

**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)

SETTLEMENT AGREEMENT AND RELEASE

Plaintiffs Charles H., Israel F., and Malik Z.¹, on behalf of themselves and those similarly situated, filed this class-action lawsuit for declaratory, injunctive, and other equitable relief against District of Columbia Public Schools (DCPS), Office of the State Superintendent of Education (OSSE), and the District of Columbia (collectively, Defendants), asserting claims under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et seq.*, its federal and local regulations, 34 C.F.R. § 300, *et seq.*, 5-E D.C.M.R. § 3000, *et seq.*, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), its federal regulations, 34 C.F.R. § 104, *et seq.*, the Americans with Disabilities Act, 42 U.S.C. § 12132, its implementing regulations, and the DC Human Rights Act, D.C. Code § 2-1401, *et seq.*

The Parties each believe that it is in their mutual interest to move forward productively to resolve the issues raised in this class action lawsuit by means other than litigation and to enter into this Settlement Agreement.

¹ The Court permitted all three Named Plaintiffs to proceed under pseudonyms, and they are referred to herein by their pseudonyms.

In reliance upon the representations contained herein, and in consideration of the mutual promises, covenants, and obligations in this Settlement Agreement, and for good and valuable consideration, Plaintiffs and Defendants, through their undersigned counsel, agree and stipulate as follows:

I. DEFINITIONS

For purposes of this Settlement Agreement, the following terms shall have the meanings set forth in this Section. With the exception of the term “Student,” which is used frequently throughout, defined terms are capitalized throughout this Settlement Agreement:

1. **Award Eligibility Period** shall mean the period of time for which a Settlement Class Member is eligible to redeem Compensatory Services awarded under this Settlement Agreement regardless of whether or not they are converted to an Educational Expense Award.

2. **Central Detention Facility (CDF)** shall mean the facility located at 1901 D Street, SE, Washington, DC, 20003.

3. **Correctional Treatment Facility (CTF)** shall mean the facility located at 1901 E Street, SE, Washington, DC, 20003.

4. **Class Notice** shall mean the notice attached in the form of Exhibit 1 to this Settlement Agreement.

5. **Compensatory Services** shall mean awards providing compensatory services and/or related services for instruction and/or services, including Contempt Relief.

6. **Compensatory Relief Subclass** shall mean all persons who (a) are entitled to relief under the Court’s Order of February 16, 2022, ECF No. 101; and/or (b) for any period between March 24, 2020 through August 31, 2021 and/or February 1, 2022 through the Effective Date were (i) entitled to receive special education and/or related services under the IDEA and its federal and local implementing regulations, and (ii) enrolled in the High School at the DOC Facilities.

7. **Compensatory Services Award Letter** shall mean the letter(s) provided to each Settlement Class Member informing them of the Compensatory Services they are entitled to under the terms of this Settlement Agreement.

8. **Complaint** shall mean the Second Amended Complaint, ECF No. 44-3, filed July 21, 2021, and accepted by the Court in a Minute Order on August 5, 2021.

9. **Contempt Relief** shall mean the relief awarded in response to the Court's Order of February 16, 2022.

10. **Court** shall mean the United States District Court for the District of Columbia.

11. **DOC Facilities** shall mean CDF and CTF collectively, including any facilities used in substitution or replacement thereof.

12. **Defendants** shall mean District of Columbia Public Schools (DCPS), Office of the State Superintendent of Education (OSSE), and the District of Columbia collectively.

13. **DOC** shall mean the District of Columbia Department of Corrections.

14. **Education Tablets** shall mean the electronic devices that, among other things, allow students to access Virtual Instruction and Virtual Services.

15. **Educational Expense Award** shall mean an award equal to the monetary value of the Compensatory Services for which the Settlement Class Member is eligible and that can be used on eligible educational expenses. A Settlement Class Member may opt to receive all or part of their Compensatory Services as an Educational Expense Award as specified in Sections V-VI below. Educational Expense Awards can be broadly utilized by the student as provided in paragraph 96. Educational Expense Awards are subject to the Award Eligibility Period and shall be tolled as appropriate pursuant to paragraphs 85-86 and 102-103.

16. **Effective Date** shall mean the date on which all Parties have executed this Settlement Agreement.

17. **Expiration Date** shall mean the date that this Settlement Agreement expires in accordance with Section X below.

18. **Final Court Approval** shall mean the Court's granting of the Parties' motion for final approval of this Settlement Agreement following completion of all procedures required under Federal Rule of Civil Procedure 23, including a class-action fairness hearing.

19. **Free Appropriate Public Education (FAPE)** shall have the meaning set forth in the IDEA, 20 U.S.C. §1400, *et seq.*, its federal regulations, 34 C.F.R. § 300, *et seq.*, and local law and regulations, 5-E D.C.M.R. § 3000, *et seq.*

20. **High School at the DOC Facilities** shall mean the program providing high school education to eligible persons at the DOC Facilities.

21. **Including** shall mean including, but not limited to, the items listed.

22. **Independent Student Work** shall mean written work or computer-based software and/or virtual programs provided to the student to complete on their own.

23. **Individualized Education Program (IEP)** shall have the meaning set forth in 20 U.S.C. § 1414(d)(1)(A) under the IDEA.

24. **Injunctive Relief Subclass** shall mean all persons who, on or after the Effective Date, (a) are entitled to receive special education and/or related services under the IDEA and its federal and local implementing regulations, and (b) are enrolled in the High School at the DOC Facilities.

25. **Local Educational Agency (LEA)** shall have the meaning set forth in 34 C.F.R. § 303.23.

26. **LEA at the DOC Facilities** shall mean the entity designated as the LEA for the High School at the DOC Facilities, or if there is no LEA, the public agency responsible for the provision of FAPE for the High School at the DOC Facilities, including any contractors or subcontractors the entity has retained to provide instruction or related services.

27. **LEA Staff** shall mean employees and contractors or subcontractors of the LEA at the DOC Facilities.

28. **Maya Angelou Public Charter School Academy or Maya Angelou PCS Academy** shall mean the high school operated by the Maya Angelou Public Charter School and See Forever Foundation at the DOC Facilities.

29. **Memorandum of Agreement (MOA)** shall mean the current agreement, and any amendments thereto, entered into between DOC, OSSE, and the LEA at the DOC Facilities, that governs the delivery of special education and related services to eligible high school students at the DOC Facilities, as well as any future agreement or contract to which any District agency is a party governing the delivery of special education and related services to eligible high school students at the DOC Facilities.

30. **Parties** shall mean the Plaintiffs and Defendants collectively.

31. **Personalized Learning Plan** shall mean a holistic, integrated, individually designed plan that provides the student with the academic, social, and emotional supports and modifications necessary for that student to progress towards their academic goals. Personalized Learning Plans are based on an individual student's need and academic abilities and may include academic and/or social emotional interventions as appropriate, including supplemental academic and behavioral supports that provide instruction on targeted prerequisite skill gaps that pose

barriers to accessing grade-level content, developmentally appropriate social-emotional learning skills, and/or instruction delivered individually or in very small groups.

32. **Plaintiffs** shall mean the named plaintiffs Charles H., Israel F., and Malik Z., and all Settlement Class Members, collectively.

33. **Restrictive Housing or Restrictive Housing Unit** shall mean any housing unit at the DOC Facilities outside of the general population where students are placed based on an administrative segregation designation or for disciplinary reasons.

34. **School Day** shall mean any day on which classes are or were offered by the LEA at the DOC Facilities to all students.

35. **School Year** shall mean the period beginning on the first day of instruction of the fall term and ending on the last day of instruction of the spring term of each year.

36. **Service Providers** shall include all individuals providing education-related services, including related and compensatory services, to students.

37. **Settlement Class** shall mean the Compensatory Relief Subclass as defined in paragraph 6 and the Injunctive Relief Subclass as defined in paragraph 24 collectively.

38. **Settlement Class Members** shall mean the persons comprising the Settlement Class.

39. **Student** shall mean any individual who meets the Settlement Class Member definition in paragraph 38.

40. **Summer Term** shall mean the educational term occurring between the end of the spring term and the beginning of the fall term.

41. **Teacher-Facing Instruction** shall mean in-person instruction or Virtual Instruction.

42. **Third-Party Auditor** shall mean the individual, jointly selected by the Parties, who will audit Defendants' compliance with the terms of this Settlement Agreement.

43. **Virtual Instruction or Virtual Services** shall mean instruction or related services provided via synchronous and interactive two-way videoconference.

II. THE PROVISION OF SPECIAL EDUCATION AND RELATED SERVICES

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

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

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.

A. ROOMS AND OTHER FACILITIES

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.

B. REVISION OF POLICIES, PRACTICES, AND PROCEDURES

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

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.

1. Amendments to the Memorandum of Agreement

50. 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;

(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;

(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;

(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;

(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;

(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;

(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;

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

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.

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.

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.

2. Amendments to DOC Policies and Practices

54. 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 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 V and VI.

(b) 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.

55. 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;

(b) The availability of technology necessary to provide Virtual Instruction and Virtual Services;

(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;

(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;

(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;

(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;

(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

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

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.

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.

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.

C. IMPLEMENTATION OF AMENDED POLICIES, PRACTICES, AND PROCEDURES

1. Educational and Related Services Technology

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.

60. 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;

(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;

(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

(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.

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.

2. Instructional Practices

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

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.

64. 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

(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.

(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.

(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.

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

65. 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.

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.

3. Related Services Practices

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.

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

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.

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.

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.

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

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.

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.

74. Defendants shall ensure that the Deputy Director 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 Deputy Director 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.

5. DOC Security Clearance Process

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.

6. Funding for the LEA at the DOC Facilities

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.

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.

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.

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.

III. MONITORING BY OSSE

80. 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;

(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.);

(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.).

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

(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;

(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

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

(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);

(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.

IV. TRAINING ON THE PROVISION OF SPECIAL EDUCATION AND RELATED SERVICES

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.

V. CONTEMPT RELIEF FOR CLASS MEMBERS

82. 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;

(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

(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.

(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.

(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.

(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 88, 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.

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

(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.

(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.

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.

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.

85. 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 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.

86. 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.

(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.

(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). 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.

(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.

87. 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.

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

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.

VI. COMPENSATORY SERVICES FOR CLASS MEMBERS

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.

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.

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.

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.

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.

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

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.

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;

(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

(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).

(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;

(ii) A statement of the hours awarded per service and the current total 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, including, if applicable, time spent participating in mandatory DOC training as provided in paragraph 95;

(iv) An explanation of deadlines and tolling of awards pursuant to paragraphs 100-104;

(v) An explanation of the choice between Compensatory Services and Educational Expense Awards;

(vi) A statement of the Settlement Class Member's eligibility for the educational and support programs outlined in paragraphs 106-109;

(vii) Notice to the Settlement Class Member that their personally identifiable information and education records related to the student's Compensatory Services 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;

(viii) The contact information for Plaintiffs' counsel;

(ix) A current catalog of compensatory service providers that provides details similar to the April 2022 DCPS Family Guide to Independent Services;

(x) The guidance on Educational Expense Awards under paragraph 122; and

(xi) A description of the dispute resolution process described in paragraphs 118 and 121.

(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).

(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).

(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.

(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.

(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.

(h) Within ten (10) days of the mailing, Defendants shall provide Plaintiffs' counsel with a copy of all letters issued under this 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.

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 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.

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.

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.

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.

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.

(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.

(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).

(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.

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 sufficient to show the dates of all periods of incarceration during which the Settlement Class Member believes tolling applies.

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 the process set forth in paragraph 121.

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.

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 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

(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.

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.

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.

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.

VII. DELIVERY AND OVERSIGHT OF CONTEMPT RELIEF AND COMPENSATORY SERVICES AWARDS

A. Personnel

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.

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;

(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;

(c) The data entry into the data system developed under paragraph 113 is comprehensive and timely;

(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;

(ii) Arranged for or coordinated with appropriate providers, vendors, or suppliers;

(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;

(iv) When permitted by DOC facility policies, hand-delivered to Settlement Class Members at the DOC Facilities; and

(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.

(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

(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.

B. Data System

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).

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.

C. Payment Processing and Dispute Resolution

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).

116. 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
- (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.

117. 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.

(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.

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.

119. 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;
- (b) Confirm supporting documentation and expenses are aligned with the terms of the Settlement Agreement;
- (c) Contact the Settlement Class Member if documentation is incomplete or, if not approved, provide a rationale;
- (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;
- (e) Submit the invoice and documentation for second level approval;
and
- (f) Send to the Office of the Chief Financial Officer (OCFO) to initiate payment processing.

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).

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.

D. Monitoring and Compliance

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.

123. 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 approvals/denials, and invoice processing; and

(b) The requirement that the Compensatory Services Outreach Coordinator submit bi-weekly status reports to their supervisor(s).

124. Defendants shall provide the Third-Party Auditor monthly reports of any payment requests that are denied.

VIII. THE CONTINUATION OF EDUCATION AND RELATED SERVICES AT THE DOC FACILITIES DURING LEA TRANSITIONS

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.

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.

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.

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.

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.

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.

**IX. AUDITING OF THIS SETTLEMENT AGREEMENT AND
REPORTS TO THE COURT**

A. AUDITING AND REPORTING BY THE THIRD-PARTY AUDITOR

131. The Parties have jointly chosen a Third-Party Auditor who shall evaluate, report on, and manage ongoing compliance with this Settlement Agreement. Defendants shall conduct specified data collection and reporting activities to facilitate the Third-Party Auditor's review and compliance management. The Third-Party Auditor shall comply with all applicable provisions of the December 6, 2022 Protective Order (ECF No. 157).

132. The Third-Party Auditor shall review Defendants' compliance with this Settlement Agreement for the entire term of the Settlement Agreement, as set forth in this Section. The Third-Party Auditor shall report to the Parties on whether Defendants have satisfied the requirements of the Settlement Agreement. The Third-Party Auditor may utilize other professionals as necessary and reasonable to efficiently carry out the responsibilities set forth in this Settlement Agreement.

133. The Parties have jointly chosen Grace M. Lopes as the Third-Party Auditor for this Settlement Agreement. The Third-Party Auditor shall begin their work no later than ten (10) business days after the Effective Date.

134. The Third-Party Auditor shall formally communicate all findings in the reports described in paragraph 136.

135. The Third-Party Auditor shall be given full and reasonable access to all information necessary to audit the implementation of this Settlement Agreement including the following:

(a) Full access to all records, policies, and practices related to the High School at the DOC Facilities that are provided to, or developed by, OSSE, DOC, any District of Columbia agency, or any entity designated as the LEA at the DOC Facilities;

(b) Full access to all records related to education technology at the High School at the DOC Facilities including documentation related to distribution and functionality of student Education Tablets and the intranet;

(c) Full access to all records of DOC, the LEA at the DOC Facilities, any District of Columbia agency, and/or Service Providers related to the High School at the DOC Facilities, including (i) student attendance logs, (ii) schedules including class schedules and service disruptions, (iii) assessments including performance assessments and reviews, (iv) student progress reports and report cards, including IEP progress reports and reports related to both regular and compensatory instruction, (v) past and current IEPs, (vi) missed instruction and services, (vii) policies, practices and procedures, (viii) Independent Student Work policies and practices, particularly as related to paragraph 64, and (ix) any complaints or communications from students regarding the subject matter of this Settlement Agreement;

(d) Full access to records showing the certification and credentials of teachers and Service Providers of the LEA at the DOC Facilities;

(e) Full access to all relevant areas of the DOC Facilities, including the Restrictive Housing Units, other close custody units, and other secure units;

(f) Full access to observe (i) delivery of all education both in-person instruction and Virtual Instruction, (ii) Independent Student Work, (iii) movement to and

from classes, and (iv) other activities conducted by LEA Staff and DOC staff for purposes of delivery of education and services at the High School at the DOC Facilities;

(g) The ability to observe students during the provision of Compensatory Services and during the delivery of related services, with the student's consent, except for individual counseling services;

(h) The ability to conduct confidential in-person or virtual interviews of students, as needed;

(i) The ability to conduct confidential in-person or virtual interviews of LEA Staff and DOC staff, including administrators, teachers, and Service Providers, as needed;

(j) Full access to financial records if necessary to determine compliance with or implementation of this Settlement Agreement;

(k) The data collected pursuant to paragraph 144;

(l) The data collected in the tracking system developed in paragraph 113;

(m) OSSE reports pursuant to Section III; and

(n) The Third-Party Auditor may submit written requests to Defendants seeking access to additional records, facilities, students, or staff to fulfill the Auditor's responsibilities under this Settlement Agreement. Within ten (10) calendar days of submission of the request, Defendants shall grant the requested access or submit the issue to dispute resolution under Section XI.

136. The Third-Party Auditor shall submit quarterly reports to Plaintiffs and Defendants.

The Parties agree to protect against the disclosure of any confidential information contained in

these quarterly reports. The first report shall be issued no more than ninety (90) days after the Effective Date of this Settlement Agreement. Each subsequent report shall be issued within thirty (30) days after the close of each calendar quarter including a final report within thirty (30) days of the Expiration Date of this Settlement Agreement. Each report shall provide details as follows:

(a) Compliance Evaluation: The reports shall include compliance evaluations and findings regarding Defendants' compliance for each provision of Sections II-VIII of the Settlement Agreement.

(b) Non-Compliance Findings, Remedial Measures, and Deadlines: For findings of noncompliance, the Third-Party Auditor shall develop targeted, non-binding remedial measures and suggested timelines for the completion of such remedial measures by Defendants.

137. Implementation of the Third-Party Auditor's Recommended Remedial Measures: If Defendants choose not to implement any of the recommended remedial measures set forth in the Third-Party Auditor's reports on the suggested timeline, Defendants shall submit the matter within five (5) business days of the report to dispute resolution under Section XI.

138. Quarterly Meetings between the Parties and the Third-Party Auditor: The Third-Party Auditor and counsel for the Parties shall meet in-person or virtually within fifteen (15) days following the issuance of the Third-Party Auditor's quarterly reports.

139. In the event the Third-Party Auditor becomes unavailable to carry out the role for any reason, the Parties shall promptly meet and confer to identify a mutually acceptable replacement Auditor.

140. Defendants shall bear all costs of the Third-Party Auditor.

B. DATA COLLECTION

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.

142. Defendants shall provide monthly reports to the Plaintiffs and Third-Party Auditor concerning their compliance with the contempt relief provisions in Section V.

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.

144. 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;
- (b) Graduation rates and the date upon which each student graduates;

(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;

(d) Service log or tracker for related services;

(e) Instances in which a student does not attend classes or related services sessions, consistent with paragraphs 65 and 70; and

(f) Students' credits, educational levels, and receipt of classroom instructional hours.

X. TERM OF SETTLEMENT AGREEMENT

145. This Settlement Agreement shall expire on August 1, 2025 (Expiration Date). However, if, prior to the Expiration Date, a Party has moved the Court to enforce or construe the Settlement Agreement, and that motion remains pending on the Expiration Date, the Parties agree that the Expiration Date does not affect the Court's jurisdiction to adjudicate the pending motion(s), order appropriate relief, and, if relief is granted, ensure compliance with any resulting order(s). With the exception of motions to enforce or construe the Settlement Agreement that are pending on the Expiration Date, motions to enforce any court orders related to those pending motions, or related motions for an award of litigation costs, including attorneys' fees, the Parties agree that no motion to enforce or construe any Settlement Agreement provisions can be filed in Court after the Expiration Date.

146. The expiration of the Settlement Agreement on the Expiration Date does not affect entitlement to Contempt Relief or Compensatory Services Awards issued pursuant to Sections V and/or VI of this Settlement Agreement. Any disputes that arise related to these provisions after the Expiration Date are subject to the dispute resolution provisions in paragraph 121.

147. The Parties will jointly request that the Court include the following term in the Court's Final Approval Order:

Retention of Jurisdiction. Until further order of the Court, the Court shall retain jurisdiction of this matter to make any necessary orders enforcing or construing the Settlement Agreement and to adjudicate any motion(s) pending prior to or at the Expiration Date of the Settlement Agreement, including to order appropriate relief which may include an award of litigation costs, including attorneys' fees, and, if relief is granted, to ensure compliance with any resulting order(s).

**XI. DISPUTE RESOLUTION OF ISSUES ARISING UNDER
THIS SETTLEMENT AGREEMENT**

148. Before any Party moves the Court to enforce or construe this Settlement Agreement, the Party shall give the other Party and the Third-Party Auditor twenty (20) days' written notice of its intention. During that period, the Parties, with the assistance of the Third-Party Auditor, shall negotiate in good faith to resolve the dispute without seeking a decision from the Court.

149. With respect to any dispute that arises between the Parties that cannot be resolved during the negotiation period, the Third-Party Auditor shall issue a written recommendation to the Parties with respect to that dispute within twenty (20) days of the end of the negotiation period under paragraph 148. In the event that the dispute cannot be resolved after receipt of the recommendation by the Third-Party Auditor, within five (5) days, the Parties shall move the Court for a referral to the Circuit Court Mediation Program unless, within that time, a Party provides written notice of its decision to opt out of mediation. If no Party opts out of mediation, the Parties shall participate in a mediation session facilitated by the Circuit Court Mediation Program as early as possible based on the Mediation Program's availability. The Parties shall meet and confer with

the Mediator(s) and attempt to negotiate a resolution of the dispute for a period of no more than fifteen (15) business days, which may be extended by agreement of the Parties. If no resolution is reached within the mediation period or any extension thereof, or there has been an opt out of mediation, a Party may seek relief from the Court after first notifying the other Party in writing of the intention to seek such relief. Either Party may submit any reports or recommendations provided by the Third-Party Auditor to the Court.

150. In seeking relief from the Court to enforce the Settlement Agreement, a Party shall not seek contempt relief except that contempt relief may be sought for violation of any order issued by the Court in response to a motion seeking to enforce the terms of this Settlement Agreement.

XII. PLAINTIFFS' ATTORNEYS' FEES AND EXPENSES

151. Within forty-five (45) days of Final Court Approval, Defendants shall pay Plaintiffs the amount of \$ 2,500,000 for all litigation costs, including attorneys' fees, through the Expiration Date, except as provided in paragraph 152. Within thirty (30) days of the filing of this Settlement Agreement with a joint motion for preliminary approval, Plaintiffs shall file an unopposed motion for an award of litigation costs, including attorneys' fees, for the agreed upon amount, setting forth that the class will be notified of the litigation costs agreed upon by the Parties, the basis of the litigation costs, and of the right of any class member to object to the amount, pursuant to Rule 23(h) of the Federal Rules of Civil Procedure.

152. Solely as a compromise to achieve the settlement set forth in this Settlement Agreement, Plaintiffs will not seek further litigation costs, including attorneys' fees, for monitoring work undertaken during the term of this Settlement Agreement. The agreement that Plaintiffs shall not seek further litigation costs shall not be used by either Party for any other purpose outside this litigation. Plaintiffs, however, reserve the right to seek litigation costs, including attorneys' fees, in connection with any enforcement motion filed in Court after the date

of Final Court Approval on which they are entitled to all or part of their fees in accordance with applicable law, provided that Plaintiffs comply with the dispute resolution provisions in paragraphs 148-150. Plaintiffs shall not be entitled to seek fees on any motion that is denied by the Court, or for which they are not granted any relief, unless that motion is settled in their favor or, as a result of its filing, the District voluntarily or unilaterally changes its position on the matter that is the subject of the motion.

XIII. PROCEDURE FOR CLASS SETTLEMENT

A. CERTIFICATION OF THE SETTLEMENT CLASS

153. Plaintiffs, without Defendants' opposition, shall move for certification of the Settlement Class pursuant to Fed. R. Civ. P. 23.

B. PRELIMINARY APPROVAL BY THE COURT OF THIS SETTLEMENT AGREEMENT

154. Counsel for the Parties agree that they shall take all reasonable steps to ensure that this Settlement Agreement is approved by the Court and becomes effective. Specifically, within thirty (30) days of the Effective Date, the Parties shall, through a joint motion, (i) file the Agreement, including the attached Exhibits, with the Court, (ii) move for Preliminary Approval of this Agreement in the Court, and (iii) request entry by the Court, on the earliest date acceptable to the Court, of the Proposed Order Granting Motion for Preliminary Approval of Class Settlement, Certifying Settlement Class, Directing Issuance of Settlement Notice, and Scheduling Hearing on Final Approval.

C. NOTICE TO PLAINTIFF SETTLEMENT CLASS MEMBERS

155. The Parties shall jointly request that the Court approve the Class Notice attached as Exhibit 1 and that, upon the Court's approval, the notice be placed on the Court's website

(www.dcd.uscourts.gov/cases-interest) by the Clerk of the Court and that the Clerk state in the docket for this case the date on which that notice was placed on the website.

156. Within ten (10) business days of the Court's approval of the Class Notice, Defendants shall:

(a) Post the Class Notice at CDF and CTF in the law library, classrooms, and any other spaces where Class Members receive educational or related services;

(b) Hand deliver a copy of the Class Notice to every Settlement Class Member residing at the DOC Facilities; and

(c) Mail the Class Notice via first class mail, postage prepaid, to the current address(es) of each Settlement Class Member using good faith best efforts to obtain a current address as set forth in subparagraphs 97(a)(i)-(iii).

157. Defendants shall bear all costs for publication and mailing of the items in paragraph 156. In all cases, the Class Notice will be posted or distributed in both English and Spanish. The Spanish version will be provided to Plaintiffs' counsel with fifteen (15) days of the Effective Date for their review and comment.

158. At least fourteen (14) days before the Fairness Hearing, counsel for Defendants and Plaintiffs shall jointly submit a report to the Court to set forth the manner in which they disseminated the Class Notice and components thereof consistent with the Settlement Agreement.

159. Upon the Court's Final Approval of this Settlement Agreement and for the duration of the Term of the Agreement, Defendants shall make available the Settlement Agreement, including all its exhibits, in the law library and classrooms at the DOC Facilities.

D. FAIRNESS HEARING

160. The Parties shall jointly request that the Court schedule and conduct a Fairness Hearing to address the fairness of this Settlement Agreement settling Plaintiffs' claims against Defendants and to decide whether there will be Final Approval of the settlement embodied in this Settlement Agreement. Prior to the Fairness Hearing, the Parties shall jointly move for Final Approval of this Settlement Agreement.

161. The Parties shall request that the Court conduct the Fairness Hearing both in person and with the option to participate virtually and by telephone.

162. The Parties agree that all objections and requests to be heard shall be submitted to the Court and counsel for the Parties in writing at least fourteen (14) days before the scheduled fairness hearing.

163. Defendants shall take all reasonable measures to ensure the virtual, telephonic, or in-person participation at the Fairness Hearing for any Settlement Class Member at a DOC Facility who wishes to attend and/or submits a request to be heard.

XIV. MISCELLANEOUS PROVISIONS

164. This Settlement Agreement resolves, settles, and satisfies all claims by Plaintiffs against Defendants in the Lawsuit. The Parties agree that this Settlement Agreement is not a consent decree.

165. General Release: Effective as of the dismissal of this Lawsuit as provided for in paragraph 173, Plaintiffs hereby fully release, forgive, and discharge the Defendants, including the District of Columbia, its current, former, and future officers, agents, attorneys, officials, servants and employees for all claims that were or could have been asserted by Plaintiffs in any forum based on the facts as alleged in the Complaint under any theory of liability (including any request for attorneys' fees and costs in prosecuting this case). This release does not apply to any claim arising

from facts that were not alleged in the Complaint. In entering into this Settlement Agreement, there is no admission of liability by Defendants or admission of any factual contentions that have been asserted by Plaintiffs in this litigation. The Plaintiffs do not suggest or concede a lack of merit to their claims. The Defendants do not accept or concede any factual contention that has been asserted by the Plaintiffs in this litigation.

166. No Third-Party Beneficiary Right: This Settlement Agreement does not and is not intended to create any rights that can be relied upon or enforced by individuals who are not Parties to this Lawsuit. The Parties stipulate, agree, and acknowledge that this Settlement Agreement is not intended to create any third-party beneficiaries.

167. Confidentiality: Certain information and material provided to Plaintiffs' counsel and the Third-Party Auditor under this settlement agreement, and designated as such by Defendants, shall be treated as confidential. Such material shall be treated as confidential in conformance with the December 6, 2022 Protective Order entered by the Court (ECF No. 157).

168. The District will provide personally identifiable information related to individual students to Plaintiffs' counsel and the Third-Party Auditor to the extent necessary to effectuate the terms of this Settlement Agreement. All data sharing between the District and Plaintiffs' counsel, and the District and the Third-Party Auditor shall be done in compliance with all federal and local requirements, including the Family Educational Rights and Privacy Act (FERPA). Data sharing under this Settlement Agreement shall be implemented through written data sharing agreements as required by FERPA. Plaintiffs' counsel and the Third-Party Auditor must sign data sharing agreements before receiving any information or data protected by FERPA. Any disputes that arise concerning the data sharing agreement during the term of the Settlement Agreement shall be subject to the dispute resolution provision of paragraph 149.

169. Failure to Enforce: Failure by either party to enforce this Settlement Agreement or any provision or deadline thereof, shall not be construed as a waiver of its right to enforce that or any other provisions or deadlines of the Settlement Agreement.

170. This Settlement Agreement shall be binding upon and shall inure to the benefit of the successors, assigns, heirs, corporate parents, subsidiaries, and affiliates of each Party. No assignment or delegation of the obligations hereunder shall release the assigning Party from its obligations under this Settlement Agreement.

171. Severability: The provisions of this Settlement Agreement shall be severable in the event that any provision is found to be invalid or unenforceable. The invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions herein. The Parties shall work together to replace any provision of this Settlement Agreement voided or found unenforceable with a valid and enforceable provision that will achieve, to the extent possible, the original purposes of the voided or unenforceable provision. If within sixty (60) days of the voiding or finding of unenforceability the Parties are unable to agree upon a replacement provision, the Parties shall jointly move the Court for a referral to the Circuit Court Mediation Program, and if referred, participate in a mediation session facilitated by the Circuit Court Mediation Program as early as possible based on the Mediation Program's availability. The Parties shall meet and confer with the mediator(s) and attempt to negotiate a resolution of the dispute for a period of no more than fifteen (15) business days, which may be extended by agreement of the Parties.

172. Duty to Defend the Settlement Agreement: The Parties and their counsel agree to defend this Settlement Agreement. Counsel for all Parties shall take no position contrary to or inconsistent with the terms of the Settlement Agreement.

173. Dismissal With Prejudice: The Parties shall file a Stipulation of Dismissal of the Lawsuit with prejudice within fifteen (15) days of the Expiration Date if there are no pending motions to enforce or construe the Settlement Agreement or motions for attorneys' fees or expenses. If there is a motion(s) to enforce or construe the Settlement Agreement or motions for attorneys' fees or expenses pending on the Expiration Date, the Parties shall file a Stipulation of Dismissal of the Lawsuit with prejudice within fifteen (15) days of (a) the Court finding Plaintiffs are not entitled to any relief on such motion(s), or (b) in the event Court-ordered relief is provided to Plaintiffs, the Court finding that Defendants have fully complied with all Court-ordered relief, or upon joint agreement by the Parties. In the event that there are multiple pending motions, the Stipulation of Dismissal of the Lawsuit with prejudice shall be filed within fifteen (15) days of the latest event specified in (a) or (b) above.

174. After the dismissal with prejudice of the lawsuit by the Court, any member of the Compensatory Education Subclass who wants to seek a judicial remedy to obtain the relief provided by sections V and/or VI of this Settlement Agreement may file an action in the Superior Court of the District of Columbia after engaging in the Special Education Mediation process offered by OSSE's Office of Dispute Resolution in accordance with paragraph 121.

175. Questions regarding the interpretation of this Settlement Agreement shall not be resolved against any Party on the ground that this Settlement Agreement has been drafted by that Party. This Settlement Agreement is the result of review, negotiation, and compromise by each Party.

176. This Settlement Agreement may be modified by mutual agreement of the Parties, but such modification to the agreement must be in writing, duly and properly signed by all Parties, and shall not be effective until approved by the Court.

177. This Settlement Agreement contains the entire agreement between the Parties relating to the subject matters addressed herein and supersedes all prior written and oral agreements and understandings between the Parties. Each Party expressly acknowledges and represents that in entering into this Settlement Agreement, it is not relying upon any statement, representation, agreement or understanding that is not contained in this Settlement Agreement. This Settlement Agreement creates no obligations or duties on the part of the Parties other than as specifically stated in this Settlement Agreement.

178. This Settlement Agreement is subject to and conditioned on a fairness hearing conducted by the Court and the final approval of this Settlement Agreement.

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

180. Provided that all Parties execute a copy of this Settlement Agreement, the Settlement Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Executed copies of this Settlement Agreement may be delivered amongst the Parties by email or other comparable means. This Settlement Agreement shall be deemed fully executed and entered into on the date of execution by the last signatory.

181. For purposes for this Settlement Agreement, the Parties agree that the Court has jurisdiction over the Parties and subject matter of this litigation pursuant to 28 U.S.C. §§ 1367(a), 1343, 1331; and 20 U.S.C. § 1415(i)(2).

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

AGREED THIS 22nd DAY OF SEPTEMBER, 2023:

/s/ Ifetayo Belle

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Attorney General for the District of Columbia

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Table of Exhibits to the Settlement Agreement

| Exhibit | Description |
|----------------|--|
| 1 | Class Notice |
| 2 | December 6, 2022 Protective Order entered by the Court (ECF No. 157) |
| 3 | Data Sources and Sample Calculations for the Calculation of Compensatory Services Awards |
| 4 | List of Presumptively Approved Educational Expenses |