

**IN THE COURT OF COMMON PLEAS OF PHILADLPHIA COUNTY,
PENNSYLVANIA**

D.W., a minor, by and through her
Guardian, GEORGETTE HAND,

Plaintiff,

v.

MATHEMATICS, CIVICS AND
SCIENCES CHARTER SCHOOL OF
PHILADELPHIA INC.,
Defendant.

No. 19-1002028

**MEMORANDUM OF LAW IN SUPPORT OF
PETITION FOR INJUNCTIVE RELIEF**

D.W. is a six-year-old child in first grade who has been illegally denied enrollment at The Mathematics, Civics, and Sciences Charter School of Philadelphia Inc. (“Charter School”) in violation of Pennsylvania law, including 24 P.S. § 17-1701-A *et seq.* (“Charter School Law”) and Pennsylvania regulations for enrollment, 22 Pa. Code §§ 11.11(b), and the Pennsylvania Constitution. Twelve days after accepting D.W. and obtaining the required documentation under Pennsylvania law for enrollment, the Charter School denied her enrollment expressly based on her status as a student with a disability, and in clear violation of Pennsylvania’s Charter School Law and Pennsylvania School Code. As a result, D.W. suffered discrimination on the basis of her disability and was excluded from the Charter School that once accepted her, causing her to be denied unique educational programming, opportunities and benefits, and causing her to be stigmatized due to her disability.

D.W., as a school-age child with a disability, residing in Philadelphia, who applied and was accepted to the Charter School, has a clear right to enroll in the school and cannot be

discriminated against based on her disability. (Compl. ¶¶ 1, 5-6.) Under the Charter School Law, “a charter school **shall not discriminate** in its admission policies or practices on the basis of ... status as a person with a disability...or any other basis that would be illegal if used by a school district.” 24 P.S. § 17-1723-A(b)(1) (emphasis added). The Charter School is a charter school within the meaning of 24 P.S. § 17-1703-A and is required to adhere to all statutory requirements in the Charter School Law.¹ In addition, under the Pennsylvania School Code, specifically 22 Pa. Code § 11.11(b), D.W. is entitled to enroll in a charter school within 5 days of presentation of certain required enrollment documents, all of which were submitted to the Charter School on May 7, 2019.

None of this is disputed. Yet, the Charter School refuses to enroll D.W. because she has a disability that requires special education services. (Compl. ¶ 22.) The Charter School is improperly discriminating against D.W. in violation of the Charter School Law and the Pennsylvania Constitution and denying her enrollment in violation of Pennsylvania law. The Charter School’s illegal refusal to enroll D.W. must be remedied by immediate intervention by this Court through the issuance of a preliminary injunction.

I. BACKGROUND

D.W. is a six-year-old girl who sought to attend Mathematics, Civics, and Sciences Charter School of Philadelphia Inc. (“Charter School”). (Compl. ¶¶ 1, 9.) Instead, she faced pervasive and explicit discrimination on the basis of her disability for which she continues to suffer irreparable harm. (Compl. ¶¶ 22-26; Pl. Pet. ¶ 32.) D.W. is diagnosed with Attention

¹ The Charter School is also required to comply with all provisions of Chapter 711, including 22 Pa. Code § 711.7(a), which states that a charter school “may not deny enrollment or otherwise discriminate in its admission policies or practices on the basis of a child’s disability or the child’s need for special education or supplementary aids or services.”

Deficit Hyperactivity Disorder (“ADHD”) and has been determined to be a “child with a disability.” (Compl. ¶ 6.) She has an Individualized Education Program (“IEP”) that outlines the educational services necessary for her disability. (Compl. ¶ 8.)

On June 27, 2019, D.W.’s mother completed an application for D.W. to be considered for admission to the first grade class at the Charter School. (Compl. ¶ 9.) She also provided a copy of D.W.’s final kindergarten grades. (Compl. ¶ 9.) The Charter School describes its mission as preparing its students for higher education and the workforce through a rigorous curriculum, emphasis on creative thinking, and a focus on children and youth who are “classified as academically at-risk.” (Compl. ¶ 12.) The Charter School describes itself as meeting the needs of children who have varied learning styles through an “alternative style and setting for children experiencing learning difficulties.” (Compl. ¶ 12.) The Charter School promises an “advanced curriculum” and “small class sizes (not to exceed 20 students) with a highly qualified team of certified teachers and full-time assistants for children in grades 1 through 5.” (Compl. ¶ 12.) In addition, the Charter School provides “character education and self-esteem” as part of its curriculum “which give[s] students the ability to have confidence, pride, make moral decisions and foster a positive attitude when dealing with any negative situations.” (Compl. ¶ 12.) Finally, the school provides “tutoring, free of charge, during the day and after school to all MCSCS students.” (Compl. ¶ 12.) G.H. chose to send her daughter to the Charter School because of these features which would be of particular benefit to D.W., who was previously in foster care and has experienced trauma, needed small class sizes, additional teacher support, and a curriculum focused on self-esteem building. (Compl. ¶ 13.)

On July 10, 2019, the Charter School sent a letter communicating that D.W. was accepted as a first grader. (Compl. ¶ 17.) The acceptance letter instructed that G.H. needed to bring the following documents for enrollment: 1) immunization records; 2) proof of age; 3) proof of

residency. (Compl. ¶ 18, Exhibit A.) The letter stated that submission of D.W.'s final report card was optional. (Compl. ¶ 18, Exhibit A.) Although designated as "optional," the letter stated, "if your child is in Special Education, we *must* have a copy of the most recent Individualized Education Plan, NORA and CER" (emphasis added). (Compl. ¶ 18, Exhibit A.) G.H. was very excited to receive the Charter School's acceptance letter and made an appointment for July 22, 2019 to provide the necessary documents for D.W.'s enrollment. (Compl. ¶ 19.)

On July 22, 2019, G.H. brought D.W. to the Charter School and submitted D.W.'s immunization records, proof of age, proof of residency and her May 7, 2019 IEP. (Compl. ¶ 20.) While G.H. and D.W. waited, they believed that Ms. Veronica Joyner, Founder and Chief Administrative Officer of the Charter School, reviewed D.W.'s May 7, 2019 IEP. (Compl. ¶ 21.) After less than twenty minutes, Ms. Joyner met with G.H. and D.W. and told them that D.W. could not enroll in the Charter School because she had an IEP for an emotional disability. (Compl. ¶ 22.) She told G.H. that the Charter School did not have the class or teacher to provide the services required by her IEP. (Compl. ¶ 22.) Ms. Joyner momentarily observed D.W. and remarked that she did not seem to have the "problems" in her IEP, but, nevertheless, she could not enroll her with the IEP. (Compl. ¶ 23.) When G.H. asked Ms. Joyner if D.W. could attend the Charter School if she did not have her IEP, Ms. Joyner responded that she could and provided instructions on how G.H. could revoke her IEP. (Compl. ¶¶ 24, 25.) D.W. overheard the entire exchange between G.H. and Ms. Joyner. When they left the Charter School, D.W. expressed disappointment that Ms. Joyner did not want her to attend the Charter School. (Compl. ¶ 26.) G.H. was prohibited from enrolling D.W. in the Charter School for the 2019-2020 school year. (Compl. ¶ 27.)

On September 11, 2019, G.H., through her attorney, contacted counsel for the Charter School to request D.W.'s immediate enrollment. The Charter School did not respond. (Compl. ¶

28.) On October 4, 2019, the Charter School’s attorney communicated that Ms. Joyner did not believe that D.W. was admitted to the school and requested information about the special education services she would require. (Compl. ¶ 29.) On October 4, 2019, G.H.’s attorney submitted the July 10, 2019 acceptance letter and requested D.W.’s immediate enrollment. (Compl. ¶ 30.) The Charter School did not respond. (Compl. ¶ 30.) D.W. now seeks a preliminary injunction to obtain immediate enrollment in the Charter School.

II. ARGUMENT

A. Preliminary Injunctive Relief Is Warranted.

Pennsylvania courts consider several factors in determining whether to issue a preliminary injunction: (1) whether the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; (2) whether greater injury would result from refusing the injunction than from granting it; (3) whether the injunction will restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the plaintiff’s likelihood of success on the merits; (5) whether the injunction is reasonably suited to stop the offending activity; and (6) the injunction’s effect on the public interest. *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 573 Pa. 637, 647, 828 A.2d 995, 1001 (Pa. 2003). A hearing is “not required” for a court to issue a preliminary injunction. *Walter v. Stacy*, 2003 Pa. Super. 458, ¶ 15, 837 A.2d 1205, 1210 (Pa. Super. Ct. 2003); *see* Pa. R. Civ. P. 1531(a). Rather, a court may grant a preliminary injunction upon considering “the averments of the pleadings or petition” Pa. R. Civ. P. 1531(a).

All six preliminary-injunction factors strongly favor granting D.W. a preliminary injunction to require the Charter School to admit her immediately.

1) The Charter School’s Ongoing Refusal to Enroll D.W. Has Caused Irreparable Harm.

D.W. has—and will continue to suffer—immediate and irreparable harm due to the Charter School’s refusal to enroll her. The Charter School accepted D.W. for inclusion in its first-grade class and has received all legally required documents to enroll her in school. (Compl. ¶¶ 17, 20.) However, in violation of Pennsylvania law, the Charter School denied her enrollment due to the fact that she is a student with a disability and requires services under her IEP.² (Compl. ¶ 22.)

Courts have found that educational exclusions and deprivations of educational opportunities “either by refusing or delaying enrollment” cause irreparable harm to students in a range of contexts. As explained in *Issa v. Sch. Dist. of Lancaster*, No. CV-16-3881, 2016 WL 4493202, at *7 (E.D. Pa. Aug. 26, 2016), *aff’d*, 847 F.3d 121 (3d Cir. 2017) educational deprivations such as a lack of appropriate language instruction services result in harm “not only in the student’s education but also in other social and psychological developmental processes that take place during the child’s schooling.” (quoting *N.J. v. New York*, 872 F. Supp. 2d 204, 214 (E.D.N.Y. 2011)). *See also Oravtez v. W. Allegheny Sch. Dist.*, 74 Pa. D. & C.2d 733, 737–38, 743 (Pa. Ct. Com. Pl. 1975) (“deprivation of educational rights can produce irreparable harm and establishes a need for prompt and immediate relief”). Denial of specific types of educational placements and education-related services have also been found to cause irreparable harm. *See e.g., Wyland v. W. Shore Sch. Dist.*, 52 A.3d 572, 576 (Pa. Commw. Ct. 2012) (finding irreparable harm where students were not provided with statutorily required busing, even though the students did not miss school); *L.R. ex rel. G.R. v. Steelton-Highspire Sch. Dist.*, No. 1:10-

² Where a school board’s conduct is an abuse of discretion because it is “arbitrary, capricious and to the prejudice of public interest,” or exceeds the scope of its authority or represents a constitutional error or error of law, intervention from the court is warranted and necessary. *Commonwealth v. Hall*, 309 Pa. Super. 407, 455 A.2d 674, 676 (Pa Super. 1983). A charter school is a body corporate which has the powers to execute its charter as an independent public school. 24 P.S. § 17-1714-A, 17-1703-A.

CV-00468, 2010 WL 1433146, at *4 (M.D. Pa. Apr. 7, 2010) (requiring a child to enroll in one school district only to eventually have him transfer back to his legally-entitled school district “has the very real potential to significantly and irreparably harm [the child’s] educational prospects”).

Importantly, exclusion from a school placement causes irreparable harm to a student even if she is “eventually transferred back” to the excluding school. *L.R.*, 2010 WL 1433146, at *4. Subsequent re-enrollment following full adjudication of a matter fails to remedy the immediate and ongoing harm caused by the unlawful exclusion. *See Minnicks v. McKeesport Area Sch. Dist.*, 74 Pa. D. & C.2d 744, 749–50 (Pa. Com. Pl. 1975) (harm caused by school exclusion is irreparable because “absence from school cannot be repaired... by a subsequent reinstatement”). In such cases, immediate enrollment effectuated by a preliminary injunction is warranted to prevent further harm. *Id.*

Finally, money damages “can never atone for deprivation of a meaningful education in an appropriate manner at the appropriate time.” *John T. v. Commonwealth of Pa.*, No. CV-98-5781, 2000 WL 558582, at *8 (E.D. Pa. May 8, 2000); *see also Minnicks*, 74 Pa. D. & C.2d at 749 (deprivation of an adequate education “cannot be repaired by money damages”). The very fact that educational deprivations “cannot later be readily remedied by monetary relief” makes the type of harms faced by students irreparable. *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 294 (W.D. Pa. 2017).

Moreover, courts universally *presume* irreparable harm where, as here, the challenged conduct violates a statute. *See SEIU Healthcare Pa v. Commonwealth of Pa.*, 628 Pa. 573, 594, 104 A.3d 495, 508 (Pa. 2014) (“when the Legislature declares certain conduct to be unlawful, it is tantamount to calling it injurious to the public, and to continue such unlawful conduct constitutes irreparable injury for purposes of seeking injunctive relief”) (citing *Pa. Pub. Utility*

Comm'n v. Israel, 356 Pa. 400, 52 A.2d 317, 321 (Pa. 1947) (reversing denial of preliminary injunction and finding irreparable harm where the Governor's office acted "in direct contravention of the plain language" of state healthcare statute). A district's "failure to comply with a statute is sufficiently injurious to constitute irreparable harm." *Wyland* 52 A.3d at 583 (citing *Patriot–News Co. v. Empowerment Team of Harrisburg Sch. Dist. Members*, 763 A.2d 539 (Pa. Cmwlth.2000)). In such cases "an injunction is suitable to mandate compliance with a statute," as the harm is "irreparable per se." *Id.*

In this case, the Charter School's denial of D.W.'s enrollment based on her disability constitutes irreparable harm, including ongoing stigma³, that cannot be remedied by money damages or by subsequent re-instatement following full adjudication of this matter. D.W., like the students in *Issa* and *L.R.*, has experienced and will continue to experience irreparable harm caused by her inability to attend a school with unique features to meet her educational needs. (Compl. ¶¶ 12-13.) Moreover, she has a clear legal right to attend the Charter School as she applied, was accepted, and provided all the materials necessary for enrollment. (Compl. ¶¶ 9, 17, 20.) Additionally, like the students in *L.R.* and *Wylor* who were excluded from educational services and opportunities but still received other educational services, D.W. suffers irreparable harm because she has been excluded from the Charter School, which was uniquely able to meet her needs, despite her receipt of educational services at another school. (Compl. ¶¶ 27, 31.) Finally, like the challenged conduct in *SEIU Healthcare Pa* and *Wylor* that produced irreparable harm because it was in violation of a statute, the Charter School's refusal to enroll D.W. because

³ Conduct which is stigmatizing has also been recognized as an independent basis for causing irreparable harm. *See e.g., Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 294 (W.D. Pa. 2017) ("disparate treatment itself stigmatizes members of a disfavored group as innately inferior and raises the 'inevitable inference' of animosity toward those impacted by the involved classification") (internal citations omitted).

she has an IEP, in plain violation of the statutory mandates of 24 P.S. § 17-1723-A(b)(1), has also caused irreparable harm. (Compl. ¶ 22.)

2) The Harm to D.W. Outweighs Any Negative Effect to the Charter School and This Court Must Restore the Parties to their Lawful Status.

The harm to D.W. from being denied enrollment far outweighs any negative effects that granting the requested injunction might have on the Charter School. In balancing potential harms, courts “should be unwilling to gamble with a child’s education.” *Issa*, 2016 WL 4493202, at *7. While D.W. is unquestionably harmed by being denied an education at the Charter School on the basis of her disability, allowing D.W. to enroll in the Charter School consistent with the statutory requirements of Pennsylvania law cannot harm the Charter School as a matter of law. *See id.* (“Providing statutorily granted services to a child does not harm the school district; doing so is its function under state . . . law.”). Moreover, because this is a clear statutory violation, the balancing of harms “has already been done by the Legislature” and therefore favors granting the injunction. *Milk Mktg. Bd. v. United Dairy Farmers Co-op Ass’n*, 450 Pa. 497, 505, 299 A.2d 191, 194 (1973).

Granting the injunction will “properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct.” *See Summit*, 573 Pa. at 647. “The status quo to be maintained by a preliminary injunction is the last actual, peaceable and lawful noncontested status which preceded the pending controversy.” *Valley Forge Historical Soc. v. Washington Memorial Chapel*, 493 Pa. 491, 501, 426 A.2d 1123, 1129 (Pa. 1981). *See also Commonwealth ex rel. Corbett v. Snyder*, 977 A.2d 28, 43 (Pa. Commw. Ct. 2009) (noting that the status quo for preliminary-injunction purposes is the “status of the parties prior to . . . the alleged wrongful conduct, not their status immediately prior to the lawsuit.”). The requested injunction in this matter will restore the status quo ante: D.W. will enroll in the Charter School and the Charter

School—as it has long done for other accepted students—will enroll D.W. There can be no serious dispute that D.W. enrolling in a charter school for which she was accepted and provided required enrollment documentation constitutes her last uncontested status prior to this controversy. (Compl. ¶¶ 17, 20.)

3) D.W. Is Likely to Success on the Merits.

“The party seeking an injunction need not prove the merits of the underlying claim, but need only show that substantial legal questions must be resolved to determine the rights of the respective parties.” *Chmura v. Deegan*, 398 Pa. Super. 532, 535, 581 A.2d 592, 593 (Pa. Super. Ct. 1990). D.W. easily meets this standard because the Charter School has unambiguously violated the Charter School and Pennsylvania regulations for enrollment by not allowing D.W. to attend the Charter School. D.W. is a child with a disability whose IEP reflects the educational services she requires due to her disability. (Compl. ¶¶ 6, 8); *see* 22 Pa. Code § 711.1. The Charter School is a charter school and political subdivision under the Charter School Law and Pennsylvania state law. (Compl. ¶ 2); 24 P.S. § 17-1703-A; Pa. R.C.P. No. 76. D.W. lawfully applied and was accepted to the Charter School as a six-year-old child living in Philadelphia, Pennsylvania. (Compl. ¶¶ 1, 9, 17); *see* 24 P.S. § 17-1723-A(a). After receiving her acceptance and presenting all of the required documents for enrollment under 22 Pa. Code § 11.11(b), D.W. was denied enrollment due to her status as a child with a disability in violation of the Charter School Law, state enrollment regulations, and the Pennsylvania Constitution. (Compl. ¶ 22); *see* 24 P.S. §§ 17-1717-A(3), 17-1723(A)(b)(1); 22 Pa. Code § 11.11(b); Pa. Const. Art. § 26. *See also Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under Section 504 of the Rehabilitation Act of 1973*, U.S. Department of Education, Office for Civil Rights (December 28, 2016) (discrimination on the basis of disability occurs when a charter school “excludes any student because the student needs special education”); *Issa*

v. Sch. Dist. of Lancaster, No. CV 16-3881, 2016 WL 4493202, at *5 (E.D. Pa. Aug. 26, 2016), aff'd and remanded, 847 F.3d 121 (3d Cir. 2017) (Pennsylvania law, 22 Pa. Code § 11.11(b), requires a school district to enroll a student within five days of a completed application); *see also Pocono Mountain Charter Sch. v. Pocono Mountain Sch. Dist.*, 908 F. Supp. 2d 597, 618 (M.D. Pa. 2012) (Article 1, Section 26 of the Pennsylvania Constitution “embodies the general rule that all persons similarly situated should be treated alike”) (internal quotations omitted).

Here, in clear violation of the law, D.W. was discriminated against on the basis of her disability and not treated like other children similarly situated at the Charter School. Upon receiving the legally-required documents, the Charter School denied D.W. enrollment because she had an IEP, which constitutes discrimination on the basis of her disability and unequal treatment. State-issued guidance confirms that the Charter School is breaking the law. The Basic Education Circular addressing Charter Schools directs that once a parent “has provided the school with proof of the child’s age, residence and required immunizations,” a charter school has an obligation to enroll the student. Basic Education Circular, *Charter Schools*, available at <https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/CharterSchools.aspx#10>. In addition, a charter school may not use “enrollment forms, admissions interviews, or other means of testing a student’s intellectual ability, disability status, English language proficiency or other basis that would be illegal if used by a school district to grant or deny admission.” *Id.* Here, the Charter School did just that: it barred D.W. from enrolling in the Charter School on the basis of her status as a child with a disability after her mother provided the required enrollment documents. (Compl. ¶ 22.) As a result, the Charter School violated the Charter School Law, Pennsylvania state law and the Pennsylvania Constitution.

The Charter School has wrongly argued that its inability to provide the services required in D.W.’s IEP justifies denying D.W.’s enrollment. This argument is both factually baseless and legally

incorrect. In fact, D.W.'s IEP requires only *45 minutes per month* of itinerant learning support instruction to be provided by a special education teacher. The Charter School employs a special education teacher who could and must provide the services in D.W.'s IEP. (Compl. ¶ 16); "Teacher Directory," *MCSCS Website*, available at <http://mcscs.org/teacher-directory/>. The Charter School cannot ignore its legal duty to provide special education services to all children with disabilities nor can it substitute its judgment to circumvent state and federal law. *See Watts v. Manheim Twp. Sch. Dist.*, 632 Pa. 583, 597, 121 A.3d 964, 972 (2015) ("[S]chool boards do not have unfettered discretion; courts have authority to interfere when a school board's action is based on a misconception of law, ignorance through lack of inquiry into facts necessary to form intelligent judgment, or the result of arbitrary will or caprice . . .") (internal quotation marks and citation omitted); *Save Our School v. Colonial Sch. Dist.*, 156 Pa. Commw. 671, 674 (Pa. Commw. Ct. 1993) ("preliminary injunction interfering with a school board's discretion is proper where the action is based on a misconception of the law.").

Here, the Charter School's discrimination against D.W. on the basis of her disability was straightforward and clear. D.W. has a legal right to enroll in and be educated at the Charter School and accordingly, she has an exceedingly high likelihood of success on the merits of her claims.

4) The Requested Injunction Is Narrowly Tailored to Address the Wrongful Conduct.

"[A]n injunction must be carefully tailored to remedy only the specific harm shown and be no broader than needed . . ." *Chase v. Eldred Borough*, 902 A.2d 992, 999 (Pa. Commw. Ct. 2006). Here, the requested injunction is well-suited to end the Charter School's illegal exclusion of D.W. from school and is no broader than it needs to be because it only asks the Charter School to comply with the applicable laws by immediately enrolling D.W. and assisting her to catch up to her peers who have been in school for a month and a half. While Plaintiffs also seek revisions to the Charter School's admissions policies and practices, trainings on inclusion for staff, and

notice to all families apprising them of their legal rights, this relief is not requested as part of the request for preliminary injunctive relief.

5) Granting the Injunction Is in the Public Interest.

The requested injunction will also best serve the public interest because it enforces compliance with the judgment of the General Assembly, which has already determined that charter schools cannot discriminate in their admissions policies and practices. 24 P.S. §§ 17-1717(A)(3), 17-1723(A)(b)(1). *See Milk Mktg. Bd.*, 450 Pa. 497 at 194. Moreover, requiring admissions practices that do not discriminate on the basis of disability is clearly consistent with the legislative intent of the Charter School Law itself, which seeks to “increase learning opportunities for all pupils” and “provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system,” including children with disabilities. 24 P.S. 17-1702A(2), (5); *see also Charter Schools*, Basic Education Circular, available at <https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/CharterSchools.aspx#1>. Consistent with the express legislative intent, the requested injunction seeks to ensure the availability of expanded educational opportunities for all children in Pennsylvania, regardless of disability, and will well serve the public interest.

B. The Court Should Set a Nominal Bond.

Rule 1531(b) requires the petitioner to post a bond, which must be sufficient to cover the respondent’s reasonably foreseeable damages if the injunction is granted erroneously. Pa. R. Civ. P. 1531(b); *Greene Cty. Citizens United by Cumpston v. Greene Cty. Solid Waste Auth.*, 161 Pa. Cmwlth. 330, 337, 636 A.2d 1278, 1281 (1994). The bond amount is set based on the equities involved. *See id.* The court may consider, among other factors, the likelihood of actual


damage to the defendant and a plaintiff's ability to pay. *Christo v. Tuscan, Inc.*, 368 Pa. Super. 9, 12, 533 A.2d 461, 466-67 (1987).

Here, the risk that the Charter School will be damaged by an erroneous injunction is nil because D.W.'s rights are clear under the Charter School Law and Pennsylvania enrollment laws. The Charter School receives additional funding to meet the needs of students with disabilities and there are no hypothetical out-of-pocket damages imposed on the Charter School. In addition, D.W. and G.H. do not have means to post a substantial bond. Accordingly, a nominal bond of \$1.00 is proper. See *Pleasant Hills Const. Co., Inc. v. Public Auditorium Auth. of Pittsburgh*, 782 A.2d 68, 81 (Pa. Cmwlth. Ct. 2001) (affirming nominal bond of \$1.00), *rev'd on other grounds*, 567 Pa. 38, 784 A.2d 1277 (2001); *Christo*, 368 Pa. Super. at 12 (discussing trial court order setting nominal bond of \$1.00); *Scranton Times, LP v. Entercom Wilkes Barre Scranton, LLC*, No. 10-CV-2439, 2010 WL 9942012, at *11 (Pa. Ct. Com. Pl. Apr. 10, 2010) (setting bond of \$1.00).

III. CONCLUSION

For the foregoing reasons, D.W. respectfully requests that the Court grant her Petition.

Respectfully submitted,



Attorneys for the Plaintiff
Maura McInerney, No. 71468
Margaret Wakelin, No. 325500
Paige Joki, No. 324204
Education Law Center-Pa.
1315 Walnut St., Suite 400
Philadelphia, PA 19107
(215) 238-6970, ext. 316

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