

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
OFFICE OF DISPUTE RESOLUTION**

1050 First Street NE, 3rd Floor
Washington, D.C. 20002

| | |
|----------------------|---|
| [REDACTED], |) |
| Petitioner, |) |
| v. |) |
| |) |
| DISTRICT OF COLUMBIA |) |
| PUBLIC SCHOOLS, |) |
| |) |
| and |) |
| |) |
| OFFICE OF THE STATE |) |
| SUPERINTENDENT OF |) |
| EDUCATION, |) |
| |) |
| Respondents. |) |
| _____ |) |

ADMINISTRATIVE DUE PROCESS COMPLAINT

I. INTRODUCTION

1. The District of Columbia is denying Petitioner, and similarly situated students, free appropriate public education (FAPE) while they are incarcerated in the Federal Bureau of Prisons (BOP). The District of Columbia does not maintain a local prison for individuals to serve sentences arising from a conviction of a felony violation of the D.C. Criminal Code. Instead, pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997 (Revitalization Act), the District relies on the BOP to satisfy its prison needs. Pub. L. 105-33, § 11201(b), 111 Stat. 712 (1997). Since October 1, 2001, all individuals serving a period of incarceration resulting from a conviction of a felony violation of the D.C. Code serve that sentence

within a BOP facility.¹ See D.C. Code § 24-101(a)-(b). These individuals are referred to as “D.C. Code offenders.” D.C. Code offenders are eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA) and corresponding federal and local regulations. See 20 U.S.C. § 1400, *et seq.*; 34 C.F.R. § 300, *et seq.*; D.C. Mun. Reg. tit. 5-A, § 3000, *et seq.* Yet, neither the BOP nor the District offers a high school program or special education and related services within the BOP.²

2. Petitioner [REDACTED] (Petitioner), an adult student with disabilities and educational decision maker currently incarcerated in the BOP as a D.C. Code offender, submits this Administrative Due Process Complaint (Complaint) pursuant to the Individuals with Disabilities Education Act (IDEA) and corresponding federal and local regulations. See 20 U.S.C. §1400, *et seq.*; 34 C.F.R. § 300, *et seq.*; D.C. Mun. Reg. tit. 5-A, § 3000, *et seq.* Petitioner is eligible for special education services from Respondent District of Columbia Public Schools (DCPS), the Local Education Agency (LEA) required by the IDEA and District of Columbia law to provide special education and related services to all eligible District residents through the semester in which they turn age twenty-two (22). Additionally, Respondent Office of the State Superintendent of Education (OSSE) is the State Education Agency (SEA) required by the IDEA and District law to oversee and monitor DCPS to ensure FAPE is available to all District students

¹ An individual who is convicted of a felony violation of the D.C. Code in the Superior Court of the District of Columbia (the “local” or “state” court for the District of Columbia) may be sentenced by a judge of that court to either a term of probation or incarceration pursuant to the D.C. Code. Adults who are sentenced to a term of incarceration for a felony violation of the D.C. Code will be transferred to the custody of BOP and placed in a BOP facility to serve their sentence.

² As a report commissioned by the U.S. Department of Justice noted, in BOP facilities, “there is no high school diploma program. Rather, the less valuable GED program consumes the primary focus in time, incentives, and resources. As we point out in the Section on Curriculum and Instruction in the Education Program Assessment Report, more emphasis must be placed on building a high school diploma program.” Dept. of Justice Fed. Bureau of Prisons, Federal Bureau of Prisons Education Program Assessment 3 (2016). <https://www.justice.gov/archives/dag/page/file/914026/download>.

with disabilities ages three (3) to twenty-two (22), including Petitioner. 34 C.F.R. §300.101. Despite these statutory obligations, Petitioner has not received any special education, related services, or transition services in accordance with his Individualized Education Program (IEP) since his entrance into the BOP on or about [REDACTED] and therefore OSSE and DCPS (Respondents) have deprived him of FAPE.

3. Because of this FAPE deprivation, Petitioner has not made any academic progress. He has not earned any credits toward his high school diploma. Petitioner will return to the District of Columbia having lost approximately 4 years of academic instruction and special education. When he returns to the District, he will no longer be eligible for special education, having aged out of eligibility while languishing in a BOP facility without any ability to exercise his rights.

4. But for the failures of Respondents to ensure access to FAPE and educational programming, Petitioner would be able to work towards earning his high school diploma and make educational progress. Prior to being placed in the BOP, Petitioner was on a diploma track.

5. Respondents have systemically and egregiously deprived every IDEA-eligible District resident with disabilities in BOP facilities of FAPE since 2001, for *over two decades*.

6. Respondents' ongoing violations of the IDEA result in a deprivation of FAPE to Petitioner and all IDEA-eligible District of Columbia residents ages eighteen (18) to twenty-four (24) who are incarcerated in BOP facilities as D.C. Code offenders. Respondents have a pattern and practice of depriving FAPE to all IDEA-eligible District of Columbia residents ages eighteen (18) to twenty-four (24) incarcerated in BOP facilities as D.C. Code offenders, including Petitioner.

7. The lack of educational opportunity for IDEA-eligible District of Columbia residents incarcerated in BOP facilities as D.C. Code offenders has caused severe and irreparable

harm to Petitioner and similarly situated students with disabilities. Through these inactions and the failure of the Respondents to provide Petitioner with *any* special education and related services, the District has grossly deprived and continues to deprive Petitioner and all similarly situated District students with disabilities of FAPE in contravention of the IDEA.

8. As described further below, these violations have continued despite precedence making clear that Respondents have an obligation to fulfill their responsibilities under the IDEA and provide an education to District of Columbia residents with disabilities who are incarcerated in the BOP as D.C. Code offenders. *See Brown v. District of Columbia*, 324 F. Supp. 3d 154 (D.D.C. 2018).

9. Respondents have deprived Petitioner and all similarly situated students of FAPE by Respondents' failure to provide any special education and related services, failure to provide a path to a high school diploma, and failure to perform SEA and LEA responsibilities to ensure the provision of FAPE.

10. Petitioner submits this Complaint for his individual FAPE deprivations and for the systemic deprivations of all similarly situated individuals – IDEA-eligible District of Columbia residents ages eighteen (18) to twenty-four (24) who are not receiving special education because they are incarcerated in BOP facilities as D.C. Code offenders.

II. JURISDICTION

11. Petitioner has jurisdiction to bring this Complaint under the IDEA, 20 U.S.C. § 1400 *et seq.*, its implementing regulations at 34 C.F.R. Part 300, and the District of Columbia Municipal Regulations, D.C. Mun. Reg. tit. 5-A, § 3000 *et seq.* This administrative Office of Dispute Resolution has jurisdiction pursuant to the IDEA, 20 U.S.C §§ 1400-1487, as amended in 2004, and 28 U.S.C. § 1331.

12. Petitioner has jurisdiction to bring the asserted systemic claims, as they relate to the provision of FAPE to IDEA-eligible District of Columbia residents incarcerated in BOP facilities as D.C. Code offenders. *See Easter v. District of Columbia*, 128 F. Supp. 3d 173, 178 (D.D.C. 2015) (stating, “Courts have recognized ‘systemic’ claims under the IDEA where the plaintiff has alleged a ‘pattern and practice’ of systemic IDEA violations unable to be addressed through the Due Process Hearing procedures.”); *see also Morgan Hill Concerned Parents Ass’n v. California Dep’t of Educ.*, No. 2:11-cv-3471-KJM-AC, 2013 U.S. Dist. LEXIS 46325, 18-19 (E.D. Cal. Mar. 29, 2013) (finding that “claims alleging a SEA’s systemic failure to comply with its IDEA obligations, which results in a systemic denial of FAPE, are claims ‘with respect to any matter relating to the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education to such child.’” (quoting *Beth V. v. Carroll*, 87 F.3d 80, 82 (3d Cir. 1995))); *see also New Jersey Protection & Advocacy, Inc. v. New Jersey Dep’t of Educ.*, 563 F. Supp. 2d 474 (D.N.J. 2008); *Corey H. v. Bd. of Educ. of City of Chicago*, 995 F. Supp. 900, 903 (N.D. Ill. 1998).

III. PARTIES

13. Petitioner is a [REDACTED]-year-old District of Columbia resident with a disability. He is eligible for special education and related services under the IDEA as a student with “[REDACTED] [REDACTED]” as defined in 34 C.F.R. § 300.8(c)(7). Currently, as a D.C. Code offender, he is serving a sentence of incarceration at the Federal Correctional Institution [REDACTED] (FCI [REDACTED]), a BOP facility.

14. Respondent DCPS, a public school district, is required by the IDEA, its federal implementing regulations, and District of Columbia law, to provide special education and related

services to all eligible District of Columbia residents through the semester in which they turn age twenty-two (22). *See* 20 U.S.C. § 1412(a)(1); D.C. Mun. Reg. tit. 5-A, § 3001.4.

15. Respondent OSSE is required by the IDEA, its federal implementing regulations, and District of Columbia law to ensure that FAPE is made available to all eligible District of Columbia residents with disabilities. All education programs administered by District of Columbia agencies are under OSSE's general supervision and OSSE is responsible for ensuring that all education programs administered by District of Columbia agencies meet District of Columbia educational standards. *See* 20 U.S.C. § 1412(a)(11). As the SEA, OSSE bears the ultimate responsibility for ensuring FAPE is made available to eligible District residents. *See* 34 C.F.R. § 300.101.

VI. FACTS

A. PETITIONER IS ELIGIBLE TO RECEIVE SPECIAL EDUCATION SERVICES UNDER THE IDEA.

16. Petitioner is a student with [REDACTED] ([REDACTED] [REDACTED]) and eligible as a student with a disability under the IDEA since middle school. His most recent eligibility determination was [REDACTED].

17. Prior to Petitioner's incarceration in a BOP facility, he was receiving special education and related services at [REDACTED] at [REDACTED] [REDACTED]. Petitioner has at least [REDACTED] credits towards the required 24 Carnegie Unit credits needed to earn his DCPS high school diploma.

18. Petitioner's most recent IEP, developed by [REDACTED] on [REDACTED], called for [REDACTED] hours per week of specialized instruction in a General Education setting and [REDACTED] minutes per week of Behavioral Support Services. Petitioner's most recent evaluation was on [REDACTED], [REDACTED].

19. On [REDACTED], a judge in the Superior Court for the District of Columbia sentenced Petitioner – at age [REDACTED] – to a 108-month term of incarceration in an adult correctional facility for a felony violation of the D.C. Code. Shortly thereafter, as per the Revitalization Act, Petitioner was transferred to BOP custody to serve his sentence.³ He has been in BOP facilities since on or about [REDACTED], and he is currently housed at FCI [REDACTED].

20. FCI [REDACTED], a BOP facility, does not offer high school diploma programming and does not provide special education and related services pursuant to the IDEA.

21. Petitioner is not enrolled in a high school diploma program and has not been since entering BOP custody on or about [REDACTED].

22. Respondents have not provided Petitioner any special education, related services, or transition services in accordance with his IEP since entering BOP custody on or about [REDACTED].

23. Respondents have not held an IEP meeting with Petitioner nor updated his IEP since [REDACTED].

24. Respondents have not given Petitioner any evaluations to determine appropriate special education or related services since [REDACTED].

25. Respondents never provided Petitioner with any prior written notice that his special education and related services were being terminated.

³ The Revitalization Act states: “(b) Felons Sentenced Pursuant To The D.C. Code — Notwithstanding any other provision of law, not later than December 31, 2001, the Lorton Correctional Complex shall be closed and the felony population sentenced pursuant to the District of Columbia Code residing at the Lorton Correctional Complex shall be transferred to a penal or correctional facility operated or contracted for by the Bureau of Prisons. Such persons shall be subject to any law or regulation applicable to persons committed for violations of laws of the United States consistent with the sentence imposed, and the Bureau of Prisons shall be responsible for the custody, care, subsistence, education, treatment and training of such persons.” Pub. L. 105-33, § 11201(b), 111 Stat. 712 (1997).

26. Respondents have not provided Petitioner with any compensatory education nor offer of compensatory education for the period of time he was denied special education, related services, and transition services in accordance with his IEP.

27. As a result, Petitioner has been deprived of FAPE, and delayed in achieving his high school diploma by at least [REDACTED] and has not made any educational progress.

28. Lack of a high school diploma impacts the ability of returning citizens to secure sustained employment and ultimately results in recidivism. Providing educational opportunities to young people in prison reduces recidivism.⁴ In fact, rates of recidivism decrease when individuals access higher levels of education during periods of incarceration.⁵ Despite this, the District does not provide any access to a high school diploma and special education services for IDEA-eligible District residents, like Petitioner and all similarly situated, incarcerated in BOP facilities as D.C. Code offenders.

29. Petitioner wants to receive special education and related services while incarcerated in and under the custody of the BOP so that he can pursue his high school diploma.

V. CLAIMS FOR RELIEF

A. RESPONDENT DCPS FAILED TO PROVIDE A FREE APPROPRIATE PUBLIC EDUCATION TO PETITIONER IN VIOLATION OF THE IDEA.

30. Under the IDEA and District of Columbia law, DCPS as the LEA must ensure that all students with disabilities who are residents of the District of Columbia, including adult students, have access to FAPE. *See* 20 U.S.C. § 1412(a)(1); 34 C.F.R. § 300.101; D.C. Mun. Reg. tit. 5-A,

⁴ *See* Center for American Progress, [Education Opportunities in Prison Are Key to Reducing Crime](https://www.americanprogress.org/article/education-opportunities-prison-key-reducing-crime/), Mar. 2, 2018, available at <https://www.americanprogress.org/article/education-opportunities-prison-key-reducing-crime/> (“[I]ndividuals who participate in any type of educational program in prison are 43 percent less likely to return to prison.”).

⁵ *See* Hayne Yoon, Vera Institute, [Back to School: A Common Sense Strategy to Lower Recidivism](https://www.vera.org/news/back-to-school-a-common-sense-strategy-to-lower-recidivism), Sept. 19, 2019, available at <https://www.vera.org/news/back-to-school-a-common-sense-strategy-to-lower-recidivism>.

§ 3001.2. According to District of Columbia law, DCPS is the LEA responsible for making FAPE available to all District residents with disabilities age three (3) to twenty-two (22) if they are not enrolled in another LEA. D.C. Mun. Reg. tit. 5-A, § 3001.2. Specifically, Respondent DCPS is responsible for making FAPE available to each child with a disability, who resides in or is a ward of the District of Columbia, ages three (3) to twenty-two (22), including ward students placed in out-of-District facilities. D.C. Mun. Reg. tit. 5-A, § 3001; *Hawkins ex rel. D.C. v. District of Columbia*, 539 F. Supp. 2d 108, 115 (D.D.C. 2008). In the District of Columbia, eligible residents are entitled to FAPE until the end of the semester in which they reach the age of twenty-two (22). D.C. Mun. Reg. tit. 5-A, § 3001.4. Special education rights inure to eligible students upon age eighteen (18) even if incarcerated in an adult correctional institution. 20 U.S.C. § 1415(m)(1).

31. The District is responsible for ensuring that students with disabilities in BOP facilities are provided FAPE in accordance with the IDEA. *See Brown v. District of Columbia*, No. 17-348 (RDM/GMH), 2018 U.S. Dist. LEXIS 24300, at *32 (D.D.C. Jan. 24, 2018) (finding that “as a general matter, the District of Columbia should be responsible for providing Plaintiff [a D.C. Code offender incarcerated in the BOP] with FAPE”). Respondent DCPS has knowledge of its obligations to provide these students FAPE under the IDEA since at least the *Brown* decision in 2018 – *over four years ago*.

32. The IDEA “imposes an obligation on the District to work with[. . .] BOP to provide qualifying individuals FAPE and, if that is not possible, to provide compensatory education post-incarceration or other appropriate benefits.” *Brown v. District of Columbia*, No. 17-348 (RDM), 2019 U.S. Dist. LEXIS 72755, at *11 (D.D.C. Apr. 30, 2019).

33. To provide FAPE, IEPs must outline an educational program that is “reasonably calculated to enable [the] child to make progress appropriate in light of the child’s circumstances.”

Andrew F. ex.rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1 137 S. Ct. 988, 988 (2017). A LEA must implement the specialized instruction and related services set forth in a student's IEP. *See Andrew F.*, 137 S. Ct. 988; *Sch. Comm. Of Town of Burlington v. Dep't of Educ. of Mass.*, 471 U.S. 359, 368 (1985).

34. "A party challenging a school district's implementation of an IEP must 'demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP or that 'deviations from the IEP's stated requirements [were] 'material.'" *Middleton v. District of Columbia*, 312 F. Supp. 3d 113, 128 (D.D.C. 2018) (internal citations omitted).

35. Respondent DCPS utterly failed to implement *any* part of Petitioner's IEP. Petitioner did not receive any special education or related services in accordance with his IEP during the entirety of the time he was incarcerated within the BOP from on or about January 2019 through the present. These deviations from the IEP are material deviations. *Middleton*, 312 F. Supp. 3d at 128.

36. Respondent DCPS's failure to provide special education deprives Petitioner of FAPE and violates the IDEA and its federal and District implementing regulations. *See* 34 C.F.R. §§ 300.101, 300.324(d)(1); D.C. Mun. Reg. tit. 5-A, § 3001.

37. Respondent DCPS deprived Petitioner of any instruction. Petitioner has received no high school instruction since entering the BOP.

38. Respondent DCPS deprived Petitioner of his general education and specialized instruction.

39. Respondent DCPS deprived Petitioner of his related services.

40. Respondent DCPS also deprived Petitioner of transition supports and employment and vocational opportunities. *See* 34 C.F.R. § 300.320(b); D.C. Mun. Reg. tit. 5-A, § 3026.

41. Respondent DCPS has also failed to provide prior written notice and hold annual IEP meetings, 34 C.F.R § 300.324(b)(1)(i) or conduct triennial evaluation, 34 C.F.R § 300.303, which would enable the Petitioner’s IEP team to develop an IEP reasonably calculated to enable Petitioner to make appropriate progress. These procedural violations deprived Petitioner of FAPE because they impeded his right to FAPE, impeded his ability to participate in the decision-making process, and deprived him of educational benefit. *See* 20 U.S.C. § 1415(f)(3)(E)(ii).

42. Petitioner has lost over forty-eight (48) months of academic instruction, special education instruction and related services for which he was eligible under the IDEA.

43. Respondent DCPS also systemically failed to implement the IEPs of all similarly situated students (IDEA-eligible District of Columbia residents ages eighteen (18) to twenty-four (24) who are incarcerated in BOP facilities as D.C. Code offenders) and denied these students FAPE.

44. Respondent DCPS is obligated to comply with its IDEA responsibilities. The continued deprivation of FAPE to Petitioner and all similarly situated students results in a population of District residents without any hope for education.

B. RESPONDENT OSSE FAILED TO PROVIDE A FREE APPROPRIATE PUBLIC EDUCATION TO PETITIONER AND SIMILARLY SITUATED STUDENTS IN VIOLATION OF THE IDEA.

a. Respondent OSSE Failed to Supervise and Monitor the Provision of FAPE for Students with Disabilities in the BOP.

45. Respondent OSSE, as the SEA, has the obligation to ensure that all LEAs make FAPE available to eligible students with disabilities. *See* 20 U.S.C. § 1412(a)(11)(A); 34 C.F.R. § 300.149(a); *Gadsby v. Grasmick*, 109 F.3d 940, 953, 955-956 (4th Cir. 1997) (holding that a

SEA is ultimately responsible for the provision of FAPE to its students); *DL v. District of Columbia*, 194 F. Supp. 3d 30, 91 (D.D.C. 2016) (OSSE is liable for systemically failing to ensure that FAPE was available to preschool-age children with disabilities in the District), *aff'd*, 860 F.3d 713 (D.C. Cir. 2017).

46. As the SEA, Respondent OSSE bears the ultimate responsibility for ensuring that students receive FAPE through its supervisory and monitoring responsibilities. 20 U.S.C. § 1412 (a)(11)(A); 34 C.F.R. § 300.149(a), § 300.600. As part of those supervisory and monitoring duties, Respondent OSSE is responsible for monitoring Respondent DCPS's implementation of the IDEA, making annual determinations about Respondent DCPS's performance on implementing the IDEA, enforcing Respondent DCPS's compliance with the IDEA, and reporting annually on both Respondents' performance. *See* 34 C.F.R. § 300.600(a)(1). When Respondent OSSE identifies an instance of Respondent DCPS's noncompliance with the IDEA while exercising these monitoring responsibilities, Respondent OSSE must ensure that the noncompliance is corrected as soon as possible and no less than one year after identifying the noncompliance. *See id.* at 300.600(e).⁶

47. Respondent OSSE is aware that Respondent DCPS has never provided and does not currently provide IDEA-compliant educational programs to IDEA-eligible District residents incarcerated in BOP facilities as D.C. Code offenders. *See Brown*, 324 F. Supp. 3d 154. Respondent OSSE has had knowledge of its obligations to provide these students FAPE under the IDEA since at least the *Brown* decision in 2018 – *over four years ago*. Respondent OSSE had ample time to take steps to compel compliance by Respondent DCPS, but Respondent OSSE failed to do so.

⁶ *See also* <https://sites.ed.gov/idea/idea-files/osep-memo-09-02-reporting-on-correction-of-noncompliance/>.

48. Through the dereliction of its supervisory responsibilities, Respondent OSSE has failed to ensure that Respondent DCPS is providing FAPE to Petitioner and all similarly situated IDEA-eligible students incarcerated in BOP facilities as D.C. Code offenders. Respondent OSSE's failures to ensure that a LEA is providing special education and related services, to enact interagency agreements with the relevant local and federal government entities for the provision of special education in compliance with Respondent OSSE's legal obligations under the IDEA, and to take any other necessary steps to ensure all students receive FAPE, has deprived Petitioner and all similarly situated students of FAPE in violation of 34 C.F.R. § 300.101.

49. IDEA-eligible District of Columbia residents ages eighteen (18) to twenty-four (24) who are incarcerated in BOP facilities as D.C. Code offenders, including Petitioner, have been systemically deprived of FAPE by Respondent OSSE. The continued deprivation of FAPE to these students results in a population of District residents without any hope for education.

b. Respondent OSSE Failed to Intervene to Provide FAPE in Light of an Absent and Unwilling LEA.

50. When a LEA, who is typically responsible for the provision of FAPE, is unable or unwilling to establish and maintain programs of FAPE, the provision of FAPE to that student becomes the duty of the SEA. *See* 20 U.S.C. § 1413(g)(1).

51. As part of Respondent OSSE's responsibilities to ensure all eligible students receive FAPE, Respondent OSSE is required to provide services directly when a LEA "is unable to establish and maintain programs of free appropriate public education" that meet IDEA requirements. 20 U.S.C.S. § 1413 (g)(1)(B). As SEA, Respondent OSSE had and has the ongoing obligation to intervene to ensure that IDEA-eligible District of Columbia residents incarcerated in the BOP as D.C. Code offenders receive FAPE. *See* 34 C.F.R. § 300.227; *Gadsby*, 109 F.3d at

953, 955-56; *Chavez v. Bd. of Educ. of Tularosa Municipal Schools*, 614 F. Supp. 2d 1184 (D.N.M. 2008).

52. Once a LEA is either unable or unwilling to establish and maintain programs in compliance with IDEA, the SEA is responsible for directly providing the services to disabled students. 34 C.F.R. § 300.227(a); see *Todd D. by Robert D. v. Andrews*, 933 F.2d 1576, 1583 (11th Cir.1991) (holding that a SEA must take responsibility for providing free appropriate public education where disabled student is better served by regional or state facility than local one); *Kruelle v. New Castle County Sch. Dist.*, 642 F.2d 687, 696-98 (3d Cir. 1981) (upholding district court's order requiring a SEA to provide student with full-time residential program where LEA failed to provide adequate program); *R.J. v. Rivera*, No. 15-5735, 2017 U.S. Dist. LEXIS 125840, *3 (E.D. Pa. Aug. 9, 2017) (“[A]n SEA may be required to provide direct services to qualifying students under the IDEA in certain scenarios, including where an SEA determines that an LEA ‘is *unable to establish and maintain*’ FAPE programs that comply with IDEA requirements.” (emphasis added)).

53. Petitioner was placed in a BOP facility on or about January 2019. Respondent DCPS as the LEA has not assumed the responsibility for providing him with special education and related services and has not provided him with FAPE. Accordingly, no other LEA has assumed responsibility for providing him with special education and related services and has not provided him with FAPE.

54. Respondent OSSE has had knowledge that no educational program existed for IDEA-eligible District of Columbia residents incarcerated in BOP facilities as D.C. Code offenders since at least 2018. See *Brown*, 324 F. Supp. 3d 154.

55. Respondent OSSE has not provided Petitioner or any other similarly situated students (IDEA-eligible District of Columbia residents ages eighteen (18) to twenty-four (24) incarcerated in the BOP as D.C. Code offenders) with special education and related services in accordance with their IEPs.

56. Respondent OSSE's failure to directly provide special education and related services has deprived Petitioner and all similarly situated students (IDEA-eligible District of Columbia residents ages eighteen (18) to twenty-four (24) incarcerated in the BOP as D.C. Code offenders) of FAPE.

VI. PRAYER FOR RELIEF

57. Respondents, who are charged with providing Petitioner with FAPE, have egregiously neglected Petitioner and left him to languish without any education for at least forty-eight (48) months. Respondents' systemic failures to ensure FAPE is available have resulted in a material, direct, and substantive deprivation of FAPE to Petitioner and other similarly situated students. Respondents have not provided Petitioner or other similarly situated students with any education, specialized instruction and related services, transition services, vocational services, or a path towards earning their high school diploma.

A. PRAYER FOR INDIVIDUAL RELIEF

58. As relief for Respondents' denial of FAPE, Petitioner respectfully requests that this Hearing Officer:

- a. Declare that Respondents denied Petitioner FAPE and failed to comply with the IDEA's substantive requirements in violation of federal and local law;
- b. Extend Petitioner's IDEA eligibility until the end of the semester in which Petitioner turns 29 to allow him the opportunity to complete his secondary education;

- c. Order Respondents to provide special education and related services in conformity with Petitioner's IEP;
- d. Order Respondents to authorize comprehensive independent education evaluations for Petitioner, including but not limited to vocational evaluations, psychoeducational evaluations, speech-language evaluations, assistive technology evaluations, occupational therapy evaluations, and neuropsychological evaluations;
- e. Order Respondents to convene an IEP meeting to review evaluations and update Petitioner's IEP;
- f. Order that Petitioner be returned to the District of Columbia to allow Petitioner to enroll in the high school diploma program at the District of Columbia Department of Corrections;
- g. Order that Respondents enter into an agreement with the BOP to place Petitioner at the District of Columbia Department of Corrections through the period of IDEA eligibility, including any extended eligibility that this Hearing Officer or a Court may order, and that Respondents allow him to enroll in the high school diploma program at the District of Columbia Department of Corrections through the period of IDEA eligibility, including any eligibility that Hearing Officer or a Court may order;
- h. Award an educational placement, including transportation, in an education program with special education services in conformity with his IEP. This placement must provide the opportunity to work towards his high school diploma and benefit from transition services including, but not limited to, vocational education, integrated employment (including supported employment), work readiness opportunities and programs, internship and apprenticeship opportunities, and workforce development training, including the ability to earn a certificate in a trade of his choice;
- i. Award compensatory education services including, but not limited to, the following individual relief:
 - i. Tuition and transportation for an educational program of Petitioner's choice;
 - ii. Tutoring, counseling and transition/vocational support services from a provider of Petitioner's choice;
 - iii. Funding for college preparation remediation courses and tuition;
 - iv. Funding to cover the cost of additional special education programming geared to meet Petitioner's transition needs, such as vocational and workforce development opportunities. Petitioner should be able to use this

fund to pay for associated educational costs such as, but not limited to, applications, test preparation, career exploration, and internship and apprenticeship opportunities;

- v. A laptop with a wireless hub that will allow him to complete homework and online courses and to search for employment opportunities.
- j. Award reasonable attorneys' fees and costs incurred during the litigation of this Complaint; and
- k. Award other relief, as the Hearing Officer may deem appropriate.

B. PRAYER FOR SYSTEMIC RELIEF

59. Respondents have denied Petitioner and all similarly situated students (IDEA-eligible District of Columbia residents ages eighteen (18) to twenty-four (24) incarcerated in BOP facilities as D.C. Code offenders) FAPE. Petitioner respectfully requests that the Hearing Officer award the following for relief:

- a. Declare that Respondents denied Petitioner and all other similarly situated students FAPE and failed to comply with the IDEA's substantive requirements in violation of federal and local law;
- b. Order that Respondents identify the LEA and/or SEA responsible for the provision of FAPE for all IDEA-eligible District of Columbia residents ages eighteen (18) to twenty-four (24) who are incarcerated in the BOP as D.C. Code offenders;
- c. Order Respondents to enter into an interagency agreement with all necessary parties that ensures for the provision of FAPE for all IDEA-eligible District of Columbia residents ages eighteen (18) to twenty-four (24) who are incarcerated in the BOP as D.C. Code offenders;
- d. Order Respondents to authorize comprehensive independent education evaluations for all IDEA-eligible District of Columbia residents ages eighteen (18) to twenty-four (24) who are incarcerated in the BOP as D.C. Code offenders, including but not to limited vocational evaluations, psychoeducational evaluations, speech-language evaluations, assistive technology evaluations, occupational therapy evaluations, and neuropsychological evaluations;
- e. Order Respondents to develop new IEPs that are designed to enable students to make reasonable education progress for all IDEA-eligible District of Columbia residents ages eighteen (18) to twenty-four (24) incarcerated in the BOP as D.C. Code offenders who have IEPs that are older than one year;

- f. Order Respondents to provide special education and related services in conformity with students' IEPs;
- g. Award compensatory education to all similarly situated students;
- h. Order that IDEA-eligible District of Columbia residents ages eighteen (18) to twenty-four (24) who are sentenced to a term of incarceration for violations of the D.C. Code prior to transfer to BOP facilities can elect to remain in the District of Columbia for the entirety of the IDEA eligibility, including any extended eligibility that this Hearing Officer or a Court may order;
- i. Order that Respondents enter into an agreement with the BOP to allow IDEA-eligible District of Columbia residents ages eighteen (18) to twenty-four (24) who are sentenced to a term of incarceration for violations of the D.C. Code to elect to be placed at the District of Columbia Department of Corrections through the period of IDEA eligibility, including any extended eligibility that this Hearing Officer or a Court may order, and that Respondents allow them to enroll in the high school diploma program at the District of Columbia Department of Corrections through the period of IDEA eligibility, including any eligibility that Hearing Officer or a Court may order;
- j. Award other relief as the Hearing Officer may deem appropriate.

Respectfully submitted,

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February 17, 2023

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Sarah Comeau., hereby certify that on this 17th day of February, 2023, that this Administrative Due Process Complaint was served on District of Columbia Public Schools via email at dueprocess.dcps@k12.dc.gov and OSSE's Office of General Counsel via facsimile at (202) 299-2134. A copy of this Administrative Due Process Complaint was provided to the Office of Dispute Resolution via email to hearing.office@dc.gov.

/s/ Sarah Comeau

Sarah Comeau, Esq.