, as addressed in the narrative related to Paragraph 82 (c), there is substantial evidence that a significant number of subclass members incarcerated at the CDF and CTF require much more information and guidance about their compensatory awards, the educational expense award option, and the related processes, timelines and tolling requirements. The Third-Party Auditor recommends that the Parties work together on an expedited basis to remedy this issue.<sup>331</sup>

**Paragraph 123(a-b):**

**Defendants shall institute a data-driven review protocol to ensure compliance and proactively resolve challenges, including:**

- a. **Weekly check-ins between the Compensatory Services Outreach Coordinator and their supervisor(s) to review outreach metrics, award selections, educational expense**

**Status of Compliance with Paragraph 123(a):** The Third-Party Auditor makes no findings regarding Defendants' performance relative to the requirements in this subsection at this

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<sup>330</sup> See Ex. 37, Education Expense Award Guidance (final version submitted by Defendants' counsel to the third-Party Auditor and Plaintiffs' counsel on October 31, 2023).

<sup>331</sup> *Infra* at 158-160.

time, and expects to address Defendants' performance related to this requirement in a future report.

- b. **The requirement that the Compensatory Services Outreach Coordinator submit bi-weekly status reports to their supervisor(s).**

**Status of Compliance with Paragraph 123(b):** The Third-Party Auditor makes no findings regarding Defendants' performance relative to the requirements in this subsection at this time, and expects to address Defendants' performance related to this requirement in a future report.

**Paragraph 124:**

**Defendants shall provide the Third-Party Auditor monthly reports of any payment requests that are denied.**

**Status of Compliance with Paragraph 124:** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

**Section VIII. The Continuation of Education and Related Services at the DOC Facilities During LEA Transitions**

Paragraphs 125-130 of the Settlement Agreement address requirements relevant to the transition to a new entity to serve as the LEA at the DOC Facilities. The Third-Party Auditor's findings concerning the Defendants' performance relative to these requirements are set forth below.

**Paragraph 125:**

**Within ten (10) days of approval of the decision to designate a new entity as the LEA at the DOC Facilities for an upcoming School Year, Defendants shall provide Plaintiffs and the Third-Party Auditor with written notice of that decision.**

**Status of Compliance with Paragraph 125:** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

**Paragraph 126:**

To the extent feasible, at least two (2) months prior to the transition, Defendants shall provide the new entity designated to serve as the LEA at the DOC Facilities for an upcoming School Year with full access to students' most recent IEPs and assessments.

**Status of Compliance with Paragraph 126:** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

**Paragraph 127:**

Barring circumstances outside of Defendants' control, Defendants shall ensure that the transition to a new entity designated to serve as the LEA at the DOC Facilities occurs prior to the start of the new School Year.

**Status of Compliance with Paragraph 127:** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

**Paragraph 128:**

Defendants shall ensure that the contract and/or MOA for the new entity designated to serve as the LEA at the DOC Facilities includes provisions consistent with Section IIB.1. Barring circumstances outside of Defendants' control, Defendants shall ensure that the contract and/or MOA shall be finalized prior to the start of the new School Year.

**Status of Compliance with Paragraph 128:** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

**Paragraph 129:**

In the event that the entity serving as the LEA at the DOC Facilities changes prior to the termination of this Settlement Agreement, Defendants shall ensure that students continue to receive their educational and related services as required by this Settlement Agreement throughout the LEA transition.

**Status of Compliance with Paragraph 129:** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

**Paragraph 130:**

Defendants shall provide training pursuant to Section IV no later than fifteen (15) days in advance of the date upon which the new entity serving as the LEA at the DOC Facilities will begin providing education and/or related services.

**Status of Compliance with Paragraph 130:** The requirements reflected in this paragraph are not ripe for reporting at this time. Updates will be provided as appropriate.

## **Section IX. Auditing of This Settlement Agreement and Reports to the Court**

### **B. Data Collection**

Paragraphs 141-144 of the Settlement Agreement require Defendants to submit monthly reports to the Plaintiffs and Third-Party Auditor demonstrating compliance with the Settlement Agreement, ensure the Plaintiffs and Third-Party Auditor are kept apprised of class members' award selections and that data is collected and maintained to track class members' academic progress. The Third-Party Auditor's findings concerning the Defendants' performance relative to these requirements are set forth below.

#### **Paragraph 141:**

**Defendants shall submit monthly reports to the Plaintiffs and Third-Party Auditor demonstrating its compliance with the requirements of this Settlement Agreement, and will include a component that is in the same format as the reports submitted by Defendants under the Court's Preliminary Injunction Order from February 2022 forward (see ECF No. 107-1). If Defendants take the position that some of the information in a monthly report is subject to the December 6, 2022 Protective Order entered by the Court (ECF No. 157), it shall produce two versions of the report, one containing confidential information subject to the protective order and one containing no such information. The monthly report shall be due to Plaintiffs and the Third-Party Auditor by the 10th day of the following month. Defendants shall provide a report on its compliance during the final month of the term of this Settlement Agreement within ten (10) days of the Expiration Date pursuant to paragraph 145.**

**Status of Compliance with Paragraph 141:** The evidence shows Defendants met this requirement during this reporting period. This finding is explained below.

Defendants submitted status reports to Plaintiffs' counsel and the Third-Party Auditor on October 10, 2023, November 10, 2023, November 21, 2023, December 8, 2023, and January 10, 2024. Except for the November 21, 2023 report, which addressed Defendants' performance related to outreach and monitoring, each of the monthly reports included the Summary of IEP Hours Received, with Clarifications. The Defendants' reporting on implementation of Settlement Agreement requirements began to include a progress report, presented in tabular

fashion and referencing various Settlement Agreement provisions, with the December 2023 monthly report. The progress report includes a reference to the Settlement Agreement by Paragraph number, a brief description of the requirement that is the subject of reporting, a summary of the actions undertaken, the due date, and the status of Defendants' efforts.<sup>332</sup> Brief updates on the Defendants' efforts to comply with the requirements are included.

**Paragraph 142**

**Defendants shall provide monthly reports to the Plaintiffs and Third-Party Auditor concerning their compliance with the contempt relief provisions in Section V.**

**Status of Compliance with Paragraph 142:** The evidence shows Defendants met this requirement during this reporting period. This finding is explained below.

As noted in the narrative related to Paragraph 141, Defendants have submitted monthly status reports to the Plaintiffs and Third-Party Auditor on October 10, 2023, November 10, 2023, November 21, 2023, December 8, 2023, and January 10, 2024. Beginning with the December 8, 2023 Report, a description on the status of compliance with the contempt relief provisions in Section V is included in tabular format.

**Paragraph 143**

**Defendants shall ensure that each Settlement Class Member's choice regarding Compensatory Services and/or Educational Expenses Awards is reported to the Parties and the Third-Party Auditor in the monthly reporting for the first six (6) months following the Effective Date and quarterly thereafter.**

**Status of Compliance with Paragraph 143:** The evidence shows the Defendants met this requirement during this reporting period. This finding is explained below.

In their December 8, 2023 Status Report, Defendants included an attached report listing award selections made by 57 class members, and reported that the remaining 113 class members

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<sup>332</sup> The status is reported as "complete," "complete (ongoing)," "in progress," and "ongoing".

had not yet made a selection.<sup>333</sup> Also attached was a list of the selections made by each of the 57 members. In their January 10, 2024 Status Report, the Defendants reported that no additional class members had selected awards.<sup>334</sup>

**Paragraph 144(a-f)**

**Defendants shall ensure that data is collected and maintained to track the academic progress of the Injunctive Relief Subclass members including students' credits, educational levels, and receipt of specialized instruction hours, throughout the entire term of the Settlement Agreement. Specifically, Defendants shall ensure the collection of data on the following:**

- a. Each student's housing assignment within the DOC Facilities;

**Status of Compliance with Paragraph 144(a):** The Third-Party Auditor makes no finding regarding Defendants' performance relative to this requirement at this time. Defendants report that they are developing a database to collect this information but as explained in the Methodology section of this Report, the database has not been available to the Third-Party Auditor, and she is unable to determine if the data specified by this subsection are being collected and maintained.

- b. Graduation rates and the date upon which each student graduates;

**Status of Compliance with Paragraph 144(b):** The Third-Party Auditor makes no finding regarding Defendants' performance relative to this requirement at this time. Defendants report that they are developing a database to collect this information but as explained in the Methodology section of this Report, the database has not been available to the Third-Party Auditor, and she is unable to determine if the data specified by this subsection are being collected and maintained.

- c. The number of hours of specialized instruction and related services that each student receives, distinguishing between Teacher-Facing Instruction and non-teacher-facing time;

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<sup>333</sup> See December 8, 2023 Status Report at 7 and attachment titled Class Member Award Selection.

<sup>334</sup> See Defendants' January 10, 2024 Status Report at 7.

**Status of Compliance with Paragraph 144(c):** The Third-Party Auditor makes no finding regarding Defendants' performance relative to this requirement at this time. Defendants report that they are developing a database to collect this information, but as explained in the Methodology section of this Report, the database has not been available to the Third-Party Auditor, and she is unable to determine if the data specified by this subsection are being collected and maintained.

**d. Service log or tracker for related services;**

**Status of Compliance with Paragraph 144(d):** The Third-Party Auditor makes no finding regarding Defendants' performance relative to this requirement at this time. Defendants report that they are developing a database to collect this information, but as explained in the Methodology section of this Report, the database has not been available to the Third-Party Auditor, and she is unable to determine if the data specified by this subsection are being collected and maintained.

**e. Instances in which a student does not attend classes or related services sessions, consistent with paragraphs 65 and 70; and**

**Status of Compliance with Paragraph 144(e):** The Third-Party Auditor makes no finding regarding Defendants' performance relative to this requirement at this time. Defendants report that they are developing a database to collect this information, but as explained in the Methodology section of this Report, the database has not been available to the Third-Party Auditor, and she is unable to determine if the data specified by this subsection are being collected and maintained.

**f. Students' credits, educational levels, and receipt of classroom instructional hours.**

**Status of Compliance with Paragraph 144(f):** The Third-Party Auditor makes no finding regarding Defendants' performance relative to this requirement at this time. Defendants

report that they are developing a database to collect this information, but as explained in the Methodology section of this Report, the database has not been available to the Third-Party Auditor, and she is unable to determine if the data specified by this subsection are being collected and maintained.

## V. RECOMMENDATIONS

Pursuant to Paragraph 136 (b) of the Settlement Agreement, the Third-Party Auditor is required to issue recommendations related to findings of noncompliance and to “develop targeted, non-binding remedial measures and suggested timelines for the completion of such remedial measures by Defendants.” The Third-Party Auditor’s initial set of recommendations are summarized below. These recommendations are targeted to address major, pivotal areas of noncompliance and not to each specific finding of noncompliance or partial compliance identified in this report. Insofar as suggested timelines for completion, the Third-Party Auditor intends to receive updates from the Defendants on the current status of their efforts and will be prepared to discuss recommended timelines at the February 21, 2024 quarterly meeting.

Accordingly, the Third-Party Auditor recommends that the Defendants implement the following remedial measures:

- The Office of the DOC Administrator for Education, Volunteer and Religious Services must be staffed with an adequate number of personnel for administrative support. Additionally, the individual selected for the Education Manager position should be onboarded on an expedited basis, and the hiring of the Compliance Specialist should be expedited. Similarly, sufficient administrative support should be provided to the DCPS and OSSE Community Outreach Coordinators to ensure they are able to implement all the responsibilities set out in the Settlement Agreement.
- DOC policies should be reviewed and revised, if appropriate, to ensure conformity with the Settlement Agreement, including each policy listed in the narrative related to Paragraph 48.



- Policies and practices related to the scheduling of recreation, haircuts and other programs should be revised to ensure these activities do not interfere with the school day for all students enrolled in the MAA program, and the related practices should be monitored on an ongoing basis to ensure enforcement of the policies.
- Lunches for students should be delivered at the same time teachers take their lunch breaks and not at varying times during the afternoon school session.
- Post Orders in all housing units in which MAA students are confined should be revised to include each of the specific duties involving the correctional staff that relate directly to the operation of the educational program, including waking students up on time for class and issuing, charging, and distributing educational tablets. The revised post orders should be maintained on each post and correctional supervisors should ensure line staff are accountable for performing each of their duties specific to the operation of the education program on every shift.
- Correctional staffing levels in the education units should be adequate to support the educational program. Specifically, correctional staffing levels in C4B (2 posts), SMUB (2 posts) and So-1 (3-5 posts) must be maintained throughout the day shift to ensure students can attend class on time. Correctional staff assigned to the education units should not be redeployed to other posts during their assigned shifts.
- Correctional officers and their supervisors, who are assigned to the education-dedicated housing units or any other units with MAA students, should receive the training required by the Settlement Agreement.
- Private space that ensures confidentiality for the delivery of related services must be afforded to students in each housing unit in which MAA students are confined and adequate correctional staffing and security measures must be maintained in these areas to ensure the safety of students and staff. In this regard, consistent correctional officer staffing coverage must be provided for the case management office adjacent to SMUB; the key to the second office on C4C should be duplicated, so that the office can be available for instruction or related services; both correctional posts must be maintained on C4B, so that related services staff can meet with students in their offices on the upper tier; appropriate security measures should be instituted in C2A so that the TV rooms can be used for the delivery of related services; and, a space, in addition to the office that is used as a classroom, must be available for confidential meetings with appropriate security for delivery of related services to students in So-1.

- An adequate educational environment must be made available to students in SMUB. An alternative should be identified that affords a minimally adequate instructional environment. Additionally, consideration should be given to developing a viable incentive program for MAA students that would obviate the need for substantial reliance on SMUB (or an alternative unit) for disciplinary matters.
- The So-1 classroom should not be used for purposes other than instruction during the school day.
- The ShawnTech assessment should be expedited if it has not yet occurred, and a remediation plan should be developed and implemented on an expedited basis.
- Efforts should be taken on an expedited basis by Defendants and counsel for the Plaintiffs to work in a coordinated way to ensure all members of the compensatory relief subclass receive additional instruction and informed guidance about their rights to compensatory awards and educational expense, including the related processes, procedures and tolling requirements.

The Third-Party Auditor intends to issue recommendations related to the operation of the Quickbase database after it becomes available and to make the compensatory award and educational expense award program a priority matter during the next reporting period assuming the required data is produced. In the interim, the Third-Party Auditor will determine the current status of the database, so she is prepared to discuss this matter with counsel for the Parties at the February 21, 2024 quarterly meeting.

## **VI. CONCLUSION**

There is no doubt that relative to the start of the pandemic, there has been demonstrable improvement in the DOC's special education high school program. Many, albeit not all, of the ingredients for success exist. Nevertheless, the findings in this report establish that substantial and accelerated progress will be needed for the Defendants to satisfy core Settlement Agreement requirements on a timely basis. The recommendations

outlined in this report represent some of the key steps that the Defendants must promptly undertake.

The Third-Party Auditor looks forward to discussing the matters addressed in this report with counsel for the Parties at the February 21, 2024 quarterly meeting, and will be available to answer any questions the Parties may have in advance of the meeting.

s/ Grace M. Lopes  
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