UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

COMMUNITY LEGAL AID SOCIETY, INC.,

Plaintiff,

v.

ADULT & PRISON EDUCATION RESOURCES WORKGROUP, *et al*.,

Defendants.

Civil Action No. 24-615-JLH-SRF

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Legislative Materials

Regulations

Other Authorities

Students with disabilities in adult correctional facilities do not forfeit their right to a free appropriate public education under the Individuals with Disabilities Education Act (IDEA). Indeed, their right to receive individualized special education and related services to make meaningful academic progress continues, except in rare circumstances.

Plaintiff alleges that Defendants systemically violate the IDEA rights of students with disabilities incarcerated in two of Delaware's adult correctional facilities. The United States submits this Statement of Interest under 28 U.S.C. § 517 to clarify the rights afforded to students with disabilities in adult correctional facilities, explain why Plaintiff's allegations of systemic IDEA violations need not meet the IDEA's exhaustion requirement, specify how state agencies like Defendants share responsibility for delivering special education to eligible students, and identify the narrow circumstances where the IDEA relieves correctional facilities from educating students in the least restrictive environment.

Interest of the United States

The United States is charged under the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997, and the Violent Crime Control and Law Enforcement Act (Section 12601), 34 U.S.C. § 12601, with enforcing the constitutional and federal statutory rights of children in institutions. CRIPA and Section 12601 authorize the Justice Department to investigate and remedy systemic violations of those rights in juvenile justice and adult correctional facilities, including children's right to receive special education and related services under the IDEA.[1] The United States submits this Statement of Interest to assist the Court in its

[1] The United States is currently using its authority to address IDEA violations in the Texas Juvenile Justice Department's post-adjudication facilities and the Manson Youth Institution in Connecticut. Letter from Kristen Clarke, Assistant Att'y Gen., C.R. Div., U.S. Dep't of Just., to Greg Abbott, Governor of Tex. (Aug. 1, 2024), https://perma.cc/W44Q-EMRX (announcing

analysis of Plaintiff's Motion for Preliminary Injunction (D.I. 15), Defendants' Motion to Dismiss (D.I. 47), and Memoranda in Support thereof (D.I.16, 32, 43, 48, 49).

Background

Delaware's Department of Corrections (DDOC) operates a "unitary system" that houses individuals in the same correctional facilities both before trial and after sentencing. D.I. 1, Compl. ¶ 62. This case concerns two of Delaware's adult correctional facilities: the Howard R. Young Correctional Institution (Young) and James T. Vaughn Correctional Center (Vaughn). *Id.* Both facilities house 18 to 22-year-old students. *Id.*

Plaintiff Community Legal Aid Society, Inc. (CLASI) is Delaware's Protection and Advocacy Agency (P&A). *Id.* ¶ 9. In its role as the state's P&A, CLASI represents young adults with disabilities incarcerated at Young and Vaughn who may have been denied a free appropriate public education under the IDEA. *Id*.

On May 23, 2024, CLASI sued six Defendants, including the Adult and Prison Education Resources Workgroup (APER), a division of the Delaware Department of Education (DDOE), that jointly administers the Prison Education Program with DDOC. *Id.* ¶¶ 11–12, 16, 20.[2] CLASI's Complaint seeks a declaratory judgment that Defendants have violated the IDEA. *Id.* ¶ 276(a). It also requests preliminary and permanent injunctions ordering Defendants to, among other things, "develop and implement adequate and effective policies and procedures to provide [a free appropriate public education] to all eligible students regardless of their housing location" and ensure that students are provided that free appropriate public education. *Id.* ¶ 276(b). Finally,

findings); Letter from Kristen Clarke, Assistant Att'y Gen., C.R. Div., U.S. Dep't of Just., to Ned Lamont, Governor of Conn. (Dec. 21, 2021), https://perma.cc/4NV9-45K7 (same).

[2] The other three Defendants are APER's Director, Maureen Forde-Whelan, in her official capacity; Delaware Secretary of Education, Mark A. Holodick, in his official capacity; and DDOC's Commissioner, Terra Taylor, in her official capacity. D.I. 1, Compl. ¶¶ 15, 19, 21.

the Complaint asks the Court to appoint a Special Master to monitor and report on Defendants' compliance with Court orders.

On May 23, 2024, CLASI also filed a Motion for Preliminary Injunction (D.I. 15, 16) seeking more immediate relief. Along with other requests, the Motion asks this Court to order Defendants to properly evaluate, develop Individualized Education Programs (IEPs) for, and provide appropriate special education and related services to all students with disabilities housed at Young and Vaughn. D.I. 16 at 1–3. The Motion also asks this Court to direct Defendants to file a detailed plan for compliance and regular reports detailing their progress towards compliance. *Id.* at 3.

CLASI alleges that Defendants systematically deprive students with disabilities incarcerated at Vaughn and Young of a free appropriate public education in several ways. CLASI alleges that:

- Upon a student's entry into a Delaware correctional facility, APER fails to provide services comparable to those described in IEPs from prior schools. D.I. 1, Compl. ¶¶ 47–48.
- APER fails to timely and adequately evaluate students with disabilities in all areas of need. *Id.* ¶¶ 78, 98, 248.
- APER fails to timely develop appropriate IEPs for students with disabilities based on their individualized needs. And when it does develop IEPs, they do not provide students with sufficient specially designed instruction, related services, supplementary aids and services, and extended school year services in the least restrictive environment. *Id.* ¶¶ 77, 249. Indeed, CLASI alleges that all APER-developed IEPs include identical cut-and-paste language addressing the least restrictive environment requirement and that APER does not actually provide educational placement options. *Id.* ¶ 95.
- APER fails to implement IEPs as written. For example, in the rare instance where a student's IEP includes related services or supplementary aids and services, APER generally fails to provide those services. *Id.* ¶¶ 87, 250.
- Where a student is facing a disciplinary change of placement, APER fails to conduct manifestation determination reviews. *Id.* ¶¶ 96–97, 251.
- APER fails to perform annual IEP reviews. *Id.* ¶¶ 98, 252.

- APER fails to reevaluate students with disabilities at least every three years. *Id.* ¶¶ 98, 253.
- APER fails to comply with numerous other procedural requirements necessary to meaningfully involve students and their parents in the IEP process. *Id.* ¶¶ 99, 254.

All these claims allege systemic violations of the IDEA.

In their Opposition to the Motion for Preliminary Injunction, Defendants maintain that CLASI has standing to pursue claims neither in its own name nor through associational or organizational standing. D.I. 32 at 6–8. Defendants also contend that this Court lacks subject matter jurisdiction because CLASI has not yet satisfied the IDEA's exhaustion requirement. *Id.* at 9–10. Finally, Defendants argue this Court should deny CLASI's request for preliminary and permanent injunctions because CLASI is not substantially likely to succeed on the merits and will not suffer irreparable harm. *Id*. at 10–19. Defendants assert that they do not systemically violate the IDEA as CLASI alleges. *Id.*

Defendants' subsequent Motion to Dismiss (D.I. 47) largely tracks the arguments advanced in Defendants' Opposition to the Motion for Preliminary Injunction.

This Statement of Interest addresses issues raised under the IDEA only.[3]

Discussion

1. The IDEA requires Defendants to provide special education and related services to eligible students with disabilities in adult correctional facilities.

The IDEA ensures that all eligible students with disabilities receive a free appropriate public education.[4] That education includes specially designed instruction, along with related

[3] The United States' silence on other issues is not intended to express any view or assessment of those issues.

[4] Both the IDEA and Delaware law require students with disabilities to receive a free appropriate public education until their twenty-second birthday. *See St. Johnsbury Acad. v. D.H.*, 240 F.3d 163 (2d Cir. 2001) (citing 20 U.S.C. § 1412(a)(1)(A)) (explaining that a free appropriate public

services to permit students to benefit from it. 20 U.S.C. § 1401(9), (26), (29); *see also Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176, 203 (1982). Each student receives an IEP, which is the "centerpiece of the [IDEA's] education delivery system." *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 391 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988)) (internal quotation marks omitted). IEPs must tailor special education supports to a student's unique needs so that they may "advance appropriately toward [achieving] the[ir] annual goals" and "make progress in the general education curriculum." *Id.* (citing *Rowley*, 481 U.S. at 181); *see also* 20 U.S.C. § 1414(d)(1)(A)(i)(IV). The IDEA's requirements apply to "all political subdivisions of the State involved in the education of children with disabilities," including "State and local juvenile and adult correctional facilities," 34 C.F.R. § 300.2(a), (b)(1)(iv), with rare exceptions not applicable here.[5]

Special education is uniquely important for students with disabilities in correctional facilities.[6] Thirty to eighty percent of children and young adults in these facilities have disabilities, far higher than the approximately 13 percent in public schools. Nat'l Evaluation & Tech. Assistance Ctr. for Child. & Youth Who Are Neglected, Delinquent, or At-Risk, *NDTAC Fact Sheet: Youth with Special Educ. Needs in Just. Settings* 1 (Dec. 2014),

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education must be provided to all students with disabilities "begin[ning] on a child's third birthday and end[ing] on the last day of [their] 21st year (which culminates in [their] 22nd birthday)"); 14 Del. C. §§ 3101(1)–(2), (5), 3120 (also providing IDEA eligibility through age 22).

[5] The IDEA provides certain limited exceptions for older students and students convicted as adults and incarcerated in adult prisons that are not at issue here. *See* 20 U.S.C. §§ 1412(a)(1)(B), 1414(a)(d)(7)(A); 34 C.F.R. §§ 300.102(a)(2), 300.324(d)(1)(i), (ii). Plaintiff does not appear to seek relief related to these exceptions.

[6] The term "correctional facilities" is used here to include the range of facilities housing students with disabilities: juvenile justice detention and commitment facilities and adult jails and prisons.

https://perma.cc/9KER-MW97. Compared to children without disabilities in correctional facilities, those with disabilities have poorer education and employment outcomes after their release, including being less likely to work or attend educational programs upon their return to the community. *See* Michael Bullis et al., *The Importance of Getting Started Right: Further Examination of the Facility-to-Community Transition of Formerly Incarcerated Youth*, 38 J. Special Ed. 80, 91 (2004), https://perma.cc/G2ZH-PEPA; Matthew Saleh & LaWanda Cook, *Vocational Rehab., Youth Tech., Assistance Ctr.* 2–3 (2020), https://perma.cc/2M58-ZRNZ; Heather Griller Clark et al., Nat'l Evaluation & Tech. Assistance Ctr. for Child. & Youth Who Are Neglected, Delinquent, or At-Risk, *Transition Toolkit 3.0: Meeting the Educ. Needs of Youth Exposed to the Juv. Just. System* 6 (Dec. 1, 2016), https://perma.cc/8RUA-FFXW.

Quality educational services can be important to enable children and young adults to successfully transition back home, while decreasing the likelihood of recidivism. *See* Regina M. Foley, *Academic Characteristics of Incarcerated Youth & Correctional Educ. Programs: A Literature Review*, 9 J. Emotional & Behav. Disorders 248, 248–49 (2001); Lois M. Davis et al., RAND CORP*, Evaluating the Effectiveness of Correction Educ.: A Metanalysis of Programs that Provide Educ. to Incarcerated Adults* xvi–xvii (2003), https://perma.cc/B3HY-FYHN. Special education services for young adults with disabilities in correctional facilities may be their last opportunity to receive specialized support to make meaningful academic progress before they lose eligibility under the IDEA.

2. The IDEA's exhaustion requirement does not apply when systemic violations threaten the statute's basic goals.

To ensure that each eligible child receives a free appropriate public education, the IDEA provides multiple options for families and school systems to resolve disputes about recommended supports and services. Options include filing a complaint with the state

educational agency, requesting mediation, participating in an impartial due process hearing, and appealing hearing decisions to the state educational agency. 20 U.S.C. § 1415(b)(6)–(7), (e), (f), (g). If the dispute persists after an impartial hearing and an appeal if a local educational agency conducted the hearing, the aggrieved party can sue in state or federal court. *Id.* § 1415(i)(2)(A). While the IDEA does not "restrict or limit the rights, procedures, and remedies" available under other federal laws, such as the Americans with Disabilities Act or Section 504 of the Rehabilitation Act of 1973, claimants seeking relief available under the IDEA must exhaust the IDEA's procedures before initiating any civil action under those other statutes. *Id.* § 1415(l).

In *Honig v. Doe*, the Supreme Court recognized two exceptions to the IDEA's exhaustion requirement: futility and inadequacy. 484 U.S. 305, 327 (1988) ("[P]arents may bypass the administrative process where exhaustion would be futile or inadequate."). As explained in the House Report for a 1986 precursor to the IDEA—the source of the IDEA's current exhaustion provision—exhaustion should be excused when:

> (1) it would be futile to use the due process procedures (e.g., an agency has failed to provide services specified in the child's individualized educational program . . . or an agency has abridged a handicapped child's procedural rights . . .); (2) an agency has adopted a policy or pursued a practice of general applicability that is contrary to the law; (3) it is improbable that adequate relief can be obtained by pursuing administrative remedies (e.g., the hearing officer lacks the authority to grant the relief sought); and (4) an emergency situation exists (e.g., the failure to take immediate action will adversely affect a child's mental or physical health).

H.R. REP. NO. 99-296, at 7 (1985). In the Senate Report on that 1986 statute, Congress also noted that exhaustion would not be required when proceedings would be futile. S. REP. NO. 99-112, at 15 (1985). Congress has twice ratified *Honig*'s interpretation of the IDEA's exhaustion requirement as having two exceptions by reenacting the IDEA's relevant text without material change. *See* Individuals with Disabilities Educ. Improvement Act of 2004, Pub. L. No. 108-446,

§ 101, 118 Stat. 2647, 2723–24; Individuals with Disabilities Educ. Act Amendments of 1997, Pub. L. No. 105–17, § 101, 111 Stat. 37, 92.

Consistent with *Honig*, the Second, Third, Ninth, and Tenth Circuits have each recognized a systemic violations exception to the IDEA's exhaustion requirement as an example of either futility or inadequacy or both. *See, e.g.*, *Beth V. v. Carroll*, 87 F.3d 80 (3d Cir. 1996); *J.S. ex rel. N.S. v. Attica Cent. Sch.*, 386 F.3d 107 (2d Cir. 2004); *Hoeft v. Tucson Unified Sch. Dist.*, 967 F.2d 1298 (9th Cir. 1992); *McQueen ex rel. McQueen v. Colo. Springs Sch. Dist. No. 11*, 488 F.3d 868 (10th Cir. 2007); *see also Roe v. Healey*, 78 F.4th 11, 25 (1st Cir. 2023) (deciding the case without addressing whether to recognize a systemic violations exception). Systemic violations are "so serious and pervasive" that they challenge the IDEA's "basic goals . . . on a system-wide basis." *See Hoeft*, 967 F.2d at 1304–05 (finding that plaintiffs' complaint—which focused on alleged violations in only one component of the district's special education program, extended year services—"do not rise to a truly systemic level in the sense that IDEA's basic goals are threatened on a system-wide basis"). Such violations render the IDEA's administrative process futile because impartial hearing officers lack authority to order a school district to alter its system-wide policies, procedures, or practices. *See Beth V.*, 87 F.3d at 89 ("In the IDEA § 1415 context, plaintiffs may thus be excused from the pursuit of administrative remedies where they allege systemic legal deficiencies and, correspondingly, request system-wide relief that cannot be provided (or even addressed) through the administrative process."); *see also N.S.*, 386 F.3d at 114 ("[T]he futility exception has been applied in cases of alleged systemic violations, and . . . such cases are often class actions."). Administrative remedies for these types of violations are also "generally inadequate where structural, systemic reforms are sought" because the IDEA's impartial hearing process tailors remedies to individual violations related to

a specific child. *Hoeft*, 967 F.2d at 1309; *see also McQueen*, 488 F.3d at 874 ("The role of the § 1415 process is to resolve a complaint about the education of a specific child.").

Defendants suggest that the systemic violations exception is limited to allegations challenging a "policy that threatens the IDEA's goals." D.I. 48 at 11–12. But nothing in the statute, its legislative history,[7] or subsequent case law supports Defendants' manufactured distinction between unlawful policies and systemic implementation failures. Indeed, Defendants do not point to any. *Id.* When plaintiffs challenge systemic violations—as CLASI does here, *see* D.I. 1, ¶¶ 77–99—they need not satisfy the IDEA's exhaustion requirement. *See, e.g.*, *J.G. v. Bd. of Educ. of Rochester City Sch. Dist*., 830 F.2d 444, 446–47 (2d Cir. 1987) (recognizing a systemic violations exception "when the wrongdoing complained of is inherent in the program"); *New Mexico Ass'n for Retarded Citizens v. New Mexico*, 678 F.2d 847, 851 (10th Cir. 1982) ("The gravamen of [plaintiff's] lawsuit is that the entire special education service system offered by the State is infirm."). Such violations threaten the IDEA's basic goal: providing all eligible students with a free appropriate public education.

3. Defendants share responsibility for providing special education—including related services—to all IDEA-eligible children detained or incarcerated in Delaware's adult prisons.

While acknowledging that DDOE and DDOC are "jointly responsible" for administering the Prison Education Program, D.I. 32 at 14, Defendants DDOE and APER nevertheless duck allegations that they do not provide related services by ascribing that responsibility solely to DDOC. D.I. 48 at 17 ("DDOC has exclusive jurisdiction over the care, charge, custody, control,

[7] H.R. REP. NO. 99-296, at 7 (1985) (recognizing as an exception to the IDEA's exhaustion requirement when "an agency has adopted a policy or *pursued a practice* of general applicability that is contrary to the law") (emphasis added).

management, administration, and supervision of 'diagnostic and treatment programs.'"). The IDEA does not allow such finger pointing.

Students with disabilities detained or incarcerated in Delaware's correctional facilities are provided educational services—including special education and related services—through the Prison Education Program. *See* 11 Del. C. § 6531A(a). DDOE, with the help of APER, jointly runs this program with DDOC. *Id.* ("The Department of Education and the Department of Correction shall be jointly responsible for the administration of a prison education program."); *see also* D.I. 33, Decl. of Maureen Wheelan ¶ 5 ("The State of Delaware's Prison Education Program is an educational program administered jointly by APER and [DDOC]."). Because DDOE and DDOC are "political subdivisions of the State . . . involved in the education of children with disabilities," they are each obligated to ensure that students with disabilities at Young and Vaughn receive a free appropriate public education. *See* 34 C.F.R. § 300.2(b)(1)(iv).

When a non-educational public agency like DDOC and an educational agency like DDOE share responsibility for providing special education and related services to detained or incarcerated students with disabilities, the IDEA requires "an interagency agreement or other mechanism for interagency coordination" between each responsible agency. 20 U.S.C. § 1412(a)(12); 34 C.F.R. § 300.154. Defendants have in place a Memorandum of Understanding (MOU) between DDOC and DDOE as well as "Joint Agency Operating Procedures For The Prison Education Program." D.I. 33, Decl. of Maureen Wheelan, Exs. A and B; *see also* 11 Del. C. § 6531A(a) (assigning joint responsibility for a prison education program to DDOC and DDOE and requiring those agencies to "work collaboratively through designated agency contracts to accomplish this task").

CLASI claims that DDOE and APER fail to provide related services. D.I. 1, Compl. ¶¶ 77, 81, 87, 95. Without addressing whether they provide related services, DDOE and APER purport to bear no responsibility for providing such services, like counseling or psychological services, to address students' behavioral and emotional needs.[8] D.I. 48 at 17. Instead, DDOE and APER assert that Delaware law places responsibility for related services within DDOC's "exclusive jurisdiction." *Id.* (citing 11 Del. C. § 6504(8)).[9] But the statute they cite does not absolve DDOE and APER of their responsibility to ensure that detained or incarcerated students with disabilities receive a free appropriate public education—including related services necessary for them to benefit from specially designed instruction. Even if state law assigns DDOC sole responsibility for providing related services, the IDEA's regulations make clear that any failure of a non-educational public agency like DDOC to provide those services also falls upon the local education agency (LEA)[10] or state agency responsible for developing the student's IEP. 34 C.F.R. § 300.154(b)(1)–(2); *see also* Letter from Melody Musgrove, Dir., Off. of Special Educ. Programs, U.S. Dep't of Educ., & Michael K. Yudin, Acting Assistant Sec'y, Off. of Special Educ. & Rehab. Servs., U.S. Dep't of Educ., to Colleague 3 (Dec. 5, 2014), https://perma.cc/F95R-GWS4 ("SEAs must exercise general supervision over all educational

[8] We note that this argument also does not address the alleged failure to provide other related services, such as speech-language pathology and audiology services, physical and occupational therapy, and recreation. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.34.

[9] This position is in tension with the state's MOU, which assigns DDOE primary responsibility for providing "special education services in alignment with the processes and procedures established by federal and state regulations" to detained or incarcerated students with disabilities. D.I. 33, Decl. of Maureen Wheelan, Ex. A at 5.

[10] A "local educational agency" is "a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State." 20 U.S.C. § 1401(19)(A). CLASI alleges that APER is an LEA. D.I. 1, Compl. ¶ 26.

programs for students with disabilities in correctional facilities (unless covered by an exception) to ensure that their educational programs meet State education standards and IDEA, Part B requirements. This responsibility includes monitoring public agencies that are responsible for providing FAPE to students with disabilities in correctional facilities."). Here, that is DDOE and APER.

4. The IDEA requires adult jails and prisons to provide a continuum of educational placement options to all IDEA-eligible students.

IDEA's least restrictive environment principle requires that, to the maximum extent appropriate, students with disabilities receive special education and related services in the same classroom as students without disabilities. 34 C.F.R. § 300.114(a)(2). To comply with this requirement, school districts must offer a continuum of educational placement options to students with disabilities, including general education classes for all or part of the day, small group instruction outside the classroom for part of the day (often known as "resource room"), and special education classes for all or part of the day. *Id.* § 300.115. IEP teams use this continuum to determine each student's educational placement after considering the services and supports needed for meaningful progress and where and how to provide those services and supports effectively. Except under narrow circumstances not applicable here, correctional facilities are not exempt from ensuring that all IDEA-eligible students receive special education and related services in the least restrictive environment.

IEP teams can only modify a student's IEP or placement by, for example, moving them to disciplinary units that prevent attendance at school or in-person instruction if that student has been convicted as an adult and incarcerated in an adult prison. 20 U.S.C. § 1414(a)(d)(7)(B); 34 C.F.R. § 300.324(d)(2). IDEA-eligible students held pre-trial and pre-conviction at Vaughn and Young are not subject to this exception.

Even where the exception applies, it is not determinative. The state must still demonstrate to the IEP team a "bona fide security or compelling penological interest" to justify modifying the student's IEP or placement. 20 U.S.C. § 1414(a)(d)(7)(B); 34 C.F.R. § 300.324(d)(2). The IEP team then makes an individualized determination about whether that interest is "genuine" as to that student or merely hypothetical. *See, e.g.*, *Buckley v. State Corr. Inst.-Pine Grove*, 98 F. Supp. 3d 704, 715 (M.D. Penn. 2015) ("[A]ny security interest must be actual or genuine to the student, as opposed to theoretical."). If a security or penological interest unique to that student exists, the IEP team must consider whether that interest can be addressed by means other than modifying the student's IEP. *Id.* Modifications can only occur if accommodating the security or penological interest is impossible. *Id.*; *see also* 20 U.S.C. § 1414(a)(d)(7)(B); 34 C.F.R. § 300.324(d)(2). Then, and only then, does the least restrictive environment principle no longer apply. 34 C.F.R. § 300.324(d)(2)(ii).

Absent this very narrow circumstance, Defendants must provide special education and related services in the least restrictive environment appropriate for each student's individualized needs. CLASI alleges that APER-developed IEPs consistently use the same language to describe the least restrictive environment for each student: placement is "court-mandated to [a] DDOC facility . . . and . . . can change based on housing and security concerns." D.I. 1, Compl. ¶ 95. To highlight how this impacts students, CLASI describes two students, A.A. and C.C., who received all educational instruction in the form of self-study, alone, with limited teacher-led instruction. *Id.* ¶¶ 125, 213. CLASI also describes a third student, B.B., who received inconsistent educational instruction, occurring via self-study, small group instruction, or not at all. *Id.* ¶¶ 173, 175–78. The IDEA allows the state to deliver such services at correctional facilities like Young and Vaughn but requires educational placement options from general education classes to

resource room to special education classes. Defendants must provide that continuum and educate students with disabilities in the same classroom as students without disabilities to the maximum extent appropriate to comply with the IDEA's least restrictive environment principle.

Conclusion

Students with disabilities do not forfeit their IDEA rights to receive special education and related services—including their right to be educated in the least restrictive environment—while detained or incarcerated in adult correctional facilities, except in rare instances specified in the statute and not applicable here. State agencies like Defendants DDOE (including APER) and DDOC are jointly responsible for the delivery of special education and related services to all eligible students with disabilities at Young and Vaughn. Neither agency can avoid that responsibility by sloughing it off on their counterpart. They also cannot avoid that responsibility by suggesting that allegations of systemic unlawful practices are insufficient to excuse the IDEA's exhaustion requirement.

Dated: August 13, 2024

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