

**Settlement Agreement Between the United States
and the Pennsylvania Department of Education**

I. INTRODUCTION

- A. The Commonwealth of Pennsylvania’s Department of Education (“PDE”) and the United States Department of Justice (“United States”) (collectively, “the Parties”) enter into this settlement agreement (“Agreement”) to resolve the United States’ investigation into complaints involving PDE’s policies and practices related to its approval and general oversight of Alternative Education for Disruptive Youth (“AEDY”) Programs. The complaints that are relevant to this Agreement allege that PDE’s policies and practices regarding AEDY Programs have led to violations of federal law by Local Educational Agencies (“LEAs”) (1) referring students to AEDY Programs on the basis of disability and denying equal opportunities to access and participate in equal educational experiences, and (2) failing to provide English Learners (“ELs”) in AEDY with appropriate language services. The United States investigated these allegations under Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.* (“ADA”) and 28 C.F.R. Part 35, which collectively prohibit discrimination on the basis of disability by public entities, and the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1701 *et seq.* (“EEOA”), which requires, *inter alia*, that states and school districts take “appropriate action to overcome language barriers that impede equal participation by [their] students in . . . instructional programs.” 20 U.S.C. § 1703(f).
- B. It is PDE’s position based on its interpretation of Pennsylvania law that LEAs are afforded a great deal of local control, LEAs are directly responsible for making decisions related to the education of their respective students, and PDE’s authority over AEDY Programs is limited to approval and general oversight. The United States disagrees with PDE’s interpretation and views PDE as administering AEDY Programs and being responsible for the education of public school students in Pennsylvania, including those students placed in AEDY Programs. Nonetheless, the Parties enter this Agreement in good faith and in order to avoid further cost and administrative burden. The Parties agree that this Agreement does not constitute an admission of liability or fault on the part of PDE, PDE expressly denies all liability or fault, and the terms of this Agreement will not be construed as an admission on the part of PDE or as a validation of any allegations.
- C. The Parties acknowledge the following principles:
- i. All students in the Commonwealth are entitled to an equal opportunity to learn in educational environments that are free of discrimination.
 - ii. Students with disabilities should not be placed in an AEDY Program unless other avenues for addressing their conduct in the General Education Program have been unsuccessful.

- iii. Pursuant to Title II of the ADA and as further described in Section VI.A.i below, students with disabilities, including students with disabilities who are eligible for services under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.* (“IDEA”), should not be placed in AEDY Programs for behavior that is a manifestation of their disability; students with disabilities are entitled to an individual determination as to whether any behavior subjecting them to possible placement in AEDY Programs is because of a disability; and students with disabilities are entitled to reasonable modifications of policies and procedures under Title II of the ADA to prevent discrimination.
 - iv. ELs are entitled to receive the language assistance services to which they are eligible under Section 1703(f) of the EEOA, so that they can “overcome language barriers that impede [their] equal participation in . . . instructional programs.” 20 U.S.C. § 1703(f).
 - v. The overall goal in entering this Agreement is to provide a nondiscriminatory environment for students with disabilities and federally required services to ELs by building capacity within PDE and establishing sustainable mechanisms for overseeing AEDY Programs.
- D. The United States recognizes that PDE has made certain changes to the approval and general oversight of AEDY Programs, including: hiring an AEDY Consultant; assigning an AEDY Supervisor; establishing an AEDY Team that includes special education staff; providing training and technical assistance to AEDY Programs; conducting site visits that include (i) all LEAs with students placed in a particular AEDY Program at the time of the site visit and (ii) other LEAs, as selected by PDE, that are approved to refer students to the AEDY Program; and reviewing data related to student placement in AEDY Programs. The United States also recognizes that PDE is in the process of developing an electronic system that is intended to enable the AEDY Team to streamline program approvals, monitoring and site visits, and establish controls or flags for identifying programs that may be in need of site visits, supplementary technical assistance and/or other oversight. The United States further recognizes that PDE has certain resources in place to assist LEAs in providing educational and behavioral supports and services to students. For example, PDE, through its Bureau of Special Education (“BSE”) and Pennsylvania Training and Technical Assistance Network (“PaTTAN”), offers training and assistance with the implementation of Schoolwide Positive Behavioral Intervention and Supports (“SWPBIS”). In addition, PDE has established resources designed to assist LEAs in providing supports to students in General Education Programs including the following: Pennsylvania Equity and Inclusion Toolkit, a bullying prevention consultation line, SAS Portal, and a School Climate Leadership Institute. This Agreement is intended to

build on PDE's existing network of supports and services to the extent necessary to ensure compliance with relevant federal law.

- E. The Parties intend for the provisions in this Agreement regarding students with a disability to complement the Individualized Education Program ("IEP") process under the IDEA and not impede PDE or any LEA's ability to implement the IDEA or its regulations. Nothing in this Agreement is intended to limit, infringe upon, or conflict with PDE's duties and responsibilities under other federal and state laws impacting students with disabilities, including but not limited to the IDEA or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.*

II. DEFINITIONS

- A. "AEDY Program" refers to an individual program site approved by PDE to provide a temporary placement for students who meet the definition of a "disruptive student" under 24 P.S. § 19-1901-C (5). AEDY Programs include approved programs operated by LEAs, a combination of LEAs, or private providers.
- B. "AEDY Team" refers to PDE's AEDY Supervisor, PDE's AEDY staff, and contractors directly responsible for approving and overseeing AEDY Programs. The AEDY Team consists of individuals with experience and/or training in juvenile criminal justice system, community mental health, child welfare, education, alternative education, and/or other systems that work with children and families.
- C. "English Learners" or "ELs" refers to students who have been determined to be Limited English Proficient ("LEP") or Non-English Proficient and thus require language assistance services "to overcome language barriers that impede [their] equal participation in ... instructional programs," as required by 20 U.S.C. § 1703(f).
- D. "ESL Teaching Credential" refers to the valid credential that a teacher providing English language development instruction (otherwise known in Pennsylvania as "English as a second language" or "ESL") to ELs must hold to provide such instruction, as required by PDE and reflected in PDE's guidelines, circulars, and other documents. As of the date this Agreement was signed by representatives of all Parties, the only such credential is the ESL Program Specialist Certification. *See, e.g.,* PDE Basic Education Circular titled "Educating English Learners (ELs)" (Date of Issue: July 1, 2001; Date of Review: July 1, 2017); "The Framework for English as a Second Language Program Specialist K-12 Guidelines" (December 2016), "English as a Second Language (ESL) Program Specialist PK-12" CSPG No. 68 (June 1, 2018).
- E. "General Education Program" means a public elementary or secondary school program devoted to the foundation of skills, knowledge, habits of mind, and values that prepares students for success that an LEA uses when educating its students, including students with and without disabilities. Such programs do not include AEDY Programs, alternative schools for students who are suspended or expelled, or schools

or facilities that enroll exclusively children with disabilities.

- F. “Local Education Agency” or “LEA” refers to the definition of that term in the IDEA, 20 U.S.C. § 1401(19), in the EEOA, 20 U.S.C. § 1720(b), and in Article XIX-C and XIX-E of Pennsylvania’s Public School Code, 24 P.S. §§ 1901-C *et. seq.*, and 1901-E *et. seq.*
- G. “Parent” refers to either or both biological or adoptive parent(s) of a student, a student’s legal guardian, or other person legally responsible for making education decisions for a student under state law.
- H. “Schoolwide Positive Behavioral Interventions and Supports” or “SWPBIS” is one type of evidence-based, preventative and proactive, data-driven framework to teach positive behavior skills, reduce disciplinary incidents, increase a school’s sense of safety, and support improved academic outcomes. PDE has familiarity with SWPBIS through its offering of SWPBIS training programs and has identified implementation of SWPBIS as an educational initiative. SWPBIS schools apply a multi-tiered behavioral framework used to improve the integration and implementation of behavioral practices, data-driven decision-making systems, professional development opportunities, school leadership, supportive State Education Agency and LEA policies, and evidence-based instructional strategies. An SWPBIS framework uses academic and disciplinary data and principles of behavior analysis to develop school-wide, targeted, and individualized interventions and supports to improve behavioral and academic outcomes, identify and prevent problem behavior as early as possible, and improve school climate.
- I. “Presumptive Exit Date” refers to the date by which a student is expected to transition/return to the General Education Program and is based on the student’s individual needs. The purpose of the Presumptive Exit Date is to ensure that AEDY placements are temporary and that students are transitioning/returning to the General Education Program as soon as a student’s behavioral goals are met.
- J. “Regional Coordinator” refers to an individual identified by PDE, possibly an independent contractor, assigned to one of the three specific geographic regions established by PDE to assist PDE with the implementation of this Agreement.
- K. “Substantial Compliance” or “Substantially Comply” means that PDE has satisfied the purpose or objective of a provision in this Agreement, even though all formal requirements of the provision have not been satisfied.
- L. “Unapproved Alternative Education Disciplinary Programs” refers to disciplinary alternative education programs that have not been approved by PDE to operate as AEDY Programs.

III. AEDY PROGRAM ACCOUNTABILITY

A. PDE has already implemented the following steps, which will be maintained pursuant to this Agreement:

- i. Appointment of an AEDY Supervisor who is responsible for overseeing PDE's implementation of the terms of this Agreement.
 1. The AEDY Supervisor reports directly to PDE's Deputy Secretary for Elementary and Secondary Education.
 2. The AEDY Supervisor is responsible for overseeing the preparation of all data, reports, and information to be submitted to the United States as required under this Agreement.
- ii. Identification of an AEDY Coordinator who is responsible for overseeing the daily operations of the Regional Coordinators and AEDY Team.
 1. The AEDY coordinator reports directly to the AEDY Supervisor/Director of the Office for Safe Schools.
 2. The AEDY Coordinator is the primary administrator of the Regional Coordinators and AEDY Team and is responsible for direct oversight of the AEDY Programs.

B. By May 31, 2019, PDE will:

- i. Initiate the process for hiring or selecting a Regional Coordinator for each of PDE's three geographic regions to assist the AEDY Team as the terms of this Agreement are implemented.
 1. The AEDY Team will hold webinars and/or meetings with Regional Coordinators every month during the school year to discuss AEDY developments, concerns, and questions associated with AEDY and implementation of the terms of this Agreement.
 2. Regional Coordinators will be responsible for reporting complaints, concerns, or questions raised by or about AEDY Programs to the AEDY Team and, depending on the nature or severity of the concern or complaint, the AEDY Supervisor.
- ii. Require individual AEDY Programs to identify an "AEDY Program Coordinator" for each AEDY Program site, who will work with LEA Coordinators and serve as the central person who makes decisions on AEDY Program admissions at a particular site or sites.
- iii. Require each LEA that is approved to refer students to an AEDY Program to identify an LEA Coordinator/Lead, who will work with the relevant AEDY Program Coordinator to ensure that students are placed in the AEDY Program

in accordance with federal law. LEA Coordinators will have the authority to raise any complaints, concerns, or questions about compliance with the terms of this Agreement to the Regional Coordinators.

- C. The AEDY Team will solicit input from AEDY stakeholders, with representation from each of PDE's three geographic regions. PDE will seek to include Parents, advocates, community members, educators, special education representatives, educators holding an ESL Teaching Credential, AEDY Program Coordinators, other AEDY Program staff, Regional Coordinators, and LEA Coordinators, related to implementation of this Agreement. This solicitation of input may be part of broader request for input that is also related to (a) identifying potential problems concerning AEDY Programs; (b) improving dialogue about AEDY Programs among students, Parents, General Education Program staff involved in the AEDY placement process, AEDY Program staff, and PDE; and (c) improving PDE's AEDY forms and other program documents.
- D. AEDY Consultant: As a result of the United States' investigation, PDE hired an AEDY Consultant to provide ongoing assistance with developing best practices for AEDY Programs. PDE will continue to seek the input of the AEDY Consultant in developing best practices that relate to implementing the terms of this Agreement. PDE reserves the right to change consultants for good cause during the term of this Agreement. Before PDE changes the consultant, PDE will provide the United States with notice of the change and a copy of the job description, statement of work, or other qualifications PDE will use for selection of a new AEDY Consultant, and permit the United States 60 days to comment on these materials. PDE and the United States will make good faith efforts to resolve any disagreements regarding the selection of qualified consultant(s).

IV. COMPLAINT PROCESS

- A. PDE will develop and implement a process by which ELs and students with a disability, and their Parents, can seek to resolve complaints and concerns regarding any aspect of AEDY related to EL services or ADA requirements, including placement and exiting decisions, the quality of relevant academic instruction, the provision or omission of language assistance services, and services to students with disabilities, including reasonable modifications. PDE may open this process to all students, Parents, and others and receive and resolve complaints concerning all aspects of AEDY. The process will include the following steps:
 - i. Local Level Resolution: Students, Parents, and others having complaints and concerns regarding AEDY will be required to seek resolution of complaints and concerns via the relevant AEDY Program and/or LEA rather than elevating concerns to PDE in the first instance. PDE will require LEAs and AEDY Programs to develop and implement local policies and procedures, which will be submitted to PDE when applying for AEDY Program approval,

by which students, Parents, and others can submit complaints and concerns to LEAs and/or AEDY Programs related to AEDY Programs. This paragraph does not limit any other rights or remedies under federal and state law.

- ii. PDE Review: Students, parents, and others will be provided an opportunity to seek PDE review if a local EL or ADA complaint or concern is not resolved at the local level and/or if students, Parents, or others wish to challenge the local level resolution.
- B. At both the local level resolution and PDE review stages, the complaint process will include providing all interested persons with: the relevant policies for investigation of EL and ADA complaints, including policies regarding interviews and consideration of relevant evidence, as well as possible outcomes of an investigation; timely procedures for responding to the person making the complaint; information about potential means of responding to the complaint; reasonable time frames for response; and information regarding how to determine the status of a complaint.
 - C. PDE will notify AEDY stakeholders, including Parents, students, advocates, LEA Coordinators, and AEDY Program Coordinators, about the local level resolution and PDE review process required by Section IV.A. above, by posting the process on PDE's website in both English and Spanish, and include information that explains how persons who require oral or written translation into a different language can obtain that translation. In addition, PDE will require LEAs and AEDY Programs to notify students, Parents, and others, about the local level resolution and PDE review process in a manner that is accessible to LEP Parents, Parents with disabilities, ELs, and students with disabilities given their language needs and disabilities.
 - D. By May 31, 2019, PDE will submit to the United States for review its plan for the creation of the local level resolution and PDE review process required by this Section. The United States will have 60 days from receipt of the plan to provide PDE with its comments and proposed revisions. If the Parties disagree on whether the plan comports with PDE's obligations under Section IV, they will utilize the dispute resolution procedures in Sections XI. F-G below.
 - E. The local level resolution and PDE review process will be implemented before the start of the 2019-2020 school year.

V. ENGLISH LEARNER SERVICES IN AEDY PROGRAMS

- A. Consistent with its obligations under Section 1703(f) of the EEOA, PDE will ensure, through its guidance, process for approving AEDY Programs, oversight, monitoring, and site visits that (i) AEDY Programs accepting ELs provide EL services by utilizing teachers who hold ESL Teaching Credentials and (ii) use materials that are appropriate for the ELs' ages and levels of English proficiency.

- B. PDE will ensure, through guidance, monitoring, and oversight, that LEP Parents of students in AEDY Programs are provided adequate translation and interpretation services.
- C. PDE will require all LEAs referring ELs to AEDY Programs to establish an EL service plan to ensure that ELs placed in AEDY Programs are provided EL services by teachers holding ESL Teaching Credentials. PDE will require the EL service plans to demonstrate that:
 - i. AEDY Programs accepting ELs have the faculty and materials necessary to provide adequate and appropriate language assistance services that teach ELs English in all four language domains (listening, speaking, reading, and writing) and provide meaningful access to their grade-level core content instruction; and
 - ii. LEP Parents of students in AEDY Programs will be provided adequate translation and interpretation services.
- D. The AEDY Team will require LEAs to submit copies of their EL service plans to PDE and AEDY Programs at the time they are established, and also to PDE at the time of the AEDY program’s application for program approval.
- E. On September 1, 2019, and annually thereafter during the term of this Agreement, PDE will provide the United States copies of EL service plans collected from the LEAs that refer ELs to AEDY Programs.
- F. During site visits of AEDY Programs that serve ELs, the AEDY Team will collect a copy of the EL service plan, verify implementation of the plan, and refer EL issues and concerns to PDE’s staff who have expertise in EL services.
- G. PDE will update its policies and guidance, including its Basic Education Circular titled “Educating English Learners (ELs),” to include the obligation that LEA and AEDY Programs provide EL services to all ELs placed in AEDY Programs.

VI. ENSURING NON-DISCRIMINATORY AEDY REFERRALS/PLACEMENTS, EQUAL OPPORTUNITIES, AND TIMELY EXITING THROUGH UPDATED PDE GUIDANCE

- A. AEDY Referrals/Placements: AEDY referrals and placements will be administered in a manner that does not discriminate on the basis of disability.
 - i. Students with disabilities will be individually assessed via a manifestation determination to determine whether the behavior subjecting them to possible placement in AEDY is a manifestation of a disability. LEAs must not refer to AEDY Programs, and AEDY Programs must not accept, students with disabilities due to behavior caused by their disability, with the exception of the circumstances listed in 34 C.F.R. §§ 300.530(g) or 300.532(b)(2)(ii), or

when the student’s parent and LEA agree to the AEDY placement pursuant to 34 C.F.R. § 300.530(f)(2).

1. For the placement category, 24 P.S. § 19-1901-C(5)(i), “[d]isregard for school authority, including persistent violation of school policy and rules,” LEAs and AEDY Programs must be particularly careful to ensure they are referring and/or accepting students with a disability only when the student exhibits conduct to a “marked degree” as required under Pennsylvania law. Specifically, a student with a disability must not be placed in an AEDY Program under this placement category unless (a) the student has had multiple displays of such behavior, documented by the LEA; (b) the LEA has attempted and documented multiple unsuccessful evidence-based interventions, and that the behavior persists; and (c) the LEA has conducted and documented compliance with Section VI.A.i. above.
 2. The United States recognizes that PDE worked with lawmakers and truancy has been removed as a basis for placing students in AEDY Programs.
- ii. Students with disabilities must not be unnecessarily segregated into certain AEDY Programs because of their disability. AEDY Programs with significant overrepresentation of students with disabilities as compared to the percentage of students with disabilities in the General Education Program must be reviewed by PDE to ensure that students with a disability are neither being placed into AEDY Programs because of their disability nor are being assigned unnecessarily to a specific AEDY Program because of disability.
 - iii. AEDY Programs may not be used as a transitional placement for a student returning from a mental health or residential placement unless the student is a disruptive student within the meaning of 24 P.S. § 19-1901-C (5), and all relevant requirements in this Agreement and by law have been satisfied.

B. Equal Opportunities in AEDY Programs:

- i. Beginning with the 2019-2020 school year PDE will not approve any AEDY Program applicant that will operate for less than the number of hours and days required of General Education Programs under Pennsylvania Law unless the applicant expressly represents to PDE that it will not accept any student with a disability whose pre-referral IEP or 504 Plan demonstrates that the student needs to receive the full number of hours and days required of General Education Programs because of a disability. PDE will monitor approved AEDY Programs operating for less than the number of hours and days

required of General Education Programs under Pennsylvania Law to ensure that they are not accepting students with disabilities whose pre-referral IEP or 504 Plan demonstrates that the student needs to receive the full number of hours and days required of General Education Programs because of a disability. Additionally, PDE will require that AEDY Programs timely consider any requests from students with disabilities in AEDY Programs for reasonable modifications regarding the length of school day in AEDY.

- ii. PDE will require AEDY Programs that do not have the capability of providing necessary special education services to students with disabilities, including the requisite certified staff, programs, and services, to reasonably modify their policies to ensure that students with disabilities are not placed there. Where students with disabilities have disabilities that prevent them from meeting essential program requirements of an AEDY Program, they must not be placed in such AEDY Programs unless reasonable modifications are made to the programs to accommodate the students' disabilities.
- iii. PDE will require that all AEDY Programs implement for students with disabilities SWPBIS or any other data-driven, evidence-based, tiered prevention and intervention, non-exclusionary behavior framework ("Other Framework") to:
 - 1. Foster a positive school climate conducive to success of students with disabilities;
 - 2. Keep students with disabilities in the classroom where they can learn and achieve; and
 - 3. Help students with disabilities meet their behavioral goals and transition back to their General Education Programs by their Presumptive Exit Dates.
- iv. PDE will require that all AEDY Programs take the following actions as part of their implementation of SWPBIS or Other Framework:
 - 1. Establish a data-reporting process and platform for the collection of school-level and AEDY Program data;
 - 2. Develop an SWPBIS evaluation plan for AEDY Programs to measure context, support, fidelity, and impact on students with disabilities of the SWPBIS efforts; and
 - 3. Engage community stakeholders.
- v. To the extent that an AEDY Program uses restraints on students, the AEDY Program must: (1) reasonably modify its restraint policy and procedures, when necessary, to accommodate students with disabilities; (2) ensure that

restraints are being administered by staff appropriately trained to use such procedures; (3) ensure restraints are used in a manner that does not discriminate on the basis of disability; (4) report restraints involving students with IEPs to PDE's Bureau of Special Education, as required by law; and (5) maintain a log of restraints for PDE review.

- vi. LEAs and AEDY Programs must promote and facilitate the participation of students with disabilities placed in AEDY Programs in electives, providing supports and accommodations whenever needed to encourage participation.
- vii. ELs placed in AEDY Programs must be provided appropriate services to overcome language barriers. AEDY Programs must ensure that LEP Parents are provided appropriate interpretation and translation services.

C. Student Exiting:

- i. Within five school days of placement of a student with a disability in an AEDY Program, the LEA Coordinator, AEDY Program Coordinator, student, Parent(s), and other LEA and AEDY Program staff as appropriate ("Transition Team") must set clear exit criteria with measurable behavioral goals that can be reasonably achieved by the Presumptive Exit Date and which are clearly communicated to all AEDY staff having contact with the student. Exit criteria will address only the behavior that resulted in the AEDY placement. Exit criteria will not include measures of academic performance, attendance, or standards that may be difficult or impossible for a student with a disability to comply with or that differ from standards that would be expected of a student in a General Education Program.
- ii. Except for limited circumstances described in Section VI.C.iii, Presumptive Exit Dates must be within 45 days of a student's placement in the AEDY Program, and may be sooner than that based on the student's individual needs.
- iii. Except for students subject to expulsion for a specific period of time following a formal hearing and due process procedures pursuant to 22 Pa. Code § 12.8(b), there is a rebuttable presumption that the exit criteria for a student with a disability can and will be met by the Presumptive Exit Date.
- iv. By the beginning of the 2019-2020 school year, PDE will develop an electronic mechanism that will identify and flag AEDY Programs that consistently retain students with a disability beyond their Presumptive Exit Date. PDE will work with the AEDY Programs that are flagged to address this problem.
- v. AEDY Programs must have a formal, documented process for periodic review and evaluation by the Transition Team of progress toward established exit

criteria for each student with a disability to determine the student's readiness to transition back to the General Education Program. The review must be documented and kept on file in each student's record.

- vi. The AEDY Program Coordinator will work collaboratively with other members of the Transition Team to ensure that the student with a disability is provided the evidence-based interventions the student needs at the AEDY Program to help meet the student's exit criteria.
- vii. To determine whether a student with a disability is ready to return to the General Education Program, the Transition Team will meet prior to the Presumptive Exit Date and no less frequently than at the end of each semester.
- viii. A student with a disability must be exited/transitioned back to the General Education Program by the Presumptive Exit Date unless there is documented evidence indicating that the student has not met established exit criteria. If a student is not returned by the initial Presumptive Exit Date, a new Presumptive Exit Date period begins. All new Presumptive Exit Dates will be within 45 days of the prior Presumptive Exit Date. Pending development and implementation of the electronic mechanism described in Section VI.C.iv above, AEDY Programs must report to PDE every semester data regarding all students with a disability who have remained beyond their Presumptive Exit Dates, including the reasons why the students have remained and the newly established Presumptive Exit Dates.
- ix. The Transition Team will develop a transition plan for each student with a disability meeting his or her behavioral goals to ensure that the student receives the necessary intervention services when returning to his or her General Education Program with the goal of ensuring that the student does not return to an AEDY Program.

D. AEDY Policies:

- i. By May 31, 2019, PDE will update its policy guidance to LEAs and AEDY Programs, in the form of an AEDY Basic Education Circular ("AEDY BEC"). The AEDY BEC will include the instructions and points set forth in Section VI. A-C above and must be submitted to the United States for review. The United States will have 60 days from receipt of the document to provide its comments and proposed revisions to the BEC. If the Parties disagree on whether the AEDY BEC comports with the requirements of this Agreement, they will follow the dispute resolution procedures in Section XI. F-G below.
- ii. Within 90 days of the date on which the Parties agree on a final version of the AEDY BEC, PDE will update its AEDY forms, site visit forms, AEDY Program applications, exit criteria, and other relevant documents, as

necessary, to reflect the guidance in the AEDY BEC, and PDE will submit to the United States for review the updated documents referenced in this Section. The United States will have 60 days from receipt of the documents to provide its comments and proposed revisions. If the Parties disagree on whether these documents comport with the requirements of this Agreement, they will follow the dispute resolution procedures in Section XI. F-G below.

- iii. The United States recognizes that PDE has an internal process for review and approval of PDE policies prior to publication and implementation of the policies. The United States further recognizes that PDE intends to complete the policy review and approval process before submitting AEDY policies to the United States pursuant to this Agreement and that revisions following such submission may delay the publication and implementation of such policies.

VII. DATA COLLECTION, ANALYSIS, AND REPORTING

- A. PDE has entered a contract for the development of an electronic system designed to streamline: 1) AEDY Program approval; 2) data collection, reporting, and analysis; 3) monitoring; 4) site visits; and 5) the generation of action plans.
- B. The United States recognizes that PDE has recently implemented the AEDY Program approval portion of the electronic system.
- C. The United States recognizes that PDE intends to initiate implementation of the data collection portion of the electronic system in September 2019.
 - i. Beginning with the 2019-2020 school year, PDE will collect the following data, at a minimum, for each student placed in AEDY at any point from the effective date of this Agreement through the termination of this Agreement:
 - 1. Unique Commonwealth identification number (i.e., PAsecureID);
 - 2. Date of Birth;
 - 3. Grade;
 - 4. LEA that made the referral to the AEDY Program;
 - 5. School student attended at the time of the referral/placement to the AEDY Program;
 - 6. Disability status, including identification of the primary IDEA or Section 504 eligibility, where available;
 - 7. EL status (current EL, former EL, or never EL);
 - 8. Date of AEDY placement;
 - 9. The name and address of the AEDY Program site that the student attends/attended;

10. AEDY placement reason;
 11. For students with a disability, number and nature of interventions attempted prior to AEDY placement, as recorded by the LEA on the AEDY referral form;
 12. Description and date(s) of incident(s) that was the basis for the placement;
 13. Date of the informal hearing;
 14. For a student with a disability:
 - a. Whether a manifestation determination or other individualized assessment to determine if the behavior was related to the disability occurred; and
 - b. If such an assessment occurred, the outcome of the assessment (i.e., whether the behavior was found to be a manifestation of the student's disability, or not).
 15. For students with a disability, Presumptive Exit Dates;
 16. For students with a disability, date Transition Plan developed; and
 17. Date of exit from the AEDY Program.
- ii. Beginning with the 2019-2020 school year, PDE's data collection will also include:
1. Outcome data (as applicable), including performance on statewide assessments, English Language Proficiency ("ELP") assessments (currently WIDA composite and language domain scores), and data on whether the student progressed to the next grade and/or graduated. Outcome data includes data from one year prior to placement and at least one year after exiting.
 2. Information related to complaints received as described in Section IV.
 3. Information collected during site visits as described in Section VIII, including the AEDY program's EL service plan, the EL services and materials provided to ELs placed in an AEDY program and the credential(s) of the teacher providing the EL services.
 4. Information collected during site visits related to reports by AEDY Programs to Childline of restraints that cause an injury to

a student with a disability or require medical attention to a student with a disability.

- D. The United States recognizes that PDE currently collects data on an annual basis and that when the data collection portion of the electronic system is fully implemented, AEDY Programs will be reporting data on a real time basis. Where necessary, PDE will provide technical assistance to AEDY Programs on how to properly collect and report the requested data.
- E. Beginning with the 2019-2020 school year, by no later than August 31 of each year thereafter, PDE will collect, synthesize, and analyze the data with respect to students with a disability and ELs to assess trends on a student, LEA, AEDY Coordinator Region, AEDY Program, and state-wide level.
- F. On at least an annual basis, the AEDY Supervisor, AEDY Team, Regional Coordinators, and AEDY Consultant, will analyze aggregate data for each LEA referring students to an AEDY Program and for each AEDY Program. The data analysis will be based on the collected data and overall demographic data (e.g., the overall enrollment figures of the LEA by disability and EL status; and the percentage of students placed by LEAs by those categories as compared to the percentages of students without disabilities and never-EL students placed by LEAs) for each LEA to assess, at a minimum, progress in reducing rates of disparities in AEDY placements on the basis of disability.
- G. For those LEAs and AEDY Programs where PDE identified concerns through the analysis of data, PDE will conduct site visits of the AEDY Programs at issue or provide supplementary oversight and/or technical assistance, consistent with the terms of Section VIII.
- H. PDE will publish on its website an annual report by no later than September 2019 of each year for the prior school year (e.g., September 2019 for the 2018-2019 annual report) summarizing, at a minimum, data and information regarding the total number of students served in AEDY Programs, by EL status and disability status, and primary placement reasons.
- I. PDE will maintain the following information for the prior school year types and delivery methods for counseling provided; types of instruction offered and mode of delivery; identification of students in need of an IEP or 504 Plan while in the AEDY Program or during the AEDY Program intake process; staff credentials; and progress of students in AEDY Programs, including attendance, academic performance, and applicable standardized test outcomes; and rates of return to General Education Programs.

VIII. PDE MONITORING, SITE VISITS AND PROGRAM ACTION PLANS

- A. The United States recognizes that PDE is developing a process to conduct monitoring and site visits of AEDY Programs for the purposes of oversight and providing technical assistance to AEDY Programs on a cyclical basis using the electronic system described in Section VII.A. The provisions of this Agreement are intended to build on PDE's existing monitoring framework, and development of its electronic system, to build a foundation to ensure effective monitoring of all AEDY Programs and compliance with the terms of the Agreement.
- B. PDE will monitor each AEDY Program within the three-year term of this Agreement, subject to the early termination procedures described in Section XII.
- C. PDE will conduct a site visit of all applicant AEDY Program locations prior to PDE granting the applicant initial approval to participate in AEDY in order to ensure that the applicant's program is designed to meet the requirements for students with disabilities and ELs described in this Agreement.
- D. With the input of the AEDY Consultant, and other experts PDE may engage, PDE will develop and implement a monitoring process, which will build from PDE's existing process of monitoring AEDY Programs and other educational programs, to ensure that the goals of this Agreement are met.
- E. In addition to the initial site visit described in Section VIII.C above and as part of the monitoring cycle described in Section VIII.A above, PDE will identify AEDY Programs that require site visits based on (1) complaints and/or other information PDE receives, including complaints received from the United States, concerning specific AEDY Programs or referring LEAs; (2) the analysis of data described in Section VII.F and (3) the significant overrepresentation of students by disability.
- F. Prior to conducting site visits:
 - i. PDE will analyze the most current data regarding, at a minimum, the demographics of the AEDY Program and the LEAs whose referral of students to the AEDY Program results in AEDY placements (i.e., disability or EL status) and data regarding students with a disability and ELs exiting from the AEDY Program, as well as each EL service plan to the extent ELs are placed in the AEDY Program.
 - ii. PDE will assemble a "Site Visit Team" that will be of sufficient size to review documentation, conduct interviews of staff and students, visit classrooms during instructional periods, and tour facilities during the site visit. The Site Visit Team must include at least one representative from BSE with expertise concerning students with disabilities (e.g., through relevant training, certifications, and/or experience teaching students with disabilities). PDE will

ensure that all members of the Site Visit Team have completed the relevant portions of the training set forth in Section IX.D below, as identified by the AEDY Consultant.

- iii. PDE will review prior complaints received during the monitoring cycle and consult with the Regional Coordinator to learn of any complaints or other relevant information pertaining to the AEDY Program.
- iv. PDE will survey Parents in preparation for the site visit. PDE will ensure that Parent surveys are translated for LEP Parents who need a translation and who wish to participate in the survey process.
 1. PDE will make good faith attempts to contact Parents of students with a disability and ELs placed in the AEDY Program and urge them to participate in the above-mentioned survey outside the presence of AEDY Program and LEA staff about their children's experiences in the AEDY Program, including whether they have complaints concerning the AEDY Program, AEDY placement, and/or exiting process, or wish to share any other information pertinent to issues covered by this Agreement, including recommendations to improve the AEDY Program and AEDY placement and/or exiting process.
 2. PDE will summarize survey results of Parents in a written document, which it will keep on file for at least the duration of this Agreement, and input relevant data from the survey into PDE's electronic data collection system developed as described in Section VII.
- v. PDE will share its findings from its interviews and Parent surveys with the AEDY Program and LEA Coordinator while protecting the identities of individual Parents and students unless the Parents and students allow their identities to be shared and will incorporate findings into the action plan issued to the AEDY Program and LEA as needed.
- vi. In addition, PDE will share its findings from its Parent surveys with Regional Coordinators and will develop and implement a plan to address problems that are common to students with a disability or ELs across AEDY Programs and referring LEAs. PDE will seek assistance from stakeholders as needed (e.g., advocates, Parents, PaTTAN) in developing and implementing this plan.
- vii. PDE will work with the LEA Coordinator and AEDY Program Coordinator prior to the site visit to ensure that all documentation necessary for the site visit, including IEPs, copies of informal hearing notices, AEDY referral

forms, and documentation concerning transition plans, will be available for review at the time of the site visits.

- G. Either during or prior to the site visit, the Site Visit Team will, at a minimum:
- i. Interview the LEA Coordinator, AEDY Program Coordinator, and other staff (including teachers and counselors), and students of the AEDY Program concerning: the AEDY placement and exit process; the academic instruction and curricula at the AEDY Program; the supports and services provided at the AEDY Program to students with disabilities and ELs; and any other issue relevant to this Agreement.
 - ii. Review all individual files of students with disabilities and ELs currently placed in the AEDY Program, and duration of placement in the AEDY program, and AEDY referral reason. The Site Visit Team will review documentation relevant to the AEDY placement, including AEDY referral forms; IEPs; copies of informal hearing notices concerning the AEDY placement that LEAs have sent to Parents; behavior plans; plans for exiting the student from the AEDY Program and documentation reflecting progress towards the behavioral goals; documentation reflecting EL services (if applicable); documentation of any restraints used on the student, including the date of the incident, the reason for the use of restraint, who used the restraint and what training, if any, those persons have in using restraints;
 - iii. Review copies of documents reflecting credentials and qualifications of AEDY Program staff who provide services to students with disabilities and ELs (if applicable), and other documentation that confirms that the AEDY Program meets PDE's requirements as an approved AEDY Program and the terms of this Agreement; and
 - iv. Visit classrooms during instructional periods, and tour facilities.
- H. For any student with a disability PDE determines should not have been placed in an AEDY Program or should have been exited, PDE will immediately raise its concern with the referring LEA and AEDY Program and require that the student be transitioned back to his or her General Education Program immediately, or as soon as practicable given the needs of the student. PDE will follow up with the AEDY Program Coordinator and LEA Coordinator to ensure that the student has been returned to the General Education Program in a timely manner.
- I. For any student with a disability about whom PDE has concerns regarding placement or failure to exit in a timely manner (e.g., through review of documentation, interviews with staff, complaints raised by Parents, or by other means) but cannot conclusively determine that the placement or failure to exit was improper, PDE will conduct an expedited review to conclude no later than two weeks from when it learns of the

concerns to determine whether the student was improperly placed or kept in the AEDY Program. If PDE determines the student was improperly placed or kept in the AEDY Program, it will follow the procedures in Section VIII.H. above.

- J. Within 60 days of a site visit, unless the time period is extended for good cause as determined by the AEDY Coordinator, PDE will issue an action plan to the relevant AEDY Program and LEAs placing students in the AEDY Program for any deficiencies PDE identified that relate to this Agreement, with the exception of concerns related to the placement of students that are subject to expedited procedures pursuant to Sections VIII.H and VIII.I above. The action plans will include timeframes by which AEDY Programs and LEAs must correct the identified deficiency. PDE will ensure that such actions have been completed by the specified deadlines. Once PDE's electronic site visit tool is fully implemented, PDE will issue action plans related to this Agreement within 45 days of the site visit, unless the time period is extended for good cause as determined by the AEDY Coordinator. If the 60-day or 45-day time periods referenced above are extended for good cause, PDE will document the reason for the extension and provide such documentation to the United States as part of its semi-annual or annual report pursuant to Section XI.D.
- K. LEAs: Pursuant to Sections IV, VII, and VIII.A-J, PDE will identify through its review of data, monitoring, complaints received and other information, patterns in AEDY Program placements and exits that need further investigation because of disproportionalities of students with disabilities.
 - i. PDE will investigate all LEAs with disproportionate placements of students with disabilities to identify and examine the cause of the disproportionalities. PDE will prioritize investigating those LEAs that have the most significant overrepresentation of students with disabilities in AEDY Programs.
 - ii. PDE will develop a corrective action plan to address any unwarranted disproportionalities with respect to students with disabilities, and when deemed appropriate by PDE, collaborate with the AEDY Consultant in developing the plan. The corrective action plan will include requiring that those LEAs: set objective measures to reduce unwarranted disproportionalities; attend AEDY trainings; and encourage the implementation of SWPBIS or Other Framework.
- L. If PDE determines through its analysis of data and monitoring that students with disabilities are being unnecessarily segregated within certain AEDY Programs by disability, then PDE will require those AEDY Programs and referring LEAs take corrective action to ensure that such unnecessary segregation is eliminated.

- M. PDE will send the United States copies of all corrective action plans addressing unwarranted disproportionalities and unnecessary segregation under this Agreement at the time it issues such plans to LEAs.
- N. PDE will verify that EL services are provided to ELs placed in AEDY Programs as described in the placing LEA's EL service plan developed as described in Section V. (related to English Learner Services in AEDY Programs). If PDE plans to monitor the provision of EL services provided at the AEDY Program as part of its monitoring of the Program, the LEA's EL staff person with expertise in educating ELs and holding an ESL Teaching Credential will be part of the Site Visit Team.
- O. PDE will investigate complaints that LEAs are placing students with a disability or ELs in Unapproved Alternative Education Disciplinary Programs that are not approved pursuant to the Pennsylvania Public School Code.
 - i. PDE will require every LEA in the Commonwealth to certify annually that it is not placing students with a disability or ELs in Unapproved Alternative Education Disciplinary Programs.
 - ii. PDE will take action where necessary to ensure the transition of students with a disability or ELs placed in Unapproved Alternative Education Disciplinary Programs to an approved AEDY Program or the General Education Program.
- P. PDE will take all appropriate action to ensure that LEAs and AEDY Programs remedy all instances of non-compliance with this Agreement that are identified by PDE. Such action may include PDE revoking an LEA's approval to refer students to AEDY Programs or revoking an AEDY Program's approval to operate.
- Q. By May 31, 2019, PDE will submit to the United States all updated site visit tools, forms, and action plan templates to ensure that they capture information needed to ensure compliance with the terms of this Agreement. The United States will have 90 days from receipt of the plan and updated tools, forms, and templates to provide its comments and proposed revisions to the plan. If the Parties disagree on whether these documents comport with the requirements of this Agreement, the Parties will follow the dispute resolution procedures in Sections XI. F-G below.

IX. QUALIFICATIONS, TRAINING AND PROFESSIONAL DEVELOPMENT

- A. Through its review and approval of AEDY program applications, monitoring of AEDY Programs, and site visits, PDE will require AEDY Programs to have adequate numbers of faculty who (i) hold ESL Teaching Credentials, to the extent ELs are served by an AEDY Program; and (ii) hold credentials required by Pennsylvania law to instruct and provide services to students with disabilities to the extent those students are served by the AEDY Program. Furthermore, PDE will require that LEAs referring ELs to AEDY Programs ensure that those AEDY Programs have adequate numbers of

faculty with ESL Teaching Credentials. Where an AEDY Program serving ELs lacks adequate numbers of faculty who hold ESL Teaching Credentials, PDE will ensure that the LEA referring the ELs provides adequate training regarding instructing ELs to the existing teachers of ELs in the AEDY Programs and that the LEA makes good faith efforts to recruit and hire teachers with ESL Teaching Credentials to instruct ELs in AEDY Programs.

- B. PDE will provide professional development and trainings by qualified trainers for all LEA Coordinators, AEDY Program Coordinators, Regional Coordinators, and other LEA and AEDY Program personnel, as appropriate. To the maximum extent possible, PDE will get approval for all training to be included as accredited in the state continuing education program in order to allow teachers to satisfy continuing education requirements and receive professional certification upon successfully completing training. PDE will provide supplementary technical assistance to LEAs that PDE identifies as having unwarranted disproportionalities in referrals resulting in placements to AEDY Programs on the basis of disability, and AEDY Programs that have been identified as needing additional staff training.
- C. By May 31, 2019, PDE will submit to the United States a training plan that includes specific details about training and professional development described in Section IX.D. below. The United States will have 60 days from receipt of the plan to provide its comments and proposed revisions to the plan. If the Parties disagree on whether the training plan comports with the requirements of this Agreement, they will follow the dispute resolution procedures in Section XI. F-G below.
- D. The trainings, which may be conducted via webinars, will occur at least annually beginning with the 2019-2020 school year and will include, at a minimum, the following topics:
 - i. The prohibition of discrimination on the basis of disability in school discipline;
 - ii. Practical and detailed descriptions of the permissible reasons for placement into an AEDY Program, including explanations of each placement category, alternatives to AEDY for students with disability, and explanations of the requirement to use interventions and corrective practices before placing a student with a disability in an AEDY program;
 - iii. SWPBIS or Other Framework training developed with the assistance of the SWPBIS Consultant. The training will ensure that LEA Coordinators, AEDY Program Coordinators, Regional Coordinators, and other LEA and AEDY Program personnel identified by PDE develop the requisite skills necessary to effectively implement SWPBIS or Other Framework to make AEDY Programs accessible to students with disabilities. The training will cover the

following elements and will be phased in by the end of the 2019-2020 school year:

1. Clear, concrete, and accessible strategies for classroom management and student discipline, including de-escalation and conflict resolution techniques, and professional supports, such as a network(s) of identified colleagues and other professionals to assist in making discipline decisions; and
 2. Restorative practices focusing on resolving conflict, repairing relationships, and assisting students to redress harms caused by their conduct.
- iv. Behavior management techniques, and implementing behavior intervention plans, including functional behavior assessments;
 - v. Conducting manifestation determinations for students with a disability;
 - vi. Youth mental health needs and working with students with disabilities, including mental health and emotional disabilities;
 - vii. The requirements to provide effective EL services to ELs in AEDY Programs and translation and interpreter services to LEP Parents of students in AEDY Programs; and
 - viii. The requirements of this Agreement.

X. PARENT, STUDENT, AND COMMUNITY ENGAGEMENT AND INPUT

- A. In collaboration with the AEDY Supervisor, AEDY Team, and Regional Coordinators, PDE will develop and deliver information to assist students and Parents in understanding their rights in the AEDY process and will communicate in a language that is accessible to LEP Parents and ELs, and in a manner that is accessible to Parents and students with disabilities.
- B. The information will be provided at least annually in each of the AEDY training regions established by PDE for purposes of providing training to AEDY Program staff, LEA Coordinators, and AEDY Program Coordinators in locations across the Commonwealth, and also made available online for access by the public.
- C. PDE will provide ongoing opportunities for students, Parents, and advocates to raise any concerns and make any recommendations or inquiries about AEDY.
- D. PDE will require LEAs to inform students, Parents, and others of PDE's complaint process described in Section IV.

XI. UNITED STATES MONITORING, ENFORCEMENT, AND TERMINATION

- A. This Agreement will become effective on May 31, 2019 (“the effective date of this Agreement”). The Agreement is not a consent decree, and the Parties do not intend that it be construed as such.
- B. PDE will maintain records of all information pertinent to implementation of the terms of this Agreement and will provide such information to the United States within 60 days of request.
- C. PDE agrees, to the extent practicable, to submit all reports and records to the United States in a searchable and usable electronic format on a compact disc or DVD. Specifically, for any request for a collated list of data, PDE will provide the information using a spreadsheet (e.g., Microsoft Excel), with the delineated data separated by appropriate columns and rows, along with a corresponding data dictionary/key. For any request for copies of documents, such as policies or reports, PDE will provide the information as a searchable (OCR) Adobe Acrobat file. If the requested data or documents do not exist in the requested format (e.g., Microsoft Excel spreadsheet or searchable (OCR) Adobe Acrobat file), a reasonable period of time will be afforded to PDE to convert the data or documents into the requested format. To the extent any information is available online, PDE will provide the URL address(es) where the information is located.
- D. PDE will submit the following semi-annual reports and final annual report to the United States demonstrating its efforts to comply with the provisions of this Agreement, subject to the early termination procedures described in Section XI.I: PDE will provide the first semi-annual report by September 31, 2019, the second semi-annual report by April 1, 2020, the third semi-annual report by September 31, 2020, and the fourth semi-annual report by April 1, 2021, and a final annual report by April 1, 2022. If any of the information required for a report in a particular year is available in a document that PDE has already prepared to comply with federal law, state law, or regulation, PDE may include that document in its report and indicate the applicable section of the report. All information will be clearly labeled to indicate the topic below to which it responds; should there be no responsive information, PDE will so indicate. The reports will include the following information about the preceding school semester or years as the case may be:
 - i. All revised guidances, BECs, policies, procedures, forms, AEDY Program application templates and other documents as required to be revised or created under this Agreement, including a description of all revisions since the previous semi-annual report and the reasons for the revision.
 - ii. A description of how PDE is soliciting input from stakeholders.

- iii. A chart reflecting the status of implementation of SWPBIS or Other Framework for students with disabilities at AEDY Programs.
- iv. Data reflecting the number of PDE reviews of local complaints related to AEDY placements of students with disabilities and the outcome of each PDE review.
- v. A list, by AEDY Program, of AEDY Program staff holding ESL Teaching Credentials for teachers providing services to ELs and credentials required by Pennsylvania law for teachers providing services to special education students.
- vi. Data reflecting compliance with the terms of this Agreement regarding ELs in AEDY Programs, including:
 - 1. A list of all ELs in AEDY Programs, by unique Commonwealth identification number (i.e., PAsecureID), AEDY Program, placing LEA, grade, native language, most current English proficiency level on the Commonwealth's ELP assessment, and nature and amount of EL services provided (e.g., one hour of ESL a day, bilingual instruction in math and social studies each day), the name of the teacher providing EL services, and whether the teacher has an ESL Teaching Credential, whether the student's Parent is LEP, and if so the language needed for interpreting and/or translating.
 - 2. A list of all EL-related training LEAs provided to AEDY Program personnel.
- vii. PDE's training pertaining to issues relevant to this Agreement, and documentation of all trainings conducted as required by this Agreement, and any other training regarding AEDY. The documentation will include a brief narrative about each training, the date(s) on which it was provided, the length of time of the training, the individual(s) or entity that conducted the training, and a description of the audience.
- viii. Copies of all written complaints, whether reported by a student, Parent, advocate, or concerned member of the community that implicate any term of this Agreement.
- ix. For each written complaint received that implicates a term of this Agreement, a description of the outcome of the investigation, including any action taken.
- x. A copy of the annual data reports that the AEDY Supervisor, AEDY Team, Regional Coordinator, and/or AEDY Consultant review for each LEA and

each AEDY Program, and documents reflecting actions taken in response to the data collected pursuant to this Agreement.

- xi. Copies of all written findings, action plans and corrective action plans issued pursuant to PDE's monitoring of LEAs and AEDY Programs under Section VIII.M.
 - xii. A chart reflecting for each AEDY Program involved in an AEDY site visit the following information: the name and address of the AEDY Program; the date of the site visit; the reason for the site visit (initial site visit, complaint-driven, data-driven); the names of the Site Visit Team members; whether PDE determined that students with a disability were improperly placed or kept in the AEDY Program and what action PDE took in response, whether an action plan was issued; whether pursuant to Section VIII.J. the action plan was issued more than 60 days from the site visit prior to PDE's implementation of its electronic site visit tool or more than 45 days from the site visit after the electronic site visit tool implementation, and the reason(s) why; and whether the action steps have been completed and if not, the anticipated date of completion.
- E. The United States may evaluate PDE's compliance with this Agreement by conducting site visits (with or without experts); observing trainings; interviewing PDE staff and contractors, interviewing and communicating with students with prior parental consent; and requesting additional reports or data as the United States believes in its sole discretion to be reasonably necessary for the United States to determine whether PDE is in compliance with this Agreement.
- F. If the United States determines during the course of monitoring the Agreement that PDE is not in Substantial Compliance with any provision of this Agreement, the United States will provide PDE notice of such Substantial non-Compliance along with the basis for the determination, and a specific description of the matters at issue. PDE will have an opportunity to take action to correct or otherwise negotiate with the United States for the resolution of such Substantial non-Compliance within 45 days of the notice.
- G. In the event that PDE is not in Substantial Compliance with one or more provisions of this Agreement and does not correct such non-compliance following notice from the United States and a period of negotiations as set forth in Section XI.F, the United States may initiate judicial proceedings to enforce the ADA and EEOA. The United States agrees that it will not initiate or pursue litigation without first attempting to resolve the issues through negotiation as provided in this Agreement.

- H. This Agreement will remain in effect until 60 days after PDE submits its final annual report due on April 1, 2022, and no earlier than May 31, 2022, subject to the early termination procedures described in Section XI.I below.
- I. At any point after this Agreement has been in effect for two years, PDE will have the opportunity to demonstrate to the United States that it is in durable compliance with the EEOA and/or ADA regarding the matters covered by all or particular provisions of this Agreement, and to request that the United States agree to terminate all or particular provisions of this Agreement prior to the termination date in Section XI.H. After any such showing by PDE, the United States will determine, in good faith, whether it agrees with PDE's position and inform PDE of its determination. If the United States agrees, then the Parties will engage in good faith negotiations to terminate all or particular provisions of this Agreement within a reasonable time period prior to the termination date in Section XI.H. This provision will not be construed as an admission of liability on the part of PDE or as a validation of any allegation. Nor shall any decision by PDE not to request an early termination be construed as any admission of liability or validation of any allegation.
- J. If any provision of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement will remain in full force and effect: provided, however, that if the severance of the unenforceable provision from this Agreement will materially alter the rights or obligations of the parties, the United States and PDE will engage in good faith negotiations to amend this Agreement to the extent necessary to restore the Parties, as closely as possible, to the promises made in this Agreement.
- K. This Agreement is final and binding on the Parties, including their agents, representatives, employees, successors-in-interest, assigns, and legal representatives. The undersigned Party representatives certify that they are authorized to enter into and consent to the terms and conditions of the Agreement and to execute and legally bind the Parties to it.
- L. PDE agrees to the terms of this Agreement solely for purposes of resolving the allegations described in Section I.A. The Parties undertake this Agreement as a means of alternative dispute resolution to avoid potential litigation and to preserve judicial and governmental resources. By entering into this Agreement, PDE does not concede that it has not complied with any provision of federal or state law, and this Agreement be construed as such. The United States agrees to forego litigation over the allegations described in Section I of this Agreement in exchange for the agreement by PDE to Substantially Comply with its terms.
- M. This Agreement resolves all pending complaints to the United States regarding PDE's oversight and approval of AEDY Programs, but does not cover any future complaints received after the effective date of this Agreement. If the United States receives any

complaint related to AEDY Programs through the duration of this Agreement, the United States will, in appropriate circumstances, as determined in the sole discretion of the United States, suggest that the complainant provide a copy of the complaint to PDE.

- N. This Agreement does not resolve any claims that individuals may have against PDE related to any matters, including the matters addressed by this Agreement.
- O. The Parties will bear their own attorneys' fees and costs in connection with this Agreement.
- P. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Settlement Agreement.
- Q. Facsimiles or scanned PDFs of signatures will constitute acceptable, binding signatures for purposes of this Agreement.

For the United States of America:

ERIC S. DREIBAND
Assistant Attorney General

DONALD R. LIVINGSTON
Deputy Assistant Attorney General

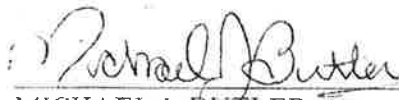


3/25/2019

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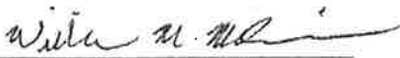
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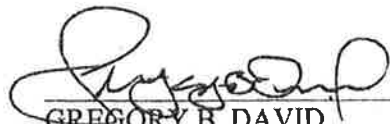
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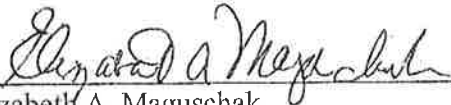
For the Pennsylvania Department of Education:



David W. Volkman
Executive Deputy Secretary
On behalf of the Pennsylvania Department of Education

3/22/19

Date



Elizabeth A. Maguschak
Chief Counsel
Counsel for the Pennsylvania Department of Education

3/22/19

Date