

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

T.R., et al.,

Plaintiffs,

THE SCHOOL DISTRICT OF PHILADELPHIA,

Defendant.

Case No. 15-cv-4782

**THE SCHOOL DISTRICT OF PHILADELPHIA’S  
MOTION FOR SUMMARY JUDGMENT**

Defendant the School District of Philadelphia, hereinafter “the District,” by and through its undersigned counsel, hereby moves this Honorable Court, pursuant to Fed. R. Civ. P. 56, for summary judgment and, in support thereof, avers as follows:

1. Plaintiffs Manqing Lin, her child R.H., and Madeline Perez, and her children D.R. and L.R. (“Plaintiffs”), were added as Plaintiffs to this case on April 20, 2017.

2. In their First Amended Class Action Complaint, Plaintiffs raise claims under the Individuals with Disabilities Education Act (“IDEA”), Section 504 of Rehabilitation Act, the Americans with Disabilities Act as Amended, 22 Pa. Code Chapter 15, the Equal Education Opportunity Act, Title VI of the Civil Rights Act of 1964, and 22 Pa. Code Chapter 14.

3. Plaintiffs’ claims arise from the alleged inability of Ms. Lin and Ms. Perez, who are both limited English proficient, to meaningfully participate in the Individualized Education Program (IEP) processes for their children, as required by the IDEA, due to an alleged lack of language services.

4. For reasons which are more fully set forth in the attached Brief, which is incorporated by reference herein, this Court does not have jurisdiction because Plaintiffs have

not exhausted their administrative remedies as required by the IDEA. Alternatively, this Court lacks jurisdiction because Plaintiffs have suffered no injury-in-fact.

5. Additionally, Plaintiffs fail to state a claim under the IDEA, Section 504 of Rehabilitation Act, the Americans with Disabilities Act as Amended, 22 Pa. Code Chapter 15, the Equal Education Opportunity Act, Title VI of the Civil Rights Act of 1964, and 22 Pa. Code Chapter 14.

WHEREFORE, the School District of Philadelphia respectfully requests that this Honorable Court enter summary judgment in its favor on all counts of Plaintiffs' Amended Complaint.

Date: September 27, 2019

Respectfully submitted:

/s/ Marjorie M. Obod

Marjorie M. Obod, Esquire (#47531)

Katharine V. Hartman, Esquire (#203697)

Danielle Goebel, Esquire (#313622)

**DILWORTH PAXSON LLP**

1500 Market Street, Suite 3500E

Philadelphia, PA 19102-2101

215-575-7000 / F: 215-575-7200

*Attorneys for Defendant, The School District  
of Philadelphia*

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**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2019, upon consideration of the School District of Philadelphia's Motion for Summary Judgment, and any response thereto, it is hereby ORDERED AND DECREED that the School District of Philadelphia's Motion for Summary Judgment is hereby GRANTED, and all claims are DISMISSED, with prejudice.

BY THE COURT:

\_\_\_\_\_  
Mitchell S. Goldberg, J.

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**THE SCHOOL DISTRICT OF PHILADELPHIA'S  
STATEMENT OF UNDISPUTED FACTS**

Defendant the School District of Philadelphia (the District), by and through its undersigned counsel, respectfully submits the following Statement of Undisputed Facts.

**Procedural History**

1. Former Plaintiffs T.R. and A.G., with their parents, Barbara Galarza and Margarita Peralta, respectively, completed the IDEA hearing process through the Office for Dispute Resolution and received due process hearing decisions. Exhibits A-B to Compl. (Doc. 1).

2. On August 21, 2015, Plaintiffs T.R., Ms. Galarza, A.G., and Ms. Peralta filed the Complaint. Compl. (Doc. 1).

3. On April 20, 2017, Plaintiffs filed the First Amended Class Action Complaint, adding Manqing Lin and her child R.H. and Madeline Perez and her children L.R., D.R., and J.R., as Plaintiffs. Am. Compl. (Doc. 53).

4. On October 18, 2017, A.G. and Ms. Peralta voluntarily dismissed with prejudice their claims against the District. Stipulation (Doc. 73).

5. On August 8, 2018, T.R. and Ms. Galarza voluntarily dismissed with prejudice their claims against the District. Stipulation (Doc. 84).

6. On April 18, 2019, this Court denied Plaintiffs' Motion for Class Certification. (Doc. 99, Doc. 100).

7. On September 26, 2019, J.R. voluntarily dismissed his claims against the District. Stipulation (Doc. 107).

### **District Practices**

8. The District's Office of Family and Community Engagement ("FACE") provides, among other things, translation and interpretation services, as well as professional development to District staff and administrators on how to best support parents who are limited English proficient ("LEP"). Ex. A (Monley dep.) at 52:24-55:14.

9. The District maintains a document management system where standard documents, such as the District's attendance policy and transportation policy, are translated into the eight most common languages, which is publically available on the District's website. Ex. A (Monley dep.) at 52:24-55:14, 76:23-77:24.

10. The District translates documents that are distributed school-wide, such as report cards and letters to parents, into the eight most common languages as a matter of course. Ex. A (Monley dep.) at 78:1-80:23, 81:3-20.

11. At the school-level, District employees are able to make requests for translation to FACE, in addition to utilizing the District's Bilingual Counseling Assistants ("BCAs") directly. Ex. A (Monley dep.) at 76:23-79:2-14.

12. The District's translation and interpretation services are available throughout the school year and utilized at key meetings (IEP meetings, report card conferences, etc.) as well as

for day-to-day communications (attendance issues, permission slips need signed, etc.). *See* Ex. B (Special Education Parental/Guardian Rights); Ex. C (Soderman dep.) at 51:3-23, 97:7-23; Ex. A (Monley dep.) at 75:5-21, 77:4-81:20.

13. For example, if a teacher needs to send a letter home to parents about a particular student, if the school's BCA knows the target language then the BCA would translate that letter for the teacher without involving the FACE office. Ex. A (Monley dep.) at 79:10-80:23.

14. BCAs and school staff are trained on best practices for providing interpretation, generally, and regarding special education issues and terminology. Ex. C (Soderman dep.) at 45:4-46:10.

15. Language Line, a telephonic interpretation service, is used as a backup option, including when the parent's language is not spoken by a BCA. Ex. C (Soderman dep.) at 39:4-40:17.

16. Specific to the special education realm, the District provides an array of services to LEP parents including translation and interpretation. Ex. D (Hess Decl.) at ¶¶ 7-11.

17. LEP parents are aware of these services because they are described in the Special Education Parental/Guardian Rights notice, which is given to parents in their native language and is also read aloud at IEP meetings. Ex. D (Hess Decl.) at ¶¶ 7-8.

18. The District's practices and procedures require that parents receive Permission to Evaluate (PTEs), Notice of Recommended Placement (NOREPs), Procedural Safeguards, and Permission to Re-evaluate (PTRE), in the native language of the parent. Ex. E (Quick Reference Guide).

19. Bilingual psychologists employed by the District evaluate students in the form most likely to yield accurate information. Ex. F (Hess dep.) at 184:5-18; Ex. G (Velez dep.) at 44:6-45:6.

20. The Procedural Safeguards are provided to the parents of special education students when students are initially identified and annually at IEP meetings, together with a Special Education Parental/Guardian Rights notice. Both documents are translated into the eight languages most commonly used among District families. Ex. D (Hess Decl.); Ex. B (Special Education Parental/Guardian Rights).

21. In scheduling IEP meetings, the District translates meeting invitations into eight languages, and makes every effort to ensure that a parent is present at the meeting. Ex. E (Quick Reference Guide).

22. District practice is to prepare a draft IEP in advance of the meeting for greater efficiency in the meeting itself. Ex. H (Capitolo dep.) at 42:15-44:18, 97:10-98:16.

23. While the IEP draft is in English because that is the common language of the IEP team, the draft is sent to parents before the meeting and District practice is to give parents the opportunity to meet with the Special Education Liaison (SEL) for their child's school and one of the Bilingual Counseling Assistants ("BCAs") to review the draft IEP, including after regular school hours as necessary to accommodate the parent's schedule. Ex. E (Quick Reference Guide); Ex. D (Hess Decl.).

24. At the IEP meeting itself, parents are encouraged to ask questions, suggest revisions to the plan, provide information on their child's current levels of functioning, and discuss strategies that may help the child's development. Ex. H (Capitolo) dep. at 41:18-42:14; Ex. F (Hess dep.) at 165:12-167:7.

25. Special education staff are trained on all District practices and procedures, including those aimed at encouraging parental participation in the IEP process and how to obtain interpretation and translation services for a parent. Ex. F (Hess dep.) at 34:5-35:21, 133:7-23.

**Plaintiff Lin and her child, R.H.**

26. Ms. Lin and R.H. have not raised claims to an administrative hearing officer. Ex. I (Lin dep.) at 161:11-19.

27. Ms. Lin has, however, requested mediation through the Office for Dispute Resolution, which resulted in a mediation agreement between Ms. Lin and the District. Ex. I (Lin dep.) at 136:2-7, 138:15-139:8; Ex. J (Lin Mediation Agreement).

28. Ms. Lin is not seeking individualized damages or remedies of any kind based on the particular placement of R.H. within the District or the absence or duration of any individualized special education service. Ex. I (Lin dep.) at 110:23-111:4; Plaintiffs' First Amended Class Action Complaint at Section VIII. Relief Requested; *see also* Plaintiffs' Memorandum of Law in Support of Class Certification (Doc. 83-1) at 17.

29. Ms. Lin understands the services R.H. receives from the District. Ex. I (Lin dep.) at 127:1-3.

30. Ms. Lin has the opportunity to meet with District staff that provide R.H.'s services, which contributes to her understanding of his condition and ability to give input at the IEP meeting. Ex. I (Lin dep.) at 41:9-44:19, 140:24-141:7.

31. Ms. Lin gives input at R.H.'s IEP meetings and suggests revisions to his IEP. Ex. H (Capitolo dep.) at 67:20-69:18; Ex. I (Lin dep.) at 162:11-21.



32. For example, during an IEP meeting Ms. Lin requested that a specific writing goal be added to R.H.'s IEP, which the District agreed to and was then added to R.H.'s IEP. Ex. I (Lin dep.) at 156:17-157:6.

33. The District provides Ms. Lin with access to a BCA and the school's Special Education Liaison to review the draft documents in advance of the meetings, so she is able to take notes on those documents and bring any questions to the IEP meeting. Ex. K (Lin Affidavit) at ¶¶ 7-10; Ex. H (Capitolo dep.) at 66:4-69:18; 74:7-23.

34. Ms. Lin's participation is not limited to the actual IEP meetings as she frequently communicates with members of R.H.'s IEP team about his progress. Ex. I (Lin dep.) at 41:9-44:19; Ex. H (Capitolo dep.) at 74:24-77:19.

35. Ms. Lin has raised no issues whatsoever relating to the language services provided to R.H. Ex. I (Lin dep.) at 126:9-24, 162:11-21.

**Plaintiff Perez and her children, D.R. and L.R.**

36. Ms. Perez and D.R. and L.R. have not raised claims to an administrative hearing officer. *See* Am. Compl. ¶ 18.

37. Ms. Perez has previously been represented by counsel in raising issues to the District pertaining to her children's special education services (none relating to the provision of language services) and those issues were resolved to the parties' mutual satisfaction. Ex. L (Perez dep.) at 23:13-25:24; Ex. A to Defendant's Answer (Doc. 54-1).

38. Ms. Perez is not seeking individualized damages or remedies of any kind based on the particular placement of D.R. or L.R. within the District or the absence or duration of any individualized special education service. Ex. L (Perez dep.) at 64:5-15, 101:19-24; Plaintiffs'

First Amended Class Action Complaint at Section VIII. Relief Requested; *see also* Plaintiffs' Memorandum of Law in Support of Class Certification (Doc. 83-1) at 17.

39. Through an interpreter, Ms. Perez has provided information every time her children have been evaluated by the District and she has an understanding of the resulting evaluations as the school psychologist and special education teacher meet with her to discuss the evaluation and provide her with an opportunity to ask questions about it. Ex. L (Perez dep.) at 83:15-88:18.

40. Ms. Perez understands the special education needs of her children, the services they receive, provides input to the school about her children, has received helpful suggestions from the IEP team, asks questions, and those questions are appropriately addressed. Ex. L (Perez dep.) at 18:24-23:12, 66:7-10.

41. Ms. Perez and the District have collaborated on numerous occasions to reach appropriate placements and services for her children. Ex. L (Perez dep.) at 25:2-24, 34:5-35:1, 37:14-23, 59:7-61:10, 64:17-66:10.

42. Ms. Perez receives translated progress reports from the District on a routine basis. Ex. L (Perez dep.) at 74:18-75:2.

43. Ms. Perez is satisfied with the services D.R. and L.R. receive, including language assistance. Ex. L (Perez dep.) at 64:12-16, 101:19-24.

Dated: September 27, 2019

Respectfully submitted:

/s/ Marjorie M. Obod

Marjorie M. Obod, Esquire  
Katharine V. Hartman, Esquire  
Danielle Goebel, Esquire  
**DILWORTH PAXSON LLP**  
1500 Market Street, Suite 3500E  
Philadelphia, PA 19102-2101  
T: 215-575-7000 / F: 215-575-7200

*Attorneys for Defendant  
The School District of Philadelphia*

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**DEFENDANT'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

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Several years after the filing of their sprawling Complaint alleging that the District was systemically failing to facilitate meaningful participation for limited English proficient (“LEP”) parents in the special education process and seeking certification of two classes, only the individual claims of Manqing Lin, her child R.H., and Madeline Perez, and her children D.R. and L.R. remain.<sup>1</sup> Plaintiffs’ claims arise from the alleged inability of Ms. Lin and Ms. Perez, who are both LEP, to meaningfully participate in the Individualized Education Program (IEP) processes for their children, as required by the Individuals with Disabilities Education Act (IDEA), due to an alleged lack of language services.

Plaintiffs lack standing to pursue these claims. The IDEA requires “serious deprivation” of parental participation rights for such a claim to be actionable. Plaintiffs have failed to provide any record evidence that either Ms. Lin or Ms. Perez were ever, in fact, deprived of their right to meaningfully participate in the IEP processes for their children, let alone seriously deprived. To the contrary, the record is replete with evidence that both Ms. Lin and Ms. Perez participated in the special education process for their children to great lengths, acting as fierce advocates on behalf of their children, often through the use of District-provided interpretation and translation services. Conspicuously, Plaintiffs do not claim that the Student Plaintiffs have been deprived of any educational benefits or opportunities, nor are they seeking any damages based on the placement of their children or the services the children have received in their years in the District. The fact that Plaintiffs were not deprived of educational benefits or opportunities, coupled with Ms. Lin and Ms. Perez’s undisputed participation in the IEP process, renders the Plaintiffs without legal standing because they have suffered no injury-in-fact.

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<sup>1</sup> “Parent Plaintiffs” is used herein to refer to Ms. Lin and Ms. Perez and “Student Plaintiffs” is used to refer to R.H., D.R., and L.R., collectively.

In addition, this Court lacks subject matter jurisdiction because none of the remaining Plaintiffs have exhausted their administrative remedies as required by the IDEA. By way of a reminder, this matter previously included two student Plaintiffs, A.G. and T.R., and their parents, Margarita Peralta and Barbara Galarza, respectively, who exhausted their administrative remedies by going through a due process hearing. Their claims were voluntarily withdrawn with prejudice prior to the Plaintiffs' Motion for Class Certification and their exhaustion cannot excuse the failure of the existing Plaintiffs to pursue administrative remedies before filing in court. Furthermore, this Court only excused the exhaustion requirement at the motion to dismiss stage based on Plaintiffs' claims of systemic failure, a theory which has no factual support in the now-developed record.

Plaintiffs' other allegations are equally without merit. For example, Plaintiffs proffer claims under the Americans with Disabilities Act, the Rehabilitation Act, and Title VI without evidence of any sort of discrimination – either based on disability, race, national origin, or otherwise – and under the Equal Education Opportunity Act, despite their agreement that none of the Student Plaintiffs were ever denied any educational opportunities. In short, Plaintiffs' claims fail for fundamental reasons and the District is entitled to summary judgment on all counts.

## **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

The District incorporates by reference its Statement of Undisputed Facts, which accompanies this Brief.

## **II. ARGUMENT**

Summary judgment shall be granted “if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A factual dispute is genuine if a reasonable jury could return a verdict for the non-

movant, and it is material if, under the substantive law, it would affect the outcome of the suit. *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 248 (1986).

If the moving party meets this initial burden, the non-moving party “cannot rely on unsupported allegations, but must go beyond pleadings and provide some evidence that would show that there exists a genuine issue for trial.” *Jones v. United Parcel Serv.*, 214 F.3d 402, 407 (3d Cir. 2000); *see also Fireman’s Ins. Co. v. DuFresne*, 676 F.2d 965, 969 (3d Cir.1982) (a party opposing summary judgment may not rely upon bare assertions, conclusory allegations, or mere suspicions). To successfully oppose entry of summary judgment, the non-moving party must designate specific factual averments through the use of affidavits or other permissible evidentiary material that demonstrate a triable factual dispute. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); *Anderson*, 477 U.S. at 247-50. Such evidence must be sufficient to support a jury’s factual determination in favor of the non-moving party. Evidence that merely raises some metaphysical doubt regarding the validity of a material fact is insufficient to satisfy the non-moving party’s burden. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

If the non-moving party fails to adduce sufficient evidence in connection with an essential element of the case for which it bears the burden of proof at trial, the moving party is entitled to entry of summary judgment in its favor as a matter of law. *Celotex*, 477 U.S. at 322-23. Importantly, a party cannot avoid summary judgment merely by challenging the credibility of the opposing party’s witnesses. *Anderson*, 477 U.S. at 257; *Schoonejongen v. Curtiss-Wright*, 143 F.3d 120, 130 (3d Cir. 1998) (“It is by now axiomatic that a nonmoving party...cannot defeat summary judgment simply by asserting that a jury might disbelieve an opponent’s affidavit to that effect.”). Further, “[i]t is well settled that only evidence which is admissible at

trial may be considered in ruling on a motion for summary judgment.” *Countryside Oil Co., Inc. v. Travelers Ins. Co.*, 928 F.Supp. 474, 482 (D.N.J. 1995). *See also* Fed.R.Civ.P. 56(c)(2).

**A. Plaintiffs Failed To Exhaust Their Administrative Remedies, So The Court Does Not Have Subject Matter Jurisdiction.**

**1. All of Plaintiffs’ Claims are Subject to the IDEA’s Exhaustion Requirement.**

Pursuant to the IDEA, Plaintiffs are required to present their claims to an administrative hearing officer before raising them in court. 20 U.S.C. § 1415(l). Because Plaintiffs have not raised their claims to an administrative hearing officer and have not been through a due process hearing, this Court does not have subject matter jurisdiction and Plaintiffs’ claims should be dismissed.

Exhaustion of administrative remedies under the IDEA is a jurisdictional requirement. *Batchelor v. Rose Tree Media Sch. Dist.*, 759 F.3d 266 (3d Cir. 2014) (“In the normal case, exhausting the IDEA’s administrative process is required in order for the statute to ‘grant[] subject matter jurisdiction to the district court [].’” (quoting *Komninos v. Upper Saddle River Bd. Of Educ.*, 13 F.3d 775, 778 (3d Cir. 1994))). “[I]t is clear from the language of the Act that Congress intended plaintiffs to complete the administrative process before resorting to federal court.” *Komninos*, 13 F.3d at 778. Only after exhausting the administrative remedies established by the IDEA does an aggrieved party have the right to bring a civil action in either state or federal court. 20 U.S.C. § 1415(i)(2)(A).

The exhaustion requirement has been construed broadly and “bars plaintiffs from circumventing [the] IDEA’s exhaustion requirement by taking claims that could have been brought under IDEA and repackaging them as claims under some other statute – e.g., section 1983, section 504 of the Rehabilitation Act, or the ADA.” *Batchelor*, 759 F.3d at 272; 20 U.S.C. § 1415(l). “Put differently, claims related to the implementation of an IEP involve the provision

of a [free appropriate public education] and are subject to exhaustion, but claims that go beyond the student's educational experience are not[.]” *Wellman v. Butler Area Sch. Dist.*, 877 F.3d 125, 133 (3d Cir. 2017) (citations omitted). Here, each count in the Amended Complaint, whether brought on behalf of the parent or the student, is about the District's alleged failure to provide translation and interpretation services during the IEP process, which is a component of the educational process for special education students. Accordingly, all of Plaintiffs' claims – not just those brought under the IDEA – are subject to the IDEA's exhaustion requirement. *See Wellman*, 877 F.3d at 133 (citing *Fry v. Napoleon Community Schools*, 137 S. Ct. 743 (2017)).

## **2. There is no Excuse for Plaintiffs' Failure to Exhaust.**

Plaintiffs bear the burden of showing they should be excused from exhausting their administrative remedies, but cannot meet that burden here. *M.M. v. Paterson Board of Educ.*, 736 F. App'x 317, 319 (3d Cir. 2018) (citing *Honig v. Doe*, 484 U.S. 305, 327 (1988)). It has been recognized by the courts that, in some situations, plaintiffs need not exhaust their administrative remedies if “they allege systemic legal deficiencies and, correspondingly, request system-wide relief that cannot be provided (or even addressed) through the administrative process.” *Beth V. by Yvonne V. v. Carroll*, 87 F.3d 80, 89 (3d Cir. 1996).

Plaintiffs originally styled this matter as a class action, claiming that their failure to exhaust their administrative remedies was excused because “administrative remedies are inadequate to address Plaintiffs' allegations of systemic failures and to afford the system-wide relief requested.” First Amended Class Action Complaint (Doc. 53) at ¶¶ 18, 60. However, “framing a complaint as a class action challenge to a general policy does not automatically convert the case into the kind of systemic violation that renders the exhaustion requirement inadequate or futile.” *J.T. ex rel. A.T. v. Dumont Public Schools*, 533 F. App'x 44, 54 (3d Cir. 2013) (quoting *Grieco v. N.J. Dept. of Educ.*, 2007 WL 1876498 at \*9 (D. N.J. 2007)); *see Blunt*

*v. Lower Merion Sch. Dist.*, 559 F. Supp. 2d 548, 559 (E.D. Pa. 2008), *aff'd*, 767 F.3d 247 (3d Cir. 2014) (“Allowing plaintiffs to bypass the administrative process by merely including conclusory allegations of systemic deficiencies would permit the exception to the exhaustion requirement to swallow the rule.”). Although this issue was not reached on the merits at the class certification stage, the record before the Court now makes clear that Plaintiffs’ allegations regarding systemic failures are simply not based in fact.

Plaintiffs’ frequent refrain is that they should be excused from exhausting their administrative remedies because a special education administrative hearing officer does not have the power to order District-wide systemic change. *See, e.g.*, Amended Complaint at ¶¶ 17, 58, 60. This argument misses the mark for two reasons. First, District-wide systemic change is not an appropriate remedy here because Plaintiffs have failed to proffer any evidence of systemic failure. Contrary to Plaintiffs’ claims, the District provides LEP parents with a myriad of language services to facilitate their participation in the special education planning process for their children. *See* School District of Philadelphia’s Statement of Undisputed Facts (“District’s SOF”) at ¶¶ 8-25. The District has robust practices and procedures for engaging parents of special education students, including specifically advising LEP parents of the availability of the District’s translation and interpretation services, which are offered throughout the school year for day-to-day communications, in addition to being an integral part of the IEP process. District’s SOF at ¶¶ 12, 17. Plaintiffs themselves have utilized and benefitted from the myriad language services offered by the District. District’s SOF at ¶¶ 30, 33, 39-42.

Second, this Court has already determined that the Plaintiffs’ claims are most appropriately reviewed on an individual basis, as discussed in this Court’s Memorandum Opinion denying Plaintiffs’ Motion for Class Certification. (Doc. 99). As such, a hearing

officer's inability to grant systemic relief is irrelevant. Additionally, and as evidenced by the due process hearings for A.G. and T.R., the administrative hearing system is well-equipped to conduct hearings and make determinations regarding the rights of individual students or parents.

Issues regarding parental participation are particularly well-suited for the administrative process because they are fact-intensive and individualized. *See, e.g., W.D. v. Watchung Hills Reg'l High Sch. Bd. of Educ.*, 602 F. App'x 563, 568-69 (3d Cir. 2015) (looking to individual circumstances of parent's participation in IEP process). The administrative process moves issues to resolution much faster than litigation and is a more thoughtful use of public resources, particularly as it requires mediation before a hearing. *See, e.g., Batchelor*, 759 F.3d at 275 ("Exhaustion serves the purpose of...encouraging parents and the local school district to work together...and allowing education agencies to apply their expertise and correct their own errors.") (citations omitted). In fact, Ms. Perez and Ms. Lin have both mediated with the District, resolving their issues at an early stage without the need for a due process hearing. District's SOF at ¶¶ 27, 37.

As such, the reasons proffered by Plaintiffs to excuse their failure to exhaust are not supported by the record and Plaintiffs claims should be dismissed for lack of subject matter jurisdiction.

**B. Plaintiffs Lack Standing Because They Have Not Suffered An Injury In Fact.**

If a plaintiff lacks standing under Article III of the United States Constitution there is no jurisdiction over an alleged case or controversy. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1545 (2016). To establish Article III standing, "[t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Id.* The party invoking federal jurisdiction bears the burden of establishing standing "in the same way as any other matter on which the plaintiff bears

the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

“To establish injury in fact, a plaintiff must show that he or she suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Spokeo*, 136 S. Ct. at 1548 (quoting *Lujan*, 504 U.S. at 560). For an injury to be concrete, a plaintiff must show the injury is real and “actually exist[s].” *Cottrell v. Alcon Laboratories*, 874 F.3d 154, 167 (3d Cir. 2017). “Bare procedural or technical violations of a statute alone will not satisfy the concreteness requirement.” *Id.* (citing *Spokeo*, 136 S. Ct. at 1549). Under the IDEA, a procedural violation is only actionable “if it results in a loss of educational opportunity for the student, seriously deprives parents of their participation rights, or causes a deprivation of educational benefits.” *D.S. v. Bayonne Bd. of Educ.*, 602 F.3d 553, 565 (3d Cir. 2010) (citing *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 525-526 (2007); *see* 20 U.S.C. § 1415(f)(3)(E)). A purely procedural violation of the IDEA is insufficient to establish standing as there is no injury in fact. *J.T. ex rel. A.T.*, 533 F. App’x at 49.

Plaintiffs concede that R.H., D.R., and L.R. were not deprived of any educational benefits or opportunities and that they “are not seeking individualized damages or remedies of any kind based on the particular placement of their children within the District or the absence or duration of any individualized special education service.” Plaintiffs’ Memorandum of Law in Support of Class Certification (Doc. 83-1) at 17; District’s SOF at ¶¶ 28, 38; Plaintiffs’ First Amended Class Action Complaint at Section VIII. Relief Requested. In fact, both Ms. Lin and Ms. Perez testified that they are satisfied with the services provided to their children. District’s SOF at ¶¶ 35, 43. As such, it is uncontested that the Plaintiffs have not alleged an injury in fact.



As to Ms. Lin and Ms. Perez, a procedural violation of the IDEA is only actionable if it results in a “serious deprivation” of parental participation rights, such as the withholding of a student’s evaluation records from her parents. *Colonial Sch. Dist. v. G.K. by and through A.K.*, 763 F. App’x 192, 198 (3d Cir. 2019) (citing *Amanda J. ex rel. Annette J. v. Clark Cty. Sch. Dist.*, 267 F.3d 877, 894 (9th Cir. 2001)). Plaintiffs do not meet this high bar as Ms. Lin and Ms. Perez’s significant involvement in their children’s IEP processes is not contested. District’s SOF at ¶¶ 29-34, 39-43. Both testified at length about their extensive involvement in the decision making-process for their children’s IEPs, which was supported by testimony from District witnesses. District’s SOF at ¶¶ 30-34, 39-43. For example, Ms. Perez provided the following description of her involvement at an IEP meeting for L.R.:

Q. The IEP meeting that you went to in person, was there an interpreter present then?

A. Yes, Elizabeth.

Q. At that meeting that was in person, were you able to ask any questions that you had?

A. Yes.

Q. Do you remember any specific questions or concerns that you raised?

A. No. Just how L.R. socialized, because that has been one of the issues with him in school. I don’t remember any specific questions.

...

Q. And did the other people at the meeting respond to your question?

A. The special education teacher responded to that question and Elizabeth translated the answer into Spanish.

...

Q. Was there a plan for how to deal with those issues?

A. Yes. The special education teacher explained how they were going to deal with – work with L.R.

Ex. L (Perez dep.) at 39:4-42:11. Similarly, Ms. Lin admits that she is able to voice her concerns and engage in a dialogue, through an interpreter, with the District and that she has knowledge of the issues relating to R.H.'s education which enables her to give input at R.H.'s IEP meetings. District's SOF at ¶¶ 29-33. Furthermore, Marie Capitolo, a District Special Education Director who attended R.H.'s IEP meetings with Ms. Lin, testified:

...[Ms. Lin] brought her notes to the [IEP] meeting. She asked any questions she wanted to ask. The meeting revolved around her, not the rest of the team...[Ms. Lin] gets to respond to every individual component of the IEP and it is fully interpreted both ways. And those meetings were very successful in that she provided a lot of input on her child, suggested many revisions, very detailed, in particular to goals and objectives and things that most parents are not really too knowledgeable about....So she was –she was a great advocate for her child.

Ex. H (Capitolo dep.) at 68:7-69:18. This plainly meets the Third Circuit's standard for meaningful participation and there is simply no evidence that either Ms. Lin or Ms. Perez were seriously deprived of their parental participation rights. As such, there is no concrete injury and Plaintiffs lack standing. *See, e.g. J.T. ex rel. A.T.*, 533 F. App'x at 49 (dismissing IDEA claims for lack of standing where plaintiffs suffered no substantive harm).

The injury-in-fact requirement also requires that an injury be "particularized," meaning that the plaintiff is affected in a "personal and individual way." *Lujan*, 504 U.S. at 560 n.1. "To the extent that Plaintiffs allege only a harm in the mere existence or absence of particular [] policies, Plaintiffs lack standing." *Mielo v. Steak 'n Shake Operations, Inc.*, 897 F.3d 467, 479 (3d Cir. 2018). As such, Plaintiffs' allegations relating to the District's purported lack of policies relating to interpretation and translation, in addition to being unsupported by the record, are legally insufficient to fulfill the standing requirement. District's SOF at ¶¶ 8-25.

**C. Plaintiffs Lin And Perez Meaningfully Participated In The IEP Processes For Their Children And Thus Fail To State A Claim Under The IDEA (Count One).**

Alternatively, Plaintiffs' claims under the IDEA should be dismissed because the undisputed facts show that Ms. Lin and Ms. Perez meaningfully participated in the IEP processes for their children. The meaningful participation requirement is *not* a "substantive guarantee that parents must fully comprehend and appreciate to their satisfaction all of the pedagogical purposes in the IEP." *Colonial Sch. Dist. v. G.K. by and through A.K.*, 763 F. App'x at 198. Rather, when evaluating whether parents have participated meaningfully, the Third Circuit looks to (i) whether parents were present at the IEP meeting, (ii) whether they were given the opportunity to ask questions and make suggestions, and (iii) whether parental contributions were honestly considered by the IEP team. *Fuhrmann on Behalf of Fuhrmann v. East Hanover Bd. of Educ.*, 993 F.2d 1031, 1036 (3d Cir. 1993) (finding meaningful parental participation where parents were present at the IEP meeting and made suggestions, some of which were incorporated into the final IEP); *D.S. v. Bayonne Bd. of Educ.*, 602 F.3d at 565-66 (same); *R.K. v. Clifton Bd. of Educ.*, 587 F. App'x 17, 21 (3d Cir. 2014) (same); *W.D. v. Watchung Hills Reg'l High Sch. Bd. of Educ.*, 602 F. App'x at 568-569 (finding meaningful participation where parent was present at IEP meeting and given opportunity to observe the proposed program); *L.G. ex rel. E.G. v. Fair Lawn Bd. Of Educ.*, 486 F. App'x 967, 972 (3d Cir. 2012) (noting that meaningful parental participation does *not* require that parents "be included in 'preparatory activities that public agency personnel engage in to develop a proposal...'" (citing 34 C.F.R. § 300.501(b))); *W.R. v. Union Beach Bd. Of Educ.*, 414 F. App'x 499, 500-501 (3d Cir. 2011) (finding meaningful parental participation where there was "considerable back-and-forth between the District and the parents regarding the best method for teaching [the child]").

Applying the Third Circuit's standard to Ms. Lin and Ms. Perez, the record is uncontradicted that they both meaningfully participated in the IEP processes for their children. Ms. Lin and Ms. Perez do not, and cannot, argue they were not present at all IEP process meetings for their children or that the District did not fulfill its obligation of providing them appropriate notice of the meetings.

Ms. Lin understands the services R.H. receives, in part because she has the opportunity to meet with District staff that provide R.H.'s services, which enables her to understand his condition and give input at the IEP meeting. District's SOF at ¶¶ 29-30. Ms. Lin also utilizes a District Bilingual Counseling Assistant (BCA), in tandem with R.H.'s special education teacher, to review documents in preparation for IEP-related meetings. District's SOF at ¶ 33. At IEP meetings, Ms. Lin is able to voice her concerns and engage in a dialogue, through an interpreter, with the District. District's SOF at ¶¶ 31-32. For example, during an IEP meeting Ms. Lin requested that a specific writing goal be added to R.H.'s IEP, which the District agreed to and was then added to R.H.'s IEP. District's SOF at ¶ 32. Nor is Ms. Lin's participation limited to the actual IEP meetings; she is in near constant communication with members of R.H.'s IEP team and frequently checks-in with his IEP team and the school about his progress. District's SOF at ¶ 34. Ms. Lin's claim that she is unable to meaningfully participate in R.H.'s IEP process is belied by the record evidencing her frequent and detailed communications with the District regarding R.H.'s educational progress.

Similarly, Ms. Perez, with interpretation services, meaningfully participates in the IEP process for her children D.R. and L.R. Through an interpreter, Ms. Perez has provided information every time her children have been evaluated by the District and has been provided with an explanation of the results of the evaluations and an opportunity to ask questions so that

she fully understands her children's issues. District's SOF at ¶ 39. Ms. Perez understands the special education needs of her children and the services they receive, provides input to the school about her children, has received helpful suggestions from the IEP team, and asks questions and those questions about her children and their services are appropriately addressed. District's SOF at ¶ 40. Furthermore, Ms. Perez and the District have collaborated on numerous occasions to reach appropriate placements and services for her children. District's SOF at ¶ 41.

To the extent Plaintiffs focus on the translation of *draft* IEP process documents, there is no statutory or regulatory mandate for the District to translate those documents.<sup>2</sup> As such, the District makes such decisions on a case-by-case basis and translates drafts when it is necessary to facilitate a parent's meaningful participation. District's SOF at ¶ 23. In fact, the District does more than what is legally required. As to Ms. Lin specifically, the District provides Ms. Lin with access to a BCA and the school's Special Education Liaison to review the draft documents in advance of the meetings, so she is able to take notes on those documents and bring any questions to the IEP meeting. District's SOF at ¶ 33. As a result, Ms. Lin has actively participated at R.H.'s IEP process meetings without translation by the District of the draft document and "provided a lot of input on [R.H.], suggested many revisions, very detailed, in particular to goals and objectives and things that most parents are not really too knowledgeable about." Ex. H (Capitolo dep.) at 67:20-69:18. There is no evidence on which a reasonable jury could rely to find that Ms. Lin or Ms. Perez were denied meaningful participation. Judgment must be entered in favor of the District.

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<sup>2</sup> The regulations implementing the IDEA explicitly identify several documents which do have to be translated into the parent's native language, all of which the District translates. The IEP is not one of them. *See*, 34 C.F.R. § 300.503; *see also* *L.G. ex rel. E.G. v. Fair Lawn Bd. of Educ.*, 486 F. App'x at 972 ("[P]arents need not be included in 'preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.'" (citing 34 C.F.R. § 300.501(b))).

**D. Plaintiffs Fail To State A Claim That Student Plaintiffs Were Not Appropriately Evaluated Under The IDEA (Count Two).**

Count Two of Plaintiffs' First Amended Complaint, which claims that the District has failed to conduct evaluations of students in their native language in violation of the IDEA, should be dismissed. The only record evidence relevant to this issue relates to T.R., who voluntarily withdrew all of her claims against the District with prejudice.<sup>3</sup> Stipulation (Doc. 84). Plaintiffs do not allege, and there is no evidence to support, that either D.R., L.R. or R.H. should have been evaluated bilingually, but were not. As discussed above, Plaintiffs do not claim that the Student Plaintiffs have been deprived of any educational benefits or opportunities, which would include appropriate evaluations. District's SOF at ¶¶ 28, 38. This claim should be dismissed for failure to state a claim.

**E. Plaintiffs Have No Evidence Of Disability Discrimination (Counts Three And Seven).**

The third and seventh counts of Plaintiffs' First Amended Complaint attempt to shoehorn claims regarding the District's alleged failure to translate "regular education forms" for Ms. Lin and Ms. Perez into the framework of Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and 22 Pa. Code Chapter 15.<sup>4</sup> However, that framework, which protects *students* who are discriminated against on the basis of disability, cannot be rationally applied to the facts before this Court. Plaintiffs therefore fail to state a claim.

"To establish claims under § 504 of the RA and the ADA, a plaintiff must demonstrate that: (1) he has a disability, or was regarded as having a disability; (2) he was 'otherwise qualified' to participate in school activities; and (3) he was 'denied the benefits of the program or

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<sup>3</sup> To be clear, the District maintains that T.R. was properly evaluated.

<sup>4</sup> 22 Pa. Code Chapter 15 is Pennsylvania's implementation of Section 504 of the Rehabilitation Act. Plaintiffs bring claims under Chapter 15 in both Counts Three and Seven. The District addresses both Counts in this Section.

was otherwise subject to discrimination because of [his] disability.’”<sup>5</sup> *D.E. v. Central Dauphin School Dist.*, 765 F.3d 260, 269 (3d Cir. 2014) (citing *Chambers v. Sch. Dist. of Phila. Bd. of Educ.*, 587 F.3d 176, 189 (3d Cir. 2009)). “Pennsylvania has ‘implement[ed] the statutory and regulatory requirements of [the RA]’ at the state level through the enactment of [22 Pa. Code Chapter 15].” *K.K. ex rel. L.K. v. Pittsburgh Pub. Sch.*, 590 F. App’x 148, 153 n.3 (3d Cir. 2014) (quoting 22 Pa. Code § 15.1(a)). Importantly, however, Chapter 15 is not meant “to preempt, create, supplant, expand or restrict the ... liabilities of ... school entities beyond what is contemplated by [federal law].” 22 Pa. Code § 15.11(c).

First, Plaintiffs do not allege, nor do they have any evidence of, discrimination against R.H., D.R., or L.R. because of their disabilities or otherwise. Second, Plaintiffs do not claim that the Student Plaintiffs have been denied any educational benefits or opportunities. As such, Plaintiffs fail to state a claim under Section 504, the ADA, or the Pennsylvania Code.

Plaintiffs claim that the ability of R.H., D.R., and L.R. to receive equal access to education services was somehow undermined by the District’s alleged failure to translate “regular education forms” for Ms. Lin and Ms. Perez. This theory of liability is not supported by the law and these claims are similarly not supported by the evidence. The record bears out that the District does translate regular education documents, both District-wide and at the individual school-level, and did so for both Ms. Perez and Ms. Lin on a routine basis. District’s SOF at ¶¶ 9-13. The District’s Office of Family and Community Engagement (“FACE”) maintains a document management system where standard documents, such as the District’s attendance policy and transportation policy, are translated into the eight most common languages (including Mandarin and Spanish), publicly available on the District’s website. District’s SOF at ¶¶ 8-9. In

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<sup>5</sup> Section 504 and ADA claims are governed by the same standard. *D.E.*, 765 F.3d at 269 n.8.

addition, the District translates documents that are distributed school-wide, such as report cards and letters to parents, into the eight most common languages as a matter of course. District's SOF at ¶ 10. At the school-level, District employees are able to make requests for translation to FACE, in addition to utilizing the BCAs directly. District's SOF at ¶ 11. For example, when a teacher needs to send a letter home to parents about a particular student, if the school's BCA knows the target language then the BCA would translate that letter for the teacher without involving the FACE office. District's SOF at ¶ 13. Thus, Plaintiffs' claims under Section 504, the ADA, and the Pennsylvania Code should be dismissed.

**F. Plaintiffs Were Never Denied Educational Opportunities (Count Four).**

Plaintiffs' claim under the Equal Education Opportunity Act ("EEOA") is a transparent attempt to repackage their IDEA meaningful participation claim. However, Plaintiffs have uncovered no evidence that R.H., D.R., or L.R. were ever denied any educational opportunities, let alone evidence that any such opportunities were denied because of their race and/or national origin, so Plaintiffs' claims under the EEOA should be dismissed. Given the extent of the services the District has provided to the Student Plaintiffs, as is recognized even by their own parents, this claim is meritless.

The EEOA provides that "[n]o state shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by ... the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs." 20 U.S.C. § 1703(f). The essential gist of the EEOA is that "schools are not free to ignore the need of limited English speaking children for language assistance." *Issa v. School Dist. of Lancaster*, 847 F.3d 121, 133 (3d Cir. 2017) (citing *Castaneda v. Pickard*, 648 F.2d 989, 1008 (5th Cir. 1981)).



To state a claim under the EEOA, Plaintiffs must establish the following elements: “(1) the defendant must be an educational agency, (2) the plaintiff must face language barriers impeding her equal participation in the defendant’s instructional programs; (3) the defendant must have failed to take appropriate action to overcome those barriers, and 4) the plaintiff must have been denied equal educational opportunity on account of her race, color, sex, or national origin.” *Issa*, 847 F.3d at 132 (citing 20 U.S.C. § 1703(f)).

First, it is evident from the statutory text and interpreting decisions that the EEOA is intended to protect *students* with language barriers, not parents. *See, e.g., K.A.B. ex rel. Susan B. v. Downingtown Area School Dist.*, 2013 WL 3742413 at \*11-12 (E.D. Pa. 2013). Plaintiffs’ Amended Complaint attempts to backdoor Ms. Lin and Ms. Perez into the EEOA claim by alleging that the District has failed to take appropriate action to overcome the parents’ language barriers. Am. Compl. ¶ 125. This cannot serve as the basis for an EEOA claim because Ms. Lin and Ms. Perez are not entitled to equal participation in the District’s instructional programs and alleged inaction towards Ms. Lin and Ms. Perez cannot state a claim under the EEOA.

Furthermore, the claim that the District’s alleged failure to take action to overcome language barriers of the *parents* somehow “impeded equal participation by Student Plaintiffs...in the District’s special education and other instructional programs,” is not supported by the record. To the contrary, the record evidence supports that the District provides R.H., D.R. and L.R. with extensive services, including language assistance where necessary. District’s SOF at ¶¶ 28-29, 35, 43. At her deposition, Ms. Perez testified that she was satisfied with the services D.R. and L.R. were receiving and there is no record evidence even suggesting that D.R. and L.R. are not receiving appropriate language assistance. District’s SOF at ¶ 43. Similarly, Ms. Lin raised no issues whatsoever relating to the language services provided to R.H. District’s SOF at ¶ 35.

And, again, Plaintiffs themselves concede that they are not seeking any particular placement or service for R.H., D.R. and L.R., underscoring that the District's services, including language services, are appropriate. District's SOF at ¶¶ 28, 38. Plaintiffs have no evidence that R.H., D.R. or L.R. did not receive appropriate language services, nor do they have evidence that any deficiency in language services was "on account" of race and/or national origin, as is necessary to state a claim. As such, Plaintiffs' claim under the EEOA should be dismissed because Plaintiffs have submitted no evidence from which a reasonable fact-finder could find that the District has failed to take appropriate action on account of the Student Plaintiffs' race and/or national origin.

**G. Ms. Lin And Ms. Perez Do Not Have Standing Under Title VI And Student Plaintiffs Fail To State A Prima Facie Case (Count Five).**

Plaintiffs' claim under Title VI is fatally flawed as Parent Plaintiffs do not have standing to pursue a Title VI claim and Student Plaintiffs fail to establish a prima facie case of race and/or national origin discrimination. Title VI provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d.

First, Ms. Lin and Ms. Perez do not have standing to pursue Title VI claims on behalf of themselves, as they are not the intended beneficiaries of federally funded school programs. *See, e.g. Brown-Dickerson v. City of Phila.*, 2016 WL 1623438 at \*8 (E.D. Pa. 2016) ("To establish standing under Title VI, the plaintiff must be the intended beneficiary of the federal spending program."); *Williams v. Lenape Board of Educ.*, 2018 WL 916364 at \*6 (D.N.J. 2018) (same); *H.B. v. Monroe Woodbury Cent. School Dist.*, 2012 WL 4477552 at \*18 (S.D.N.Y. 2012) (same); *R.W. ex rel. Williams v. Delaware Dept. of Educ.*, 2008 WL 4330461 at \*3 (D. Del.

2008) (“The intended beneficiaries of a federally funded public school program are school children, not their parents.” (quoting *Jackson v. Katy Indep. Sch. Dist.*, 951 F.Supp. 1293, 1298 (S.D. Texas 1996))).

To state a prima facie case under Title VI, the Student Plaintiffs must show: “(1) they are members of a protected class; (2) they were qualified to continue in pursuit of their education; (3) they suffered an adverse action; and (4) such action occurred under circumstances giving rise to an inference of discrimination.” *Blunt v. Lower Merion Sch. Dist.*, 826 F. Supp. 2d 749, 758 (E.D. Pa. 2011) (citing *Sarully v. U.S. Postal Serv.*, 352 F.3d 789, 797 (3d Cir. 2003)). Here, Plaintiffs have proffered no evidence that R.H., D.R. or L.R. ever suffered an adverse action, were excluded from any District program, denied benefits by the District, or subject to discrimination by the District on the grounds of race, color, or national origin. Furthermore, Plaintiffs have proffered no direct evidence of discrimination, nor is there evidence that similarly-situated Caucasian students were treated differently. As such, Plaintiffs fail to state a claim under Title VI.

#### **H. The Pennsylvania Code Does Not Require Translation Of Evaluations (Count Six).**

“Chapter 14 of the Pennsylvania Code incorporates and implements the substantive provisions of the IDEA.” *A.W. ex rel. H.W. v. Middletown Area Sch. Dist.*, No. 13-cv-2379, 2015 WL 390864, \*10 (M.D. Pa. Jan. 28, 2015). Pennsylvania’s standards for educational opportunities for handicapped students are incorporated into the IDEA and are enforceable in the federal courts. *See Geis v. Bd. of Educ. of Parsippany-Troy Hills*, 774 F.2d 575, 581 (3d Cir. 1985). However, Plaintiffs misconstrue the provisions of the Pennsylvania Code upon which this claim relies, which do not require that either evaluations or reevaluations be translated. Specifically, the provisions of the Pennsylvania Code that Plaintiffs’ rely upon only require that

copies of the evaluation report and reevaluation report “be disseminated to the parents at least 10 school days prior to the meeting of the IEP team, unless this requirement is waived by a parent in writing.” 22 Pa. Code § 14.123(d), 22 Pa. Code § 14.124(d). These portions of the code do not mention, much less require, translation services. Plaintiffs have proffered no evidence of a violation of Chapter 14 in this litigation, because no such evidence exists.

Furthermore, Plaintiffs’ claim that the District has failed “to make any attempt to interpret evaluations at any time prior to the IEP team meetings,” is completely contradicted by Ms. Lin’s own affidavit, in which she describes “a series of meetings I had with an interpreter provided by the District to review the Evaluation Report,” that occurred prior to the IEP meeting. Am. Compl. ¶ 136; Ex. K (Lin Affidavit) ¶8. Ms. Perez has an understanding of the evaluations for her children as the school psychologist and special education teacher meet with her to discuss the evaluation and provide her with an opportunity to ask questions about it through appropriate interpretation services. District’s SOF at ¶ 39. As such, Plaintiffs’ claims under the Chapter 14 of the Pennsylvania Code are both legally and factually baseless and should be dismissed.

### III. CONCLUSION

After years of litigation, Plaintiffs’ unfounded claims against the District remain unsupported by either fact or law. Accordingly, the District is entitled to summary judgment on all counts.

Date: September 27, 2019

Respectfully submitted:

/s/ Marjorie M. Obod

Marjorie M. Obod, Esquire (#47531)

Katharine V. Hartman, Esquire (#203697)

Danielle Goebel, Esquire (#313622)

**DILWORTH PAXSON LLP**

1500 Market Street, Suite 3500E

Philadelphia, PA 19102-2101

215-575-7000 / F: 215-575-7200

*Attorneys for Defendant,*

*The School District of Philadelphia*

# EXHIBIT A

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
3

4       T.R., et al.,                                 )  
  Plaintiffs,     )

5   )  
  - vs -             )

6   )  
7       THE SCHOOL DISTRICT OF                     )  
         PHILADELPHIA,                             )  
  Defendant.     )

No. 15-04782-MSG

8       - - - - - )  
9

10                               Oral deposition of JENNA MONLEY,  
11       held at the Law Offices of DRINKER, BIDDLE &  
12       REATH, LLP, One Logan Square, Suite 2000,  
13       Philadelphia, Pennsylvania, on March 19, 2018,  
14       commencing at approximately 9:30 a.m., before  
15       Susan Endt, Court Reporter and Notary Public.  
16  
17  
18  
19  
20

21                               VERITEXT LEGAL SOLUTIONS  
  MID-ATLANTIC REGION  
22                               1801 Market Street - Suite 1800  
  Philadelphia, PA 19103  
23  
24

1                   Do you work in conjunction with them  
2 often?

3           A.           I do not.

4           Q.           Do people in your office?

5           A.           They may, depending upon the  
6 caseload.

7                   So if it is a concern that comes to  
8 their attention regarding special education, a  
9 part of our process is that, once that concern  
10 is made known to the staff -- so, for example,  
11 if a call center receives a call from a parent  
12 that has a complaint around special education,  
13 they will notify the liaison at that school,  
14 provide them with the details.

15                   That liaison, then, will contact the  
16 parent to get any more specifics around the  
17 case. And, then, once the staff member has  
18 that information, they, then, will reach out to  
19 the SEL at the school level to find out more  
20 about the case.

21                   So that's a part of their  
22 investigation process. So, yes, they would  
23 work along with the SEL.

24           Q.           Okay. So I'm just going to ask you a

1 little bit more about the multilingual family  
2 support office.

3 That's the correct title, right?

4 A. The multilingual family support  
5 services is just a unit.

6 Q. Okay.

7 A. They are not an independent  
8 department. The department is the Office of  
9 Family and Community Engagement and they have  
10 different units or areas of responsibilities  
11 under the one department. They are not an  
12 office.

13 Q. Okay. So I'll refer to them as  
14 multilingual family support services?

15 A. Um-hum.

16 Q. So would you sort of just describe  
17 the structure of the multilingual family  
18 support services?

19 I believe you said Ludy Soderman is  
20 the executive -- is the director?

21 A. (Nod.)

22 Q. So can you just describe the  
23 structure? Who does she report to?

24 A. Sure. So the reporting structure, it



1 starts with myself as the executive director,  
2 Ludy Soderman is the director of family support  
3 services and reports directly in to me. Then,  
4 from there, her bilingual access coordinators  
5 that report in to her and, then, the two  
6 part-time individuals also report directly to  
7 her.

8 And, then, there is an offshoot of --  
9 where the -- Ludy will oversee the professional  
10 development for our 75 bilingual counseling  
11 assistants, who report directly to their school  
12 building administrator.

13 Q. Okay. And what type of services does  
14 the multilingual family support services  
15 oversee?

16 A. Well, they provide translation and  
17 interpretation support services. So they will,  
18 as offices or schools request translation, they  
19 will do the translation of documents. If there  
20 is a need for interpretation, they will provide  
21 support for interpretation.

22 We also provide professional  
23 development to the school staff and  
24 administrators and as well as supporting school

1 staff on how best to support a working  
2 partnership with families who are limited  
3 English proficient, ensuring that they  
4 understand how to support them in reference to  
5 rights, as well as supporting families through  
6 workshops. So providing them access to  
7 information in a language they better  
8 understand.

9 So we will do trainings for families  
10 that are either in their language, in their  
11 native tongue and/or ensuring that trainings  
12 that are offered by other entities or offices  
13 in the district, that we have on-site  
14 interpretation.

15 Q. Okay. And just going forward as  
16 well -- and I think this is how you are using  
17 the terms as well, but when I say  
18 interpretation, I'm going to be referring to  
19 verbal interpretation, if I'm reading something  
20 in English and saying it out loud in Spanish.

21 Whereas, translation, I'm going to  
22 use it as something being written down. So  
23 translating something from English to Spanish  
24 would mean taking something in English and

1 that that parent received the support and  
2 services that they need by making sure that the  
3 school is aware that the parent needed  
4 interpretation.

5 Q. So who provides the in-person  
6 interpretation once it is requested?

7 A. Either the bilingual counseling  
8 assistant or a language access coordinator.  
9 Sometimes Ludy Soderman herself will provide  
10 interpretation. So it depends.

11 Q. Okay. And what -- what are BCAs?

12 A. So BCAs are bilingual counseling  
13 assistants who provide support and services to  
14 parents in their native language. So they  
15 function like our family language -- excuse  
16 me -- family engagement liaisons, in providing  
17 response to concerns, navigating the district,  
18 workshops for families, supporting things in  
19 the community. They provide the same exact  
20 support and services, but in the native  
21 language of the parent.

22 Q. Okay. I'm going to move on to the  
23 next exhibit. And we are only going to look at  
24 the first two pages, so when you get it, you

1 don't have to review the whole thing. We are  
2 going to just go to the first two pages.

3 - - -

4 (At this time, a document  
5 was marked for identification as  
6 Exhibit No. Monley-4.)

7 - - -

8 BY MR. MICHELEN:

9 Q. Okay. Ms. Monley, did you have a  
10 chance to review this document?

11 A. Yes.

12 Q. What is it?

13 A. It's the job posting for a bilingual  
14 counseling assistant.

15 Q. And is this the current format for  
16 the job posting for BCAs?

17 A. Yes, I believe so, yes.

18 Q. And under the section that says  
19 essential functions, is this an accurate  
20 description of the essential functions of a  
21 BCA?

22 A. Yes.

23 Q. And I see from the fourth point from  
24 the bottom, the sentence that starts:

1 District-wide translated documents to  
2 parent/guardians, ensure that all documents  
3 sent to parents and guardians are translated.

4 Can you just describe that little  
5 bit, that responsibility of BCAs?

6 A. So, yes, once a -- so when requests  
7 come in for translation, we work with  
8 parents -- with departments and schools in  
9 ensuring that documents are translated for  
10 parents and what -- we start with, at the  
11 district, the top eight languages, to ensure  
12 that they have that information and, then, if  
13 there are additional requests, then, we'll  
14 support the families based on the request  
15 and/or need, but the BCAs will, then, have the  
16 opportunity to go to what we call the TDM,  
17 translated document management system, that  
18 houses all of the documents.

19 So when they are meeting with  
20 families and families indicate that they need  
21 to understand the attendance policy or needs to  
22 understand the transportation policy, the BCAs  
23 will provide that parent with that document in  
24 their language.

1 Q. Okay. And when we are speaking about  
2 parents requesting translated documents, what  
3 type of documents are you -- are you referring  
4 to?

5 A. So it would be district -- so it  
6 could be a posting about an upcoming workshop  
7 or training, if there is something for  
8 families. Like, for example, I recently wrote  
9 a letter for the parents around the March 14th  
10 walkout for students in support of Florida.

11 So we made sure that that letter was  
12 translated for all families, and not only in  
13 English, but our top eight languages, so that  
14 families were aware that students may partake  
15 in this activity and if they were to, the  
16 district would not be disciplining them.

17 So if there are large district-wide  
18 services that we are going to go out to -- that  
19 are going to students, we first and foremost  
20 make sure that we are translating those  
21 documents and ensuring that the parents are  
22 getting them. One, whether they are sent home  
23 through backpack letters, whether they go home  
24 through e-mail, the BCAs help us with that

1 dissemination.

2 Q. Okay. Do BCAs ever help in either --  
3 either help parents obtain translated documents  
4 that are student specific or is it only  
5 documents that apply to the district as a whole  
6 or the school as a whole?

7 A. So to my knowledge, I can say that I  
8 know about district -- district wide and school  
9 level.

10 Q. Okay. So if there was, for example,  
11 a letter that was -- that a teacher was sending  
12 to a parent, would they assist in translating  
13 that?

14 A. Oh, yes, most definitely.

15 Q. And how would they go about that?

16 A. So if a teacher recognized that -- so  
17 right -- most recently, we just conducted a  
18 training on Ludy's team about how to make the  
19 classroom more accessible and welcoming to  
20 English proficient families.

21 And so a part of that included, one,  
22 taking an assessment of the parents that are in  
23 the class and you realize that -- understanding  
24 about what language they prefer to be

1       communicated in, how they like to be  
2       communicated with.

3               And so if a teacher would go about  
4       saying, well, for example, I have a family in  
5       my class that speaks Arabic, they would, then,  
6       work with their assigned BCA at that school and  
7       say, well, I need to send a letter  
8       communicating -- communication home to John's  
9       parents around, either how John is doing to  
10      ensure they are having a two-way communication  
11      between a parent and a teacher. And they would  
12      ask that BCA to support in translating that  
13      document and they would.

14      Q.           Okay. So how would that process  
15      work?

16               Would the teacher just send the  
17      English text to the BCA and the BCA would  
18      translate to it into whatever the parents'  
19      language --

20      A.           Yes.

21      Q.           -- home language is?

22      A.           Yes. That's at the school level. So  
23      that would not go through our request process.

24      Q.           Okay. Are there other -- other



1 student-specific documents that a BCA might  
2 translate for a parent?

3 Would they translate a -- a report  
4 card?

5 A. So the district translates -- I'm not  
6 going to -- so what I can say is the district  
7 does translate the report cards into the eight  
8 languages.

9 And has a BCA translated a report  
10 card, I can't say they have. We would probably  
11 rather that would be something that comes  
12 through our central office and we would support  
13 from that level, just to make sure that  
14 everything was accurate and inline with the  
15 formatting of the report card, but I can't say  
16 that a BCA may have not ever provided that  
17 level of service, but we would work with our  
18 department to ensure the same level of  
19 integrity of all of the report cards that we  
20 do.

21 Q. Okay. Would a BCA ever translate  
22 IEP-related documents?

23 A. I'm not -- well, I'm not sure whether  
24 they have or they haven't. That would be a

## EXHIBIT B

### Special Education Parental/Guardian Rights

The Procedural Safeguards Notice describes the rights of parents/guardians of a child with a disability and the procedures that safeguard those rights under state and federal education law. Some of the critical parental/guardian rights are highlighted below, as well as guidance for parents/guardians whose native language is not English and who may need to request translation and interpretation services from the School District.

- Right to confidentiality and to inspect and review the educational records of your child.
- Right to give or withhold your consent prior to an evaluation, reevaluation and initial placement into special education.
- Right to participate in meetings related to the identification, evaluation, and placement of your child, and the provision of Free Appropriate Public Education (FAPE).
- Right to receive prior written notification of any changes in your child's educational program or Individualized Education Plan (IEP).
- Right to a FAPE for your child at no cost to you.
- Right to have your child attend classes, participate in nonacademic and extracurricular activities and receive services with children who are not disabled to the maximum extent appropriate.
- Right to request an impartial due process hearing if you disagree with the IEP team's identification, evaluation, or placement of your child or the provision of FAPE to your child.
- Right to withdraw consent for the continued provision of special education and related services.
- Right to meaningfully participate in the IEP process.
- Right to enlist the District's interpretation and/or translation services. You are encouraged to enlist the District's interpretation and translation services at any time. For example, Bilingual Counseling Assistants (BCAs) will be made available to provide interpretation services as needed. In addition, you may request further interpretation and/or translation services if you believe the interpretation services do not permit your meaningful participation in the IEP process. You may do so by contacting the Special Education Liaison (SEL) assigned to your child's school.

For a full description of parents/guardians' rights, please refer to the Procedural Safeguards Notice. The Procedural Safeguards Notice is available electronically by visiting the *Office of Specialized Services* (<http://webgui.phila.k12.pa.us/offices/s/oss/>) home page on the School District of Philadelphia's website.

# EXHIBIT C

1 UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3 T.R., et al, : Civil Action  
4 Plaintiff, : NO. 15-04782-MSG

5 v. :

6 THE SCHOOL DISTRICT OF :  
7 PHILADELPHIA, :  
8 Defendant. :

9 - - -  
10 WEDNESDAY, DECEMBER 6, 2017

11 - - -  
12 Oral Deposition of LUDY  
13 SODERMAN, taken pursuant to notice, at Drinker  
14 Biddle, One Logan Square, 20th Floor,  
15 Philadelphia, Pennsylvania, beginning at  
16 approximately 9:30 a.m., before Jeanne  
17 Christian, a Professional Court Reporter and  
18 Notary Public.

19 \* \* \*

20 VERITEXT LEGAL SOLUTIONS  
21 MID-ATLANTIC REGION  
22 1801 MARKET STREET, SUITE 1800  
23 PHILADELPHIA, PENNSYLVANIA 19103  
24

LUDY SODERMAN

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1 that came to our website, the District  
2 website, telephonic interpretation and live  
3 interpretation.

4 Q. And what is the difference between  
5 telephonic interpretation and live  
6 interpretation?

7 A. So this is really -- I should have said  
8 in-person interpretation, because both  
9 telephonic -- telephonic is also live. So  
10 telephonic interpretation is a service that we  
11 have. We contract with an external provider.  
12 Now, it is called Language Line. And they  
13 have over 200 languages and dialects available  
14 to District staff. And they call, and they  
15 give a code, and then they indicate the name  
16 of the language. So it is not only languages  
17 of greater deficient, like Spanish, English,  
18 French, but also languages of lesser  
19 deficient, like Twi, T-W-I, or Ewe, E-W-E, or  
20 one of the languages -- having 200 languages  
21 is great, but people in the world speak over a  
22 thousand languages, so there are like actually  
23 5,000 languages alive in the world.

24 Q. And in general, when would you use not

LUDY SODERMAN

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1 live interpretation, but in-person  
2 interpretation, and when you would you be  
3 relying on the telephonic interpretation?

4 A. Telephonic interpretation, anyone in the  
5 school can just call, as opposed to a live  
6 interpreter, in-person interpreter, they  
7 request it, but not always, because if you  
8 have a Bilingual Counseling Assistant, a BCA,  
9 assigned to your school, that is live  
10 interpretation. The reason why it would be  
11 on the website is in the event that you don't  
12 have someone to offer interpretation for you,  
13 you can reach out to us and request a live  
14 interpreter.

15 Q. And who can request a live interpreter?

16 A. Anyone in the School District, any  
17 employee.

18 Q. And the telephonic interpretation, who  
19 makes the decision about whether to ask for  
20 live interpretation or use telephonic  
21 interpretation? Who makes those decisions?

22 A. I think it is people in their own  
23 accord. Any one in the school wants to  
24 communicate with a Limited-English Proficient

LUDY SODERMAN

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1 and the rendering is in the target language.  
2 So it is important to match skills and the  
3 type of a session.

4 Q. What about with regard to IEP meetings?  
5 What would be the training that interpreters  
6 would have?

7 A. So an IEP meeting -- an IEP meeting is  
8 one name for many meetings, because it is  
9 individualized, and so even if we have, and we  
10 have, had training on how to provide services  
11 in the sessions of IEP's, Joan Egglestone has  
12 been one of the people to come and talk to the  
13 BCAs, and I, along with the medical  
14 interpreter, have done many trainings for BCAs  
15 on doing interpretation of IEP's, but we have  
16 the type of training that they get, we have  
17 developed a glossary of special education  
18 terms that is translated in the eight  
19 languages of greater deficient for the  
20 District, so the BCAs have access to that.

21 Q. Have access to the glossary?

22 A. Yes, including the English one, so even  
23 if it hasn't been translated, they have access  
24 to it in English, so they know that, for



LUDY SODERMAN

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1 example -- what? Autism. So people talk  
2 about autism, but do you know what autism  
3 means, so that you can explain it to a parent,  
4 if a parent were to learn that their child has  
5 autism? So if you speak Portuguese, it will  
6 help you, because our staff has to be  
7 completely bilingual, so it would help you to  
8 at least know the terminology or the meaning  
9 in English, so that you can do your utterance  
10 in your target language.

11 Q. Because just like you said, that there  
12 are some people on your staff who have  
13 specific skills, medical skills, so that would  
14 be appropriate for them to maybe be involved  
15 with behavioral health?

16 A. Absolutely, but not all of them.

17 Q. What are the skills that, perhaps,  
18 someone who does a psychological evaluation,  
19 do you have people on your staff that have  
20 specific skills related to special education?

21 A. Specific to special education, not the  
22 that I know of.

23 Q. So what is the training that is needed  
24 to be a BCA? What is the educational

LUDY SODERMAN

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1 ethnic groups. And that's very important,  
2 because that is an issue of equity.

3 Q. Can you describe what a typical day in  
4 the life of a BCA is? How many different  
5 schools do they go to? I know they have  
6 different roles, and they are assigned in  
7 different ways, but if you could explain a  
8 little bit what that is like?

9 A. So there is not a typical day for a BCA,  
10 because every school has its own needs, the  
11 parents of that school and the children and  
12 the staff will have different needs, but  
13 typically, the BCA will be providing  
14 interpretation, they will do short  
15 translations, if requested, by request, they  
16 will make phone calls to parents or calls for  
17 the nurse or anyone else in the staff. They  
18 collaborate with the ESOL, E-S-O-L,  
19 coordinator, check on the students. Each  
20 school, because the principal is the one,  
21 really, the boss of the BCA. I have an idea  
22 of what BCA should do, but schools will also  
23 determine how they are going to be used.

24 Q. How many BCAs are assigned solely to one

LUDY SODERMAN

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1 IEP meetings in a month?

2 A. Not many.

3 Q. In a year?

4 A. I know that last month, I attended one.

5 In this academic year, I have attended maybe

6 just one. Yeah, just one this year.

7 Q. In your experience, if a teacher  
8 identifies a child who may have disabilities,  
9 and the parent is Limited-English Proficient,  
10 how does the parent learn or is notified about  
11 a concern that a teacher has?

12 A. I know that BCAs are part of this --  
13 BCAs are used to communicate with the parent,  
14 or they will use telephonic.

15 Q. What is your understanding of when  
16 interpreters are needed in the IEP process?

17 A. Interpreters are needed when the parent  
18 is Limited-English Proficient, so we will send  
19 -- if they request, we will send someone, and  
20 they will interpret for all the parties in the  
21 meeting, all the members of the meeting, and  
22 they will do site translation of any document  
23 that they are given to site-translate.

24 Q. And who would be giving them documents

## EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

T.R., et al.,	:	
	:	
	:	
	:	Case No. 15-cv-04782-MSG
v.	:	
	:	
	:	
THE SCHOOL DISTRICT OF PHILADELPHIA,	:	
	:	
Defendant.	:	

**DECLARATION OF NATALIE HESS**

Natalie Hess deposes and states as follows:

1. I am the Deputy Chief of the Office of Specialized Services (“OSS”) at the School District of Philadelphia (the “**District**”). OSS supports schools within the District to deliver special education services to students.
2. The District believes that parental participation is an important part of the special education process and recognizes that parents make valuable contributions as members of a student’s Individualized Education Program (“**IEP**”) team.
3. Given the importance of parental involvement, the District is always taking steps to improve parental participation, as well as the services offered to them.
4. In addition to promoting parental involvement at the IEP meeting, the District encourages parents to communicate with the District throughout the school year, regardless of whether their children receive special education services.
5. My office employs a parent coordinator who is responsible for all parental issues related to special education. The parent coordinator position is meant to help ensure parental engagement and effective responses to any complaints or issues that may arise.

6. The OSS parent coordinator works in conjunction with the District's Office of Family and Community Engagement ("FACE") to ensure that any concerns raised by parents of special education students are addressed in an efficient and effective manner.

7. Parents receive a copy of the Procedural Safeguards, in their native language, at various times throughout the special education process. For example, the District provides the Procedural Safeguards to parents of special education students when the student is initially identified and annually at the IEP meeting.

8. Along with the Procedural Safeguards, parents receive a Special Education Parental/Guardian Rights notice which tells parents that they can request interpretation or translation services during the special education process. This document is translated into the eight (8) languages most commonly used by families in the District and is also read aloud at IEP meetings and interpreted, if necessary.


9. Prior to a student's IEP meeting, a draft of the IEP is provided to parents in English. Parents who do not read English are able to meet with the Special Education Liaison ("SEL") assigned to their child's school and a Bilingual Counseling Assistant ("BCA") to review the draft IEP prior to the IEP meeting.

10. Over the past year, the District has hired additional BCAs to better serve families who do not speak English.

11. My office has a contract for translation of special education documents, when needed, and maintains records of these services in order to keep track of and manage resources.

12. In addition, OSS employs two full-time Special Project Assistants who keep track of demographic and other information related to special education students in order to comply with the IDEA's various reporting requirements.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 30th day of August, 2018.

  
\_\_\_\_\_  
Natalie Hess

# EXHIBIT E



## Quick Reference Guide

### Translation and Interpretation Services

1. Parents/guardians must be notified of their right, and encouraged to meaningfully participate in the student's IEP process. This notice appears in the Special Education Parental/Guardian Rights (Parental Rights Document). A copy of the Parental Rights Document will be sent to parents/guardians when the parents/guardians are given the Permission to Evaluate ("PTE") that initiates the IEP process as well as any time a parent/guardian is given a copy of the Procedural Safeguards, which occurs at least at the annual IEP meeting.
2. Students suspected of having a disability must be evaluated in the student's native language or other form of communication, and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally and functionally, unless it is clearly not feasible to so provide or administer.
3. As per IDEA regulations, NOREPs, Procedural Safeguards, Permission to Evaluate, and Permission to Re-evaluate must be in the parents/guardians native language, unless it is clearly not feasible to do so. The District must distribute the Parental Rights Document to parents/guardians when the parents/guardians are given the PTE that initiates the IEP process as well as any time a parent/guardian is given a copy of the Procedural Safeguards that occurs at least annually at the annual IEP meeting.
4. Parents/guardians may request translation and/or interpretation services at any time throughout the IEP process. For example, upon receiving the 10-day notice of an IEP meeting that includes a draft IEP, a parent/guardian can request interpretation services by contacting the Special Education Liaison (SEL) assigned to the child's school and the SEL will arrange for the parent/guardian to meet with one of the District's Bilingual Counseling Assistants (BCA) or another bilingual staff member to review the child's special education document with the parent/guardian before the scheduled IEP meeting. The SEL should make every effort to accommodate a parent/guardian's schedule to meet with a BCA, including arranging for a meeting before or after regular school hours, if feasible. If a BCA or other bilingual staff member is not available, the SEL will make arrangements with the parent/guardian to come to the school and receive interpretation services through the District's phone-based interpretation service,

<p>Language Line. The District encourages the parent/guardian's efforts to come to the school and utilize the District's interpretation services and every effort should be made to ensure the parent/guardian is supported in such efforts.</p> <ol style="list-style-type: none"> <li>5. The District understands that not every parent/guardian will be able to visit their child's school to make use of these services, but the District asks that parents/guardians work with the SEL to arrange a time to do so, if possible. Every effort will be made to accommodate a parent/guardian's schedule, which may include arranging for meetings before or after regular school hours, if feasible. Parents/guardians will be allowed to bring family members, friends, or community advocates to join the meeting.</li> <li>6. The use of Language Line services will always be made available with assistance from the neighborhood school SEL. In addition, BCA services during IEP meetings can be arranged by contacting the SEL or through a formal request via the District's online site. Interpretation services shall be made available upon request to parents/guardians who are limited English proficient (LEP) at all IEP meetings.</li> <li>7. Parents/guardian who utilize interpretation services will be asked to confirm that the interpretation services permitted them to meaningfully participate at the IEP meeting and documentation of the parent/guardian's confirmation must be noted in the IEP meeting under the section of parent concerns or in the NOREP at the conclusion of the IEP meeting given to the parents/guardians.</li> <li>8. If in-person interpretation services are not practically accessible to a parent/guardian or if he/she feels that such services were not adequate to permit meaningful parental preparation, the parent/guardian may request a translation of the special education documents, whether drafts or finals at any time, including prior to the IEP meeting. Those requests should be directed to the SEL. The parent/guardian's request will be handled pursuant to the procedure(s) set forth below.</li> <li>9. A parent/guardian may also request written translation of the special education documents, whether drafts or finals, at the IEP meeting. Those requests should be directed to the SEL. The determination of whether a written translation will be provided shall be made pursuant to the following protocol:</li> </ol> <p>The SEL will first ask the parent/guardian:</p>	
--	--

1. Did you request interpretation services prior to today?
  - a. If so, did the interpretation services help you understand your child's special education documents?
  - b. If not, what can we do to help you meaningfully participate?
2. Do you feel you have enough information to make an informed decision about your child's special education services?

If the answer to Question # 2 is "no", the parent/guardian will be asked:

3. Are you able to read English?
4. Are you able to read your native language?

If the answer to Question # 4 is "yes", the parent/guardian will be asked:

5. Will translating the special education documents into your native language assist you in participating in the IEP process in a more meaningful way?

If the answer to Question # 5 above is "yes", the SEL shall transmit the request for translation to the assigned Special Education Director and carbon copy Nancy Velez, who will log the request. Nancy shall log every request and keep records of whether such requests were granted or denied. When transmitting the request, the SEL shall include the information gathered during the SEL's discussion with the parent/guardian and may use a pre-printed form provided by the District.

Once the Special Education Director receives a translation request from the SEL, the Director may follow-up with the SEL and/or the parent/guardian directly. In determining whether to approve a translation request, the Special Education Director will review the information provided by the SEL and/or parent/guardian and will also consider the following:

- a) Whether the parent/guardian requested interpretation services prior to requesting a translated document.
- b) Which services were provided to the parent/guardian prior to

and at the IEP meeting.

- c) Whether the parent/guardian reported that he/she was able to understand the special education document(s) and/or reported that he/she was able to meaningfully participate in the IEP process.

If the Special Education Director approves a translation request, he/she will notify the SEL and Nancy Velez. The SEL will communicate this information directly to the parent/guardian. If a translation request is approved, Nancy Velez shall begin processing the request.

If the Special Education Director denies a translation request, he/she will forward all information and/or documents relating to the request, as well as the decision to deny the request, to the Deputy Chief of the Office of Specialized Services for review. After reviewing the relevant information and/or documents, the Deputy Chief will make a final determination as to whether the request should be denied or granted. Upon making a final determination, the Deputy Chief will convey that decision to the Special Education Director and Nancy Velez. If the request is granted, Nancy Velez may begin processing the request. If the request is denied, the Deputy Chief will provide a written statement explaining why. The Special Education Director will distribute that statement to the parent/guardian who made the request. Nancy Velez will log the denial and keep a record of the reason(s) why the request was denied.

If the request is approved, the translated special education documents, whether drafts or finals, must be provided to the parent/guardian within 30 days of the request for translation.

# EXHIBIT F

1 UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3 T.R., et al, : Civil Action  
4 Plaintiff, : NO. 15-04782-MSG

5 v. :

6 THE SCHOOL DISTRICT OF :  
7 PHILADELPHIA, :  
8 Defendant. :

9 THURSDAY, JANUARY 25, 2018

10 Oral Deposition of NATALIE  
11 HESS, taken pursuant to notice, at Drinker  
12 Biddle, One Logan Square, 20th Floor,  
13 Philadelphia, Pennsylvania, beginning at  
14 approximately 10:00 a.m., before Jeanne  
15 Christian, a Professional Court Reporter and  
16 Notary Public.

17 \*\*\*

18 VERITEXT LEGAL SOLUTIONS  
19 MID-ATLANTIC REGION  
20 1801 MARKET STREET, SUITE 1800  
21 PHILADELPHIA, PENNSYLVANIA 19103  
22

## NATALIE HESS

<p style="text-align: right;">Page 34</p> <p>1 A. Yes.</p> <p>2 Q. And those positions were filled at that</p> <p>3 time in your network?</p> <p>4 A. Yes.</p> <p>5 Q. And what is the role of the special</p> <p>6 education liaison at the building level?</p> <p>7 A. To support the LEA with the special</p> <p>8 education students, programming and delivery</p> <p>9 of service in the building.</p> <p>10 Q. Do they teach special education?</p> <p>11 A. Yes.</p> <p>12 Q. As well? In addition to overseeing the</p> <p>13 special education at the building level?</p> <p>14 A. Yes.</p> <p>15 Q. So all of them are special education</p> <p>16 teachers?</p> <p>17 A. Yes.</p> <p>18 Q. And what is their role in the special</p> <p>19 education process? What are their</p> <p>20 responsibilities as part of their oversight?</p> <p>21 A. So with regards to IDEA and the rules of</p> <p>22 compliance, they monitor building compliance</p> <p>23 for special education documents, they</p> <p>24 facilitate and set up IEP meetings, meetings</p>	<p style="text-align: right;">Page 36</p> <p>1 A. It depends on the building.</p> <p>2 Q. Do some buildings have more than one SEL</p> <p>3 or does every building have a singular one</p> <p>4 SEL?</p> <p>5 A. Some buildings designate a second SEL.</p> <p>6 Q. Which buildings in your -- in that</p> <p>7 Network 7 of the 20 had more than one SEL, if</p> <p>8 you recall? And why would you have a second</p> <p>9 SEL? What is the importance of that?</p> <p>10 MS. OBOD: Objection to form.</p> <p>11 That is two questions.</p> <p>12 MS. McINERNEY: I'm sorry.</p> <p>13 Answer the first question.</p> <p>14 THE WITNESS: At the time,</p> <p>15 from what I can recall, Grover Washington, the</p> <p>16 middle school, had two SEL's.</p> <p>17 BY MS. McINERNEY:</p> <p>18 Q. And is that all that you recall that had</p> <p>19 more than one SEL at this time?</p> <p>20 A. At this time, that's what I recall.</p> <p>21 Q. And would having another SEL be</p> <p>22 dependent on the number of children with</p> <p>23 disabilities in that particular building?</p> <p>24 A. No.</p>
<p style="text-align: right;">Page 35</p> <p>1 with parents, requests for evaluation,</p> <p>2 evaluation, they provide the turnaround</p> <p>3 training that the director provides on a</p> <p>4 monthly basis to the SEL's to their teachers</p> <p>5 in their building.</p> <p>6 Q. Could you explain what the turnaround</p> <p>7 training is?</p> <p>8 A. So with 20 schools, as the director, you</p> <p>9 would train the special education liaisons,</p> <p>10 and then the SEL would go back to the</p> <p>11 building, and during a staff meeting with</p> <p>12 their special education teachers, or even</p> <p>13 individually, they would work with them and</p> <p>14 train them the same training that we provided</p> <p>15 them.</p> <p>16 Q. So you, in your capacity as a special</p> <p>17 education director, would provide a training</p> <p>18 to the SEL's, and then the SEL's would provide</p> <p>19 that training to other special education</p> <p>20 teachers?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know what percentage of time an</p> <p>23 SEL would devote to this oversight in addition</p> <p>24 to their role as a special education teacher?</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. What was it based on?</p> <p>2 A. Really, it is principals determining the</p> <p>3 schedule of their building and how they want</p> <p>4 to support the special education department.</p> <p>5 Q. So principals determine the number of</p> <p>6 SEL's?</p> <p>7 A. Yes.</p> <p>8 Q. Would you, in your capacity as director,</p> <p>9 make any of those decisions or be involved in</p> <p>10 those decisions?</p> <p>11 A. I would talk with principals about the</p> <p>12 SEL position, but they had to have someone</p> <p>13 designated to be an SEL. If they wanted to</p> <p>14 have additional people designated as the SEL,</p> <p>15 that wasn't a problem.</p> <p>16 Q. And was there additional money if you</p> <p>17 are an SEL in addition to being a special</p> <p>18 education teacher? Is it a different salary?</p> <p>19 A. No, special education teachers have a</p> <p>20 higher salary in the School District of</p> <p>21 Philadelphia than general education teachers,</p> <p>22 but there is not extra pay for being an SEL.</p> <p>23 Q. And could you describe sort of what your</p> <p>24 typical day was as the director of special</p>

## NATALIE HESS

<p style="text-align: right;">Page 130</p> <p>1 changes are in the procedure. Prior to this  2 school year, what was your procedure for  3 determining whether documents would be  4 translated or not?  5 A. It was the same practice. Now, it is  6 put in writing. That's the difference.  7 Q. So the procedure with regard to  8 translation of documents has been the same?  9 A. Yes.  10 Q. Have there been any changes in the  11 factors that you consider with regard to  12 whether or not you translate a document?  13 A. Thank you. The questions have been  14 added. We memorialized the questions by  15 which we would review the request to determine  16 whether or not we would translate it.  17 Q. You mentioned limited resources. Could  18 you explain the limitations of the resources?  19 A. We are a large urban school district,  20 where Pennsylvania does not have fair funding.  21 I don't know if you want to go down that road,  22 but I can tell you that we do not have an  23 unlimited bank account for funding the  24 services and supports that are provided to</p>	<p style="text-align: right;">Page 132</p> <p>1 A. No.  2 Q. And the practice with respect to  3 translation of documents, the practice with  4 regard to whether or not you translate or what  5 you do, how long has that practice been in  6 effect?  7 A. As long as I have been with the  8 District, and I believe, from my on-boarding,  9 my mentor at the time was another special  10 education director, Deb Griffis, who obviously  11 brought me on and shared the practices, the  12 way the District runs for special education  13 and at that time, there was a process for  14 school teams to readily make requests for  15 translation of documents, and that we would  16 talk about using interpretation services of  17 the BCA and LanguageLine at our SEL meetings.  18 It has been a part of everything I have known  19 since I started with the District.  20 Q. So you said school teams readily make  21 requests for --  22 A. I mean for BCA support, for LanguageLine  23 support. They also know that they had to  24 contact special education director from our</p>
<p style="text-align: right;">Page 131</p> <p>1 schools across the District, whether they are  2 general education students or special  3 education students. Therefore, the dollars  4 we do receive are precious, and we are very  5 careful in our budgeting and allocation of  6 funds, always mindful of the decisions we make  7 that impact our funding, and at the same time,  8 making sure that we are doing all that we can  9 to support students, schools, families.  10 Q. So are those limited resources a factor  11 you consider in determining whether or not to  12 translate a document?  13 A. No.  14 Q. You don't consider --  15 A. I think that you can't be working in a  16 district -- an urban district like this and  17 not be thinking about the impact of finances  18 in one way or another, but we have not denied  19 any requests for translation of documents, and  20 we have not done so for any reason -- for  21 financial reasons, either.  22 Q. So you have never denied a request for  23 translation of documents for financial  24 reasons?</p>	<p style="text-align: right;">Page 133</p> <p>1 office to have documents translated. That  2 has been in practice. That was very evident  3 from the time that I started that that was  4 already the established practice in the  5 District. For how long it had been that  6 established practice, I don't know, but --  7 Q. And do SEL's receive training on this  8 issue of translation and interpretation of  9 documents, and do special education teachers  10 receive training?  11 A. Yes.  12 Q. And what is that training, and who  13 provides it?  14 A. The special education training is from  15 the special education director and case  16 manager at the SEL meetings and the SEL does  17 turnaround training in the school buildings  18 and case managers and directors do trainings  19 out in the field all the time at different  20 schools, but specific to this interpretation  21 and translation, they do it for certain at the  22 SEL meetings, and it is turned around by the  23 SEL's into the schools.  24 Q. And do you have a Power Point for that</p>

34 (Pages 130 - 133)



## NATALIE HESS

<p style="text-align: right;">Page 162</p> <p>1 Some of our opposing counsel, when working  2 with non-native speaking -- non-native  3 English-speaking parents bring with them their  4 own interpreters and provide their own  5 resources, translating documents, et cetera.  6 So asking the question, again, better helps me  7 understand the individual case and the  8 resources that have been made available and  9 have been utilized to help the parent make  10 meaningful participation.  11 Q. So whether or not they have a legal case  12 is a factor that you would consider in this  13 assessment?  14 A. It is not whether or not I consider --  15 it is not a consideration for rejection. It  16 is a consideration for getting a true picture  17 of the case itself.  18 Q. And how does that help you in  19 determining whether the parent has meaningful  20 participation, whether or not they have a  21 legal case?  22 A. Again, if the opposing counsel brings  23 with them their own interpreter for the  24 parent, brings to the table translated</p>	<p style="text-align: right;">Page 164</p> <p>1 English, and they attend many of the IEP  2 meetings with this particular opposing  3 counsel.  4 Q. And who is that counsel?  5 MS. OBOD: If you can answer.  6 THE WITNESS: Mimi Rose is  7 one.  8 BY MS. McINERNEY:  9 Q. And can you give us other examples of  10 legal counsel who bring their own  11 interpreters?  12 A. Let me think a minute. I know I have.  13 Michael Basch.  14 Q. With regard to the use of the  15 terminology legal case, what does that  16 encompass?  17 A. Do they have a lawsuit? Which, again,  18 in our District doesn't mean it is a due  19 process filing. It just means that they have  20 provided the District with notice that they  21 are representing a family, a parent of a  22 student who has special education, and that we  23 are working through the review of that child's  24 services.</p>
<p style="text-align: right;">Page 163</p> <p>1 documents, and we have a couple opposing  2 counsel that do that on a regular basis, then  3 I would want to know about the case and the  4 fact that who is representing, and has that  5 been made available already.  6 Q. And how many cases have you seen legal  7 counsel bring an interpreter to IEP meetings  8 for a limited English proficient parent?  9 A. Oh, several, when I was a director,  10 lots.  11 Q. And when you say lots, about how many?  12 A. Well, gee, Network 5, I had maybe 25.  13 To me, that's a significant number.  14 Q. In a year?  15 A. Yeah.  16 Q. So there were 25 legal cases in which  17 attorneys brought interpreters for their  18 clients?  19 A. Yes, yes.  20 Q. And do you know why they did that?  21 A. For the one particular opposing counsel,  22 they have a connection with a community  23 organization that provides support to families  24 in a specific native language that is not</p>	<p style="text-align: right;">Page 165</p> <p>1 Q. So it could be with regard to special  2 education claims or it could be with regard to  3 other claims, other legal claims?  4 A. It is always special education claims,  5 but there could be other claims, yes.  6 Q. Okay, thank you.  7 Do you recall -- does the  8 District have any other policy or protocol  9 that it uses with regard to ensuring  10 meaningful parent participation?  11 A. Say that again.  12 Q. Does the District have any other policy,  13 procedure, protocol, with regard to how to  14 ensure meaningful participation for a parent,  15 other than what we reviewed in the guide?  16 A. The best practice is for the IEP team to  17 ask the parent along the way through the  18 process of reviewing that IEP whether or not  19 they understand and -- understand what's being  20 stated with them; for example, after you  21 review the present level of performance, or  22 what we call the PLEP, which is their current  23 performance on any area of deficit or  24 performance within the academic realm, might</p>

42 (Pages 162 - 165)

## NATALIE HESS

<p style="text-align: right;">Page 166</p> <p>1 talk about the student's reading fluency, for  2 example, and once you tell the parent how the  3 child is performing at their oral reading  4 skills, you might ask the parent, are you  5 experiencing this at home? Do you see that  6 your child -- is this the same reflection that  7 you have in the home? Do you understand what  8 reading fluency is? There is lots of  9 follow-up questions that you ask along the way  10 that allow school teams to monitor the  11 parent's engagement in the process and are  12 encouraged to record that in the IEP itself.  13 You want to make sure that you are including  14 the parent in the process, and when you ask  15 them about what they are seeing at home or how  16 the child does at home, what strategies they  17 have for working with the student; like, when  18 they are reading with them, do they use a  19 bookmark underneath the words? Do they use  20 their finger to run along the line? All of  21 those strategies that a parent does with their  22 child help teachers to either replicate those  23 strategies in the school when they are working  24 with the child, because it is familiar for the</p>	<p style="text-align: right;">Page 168</p> <p>1 afterwards to say, next time, you can try X,  2 Y, Z.  3 Q. So do you -- with regard to a limited  4 English proficient parent, what are you  5 considering?  6 A. Lots of things, because they have  7 different culture, possibly, they have  8 different vocabulary, words that we use don't  9 always match in the same transference of  10 language, so you have to have ask clarifying  11 questions, and you use the BCA or the  12 LanguageLine interpreter to help you continue  13 to talk about something until you know that  14 they are on the same page with what you are  15 talking about.  16 Q. I'm going to show you what's being  17 marked as Hess Exhibit 6.  18 ---  19 (Whereupon the court reporter  20 marked document as Hess 6 for identification.)  21 ---  22 BY MS. McINERNEY:  23 Q. Ms. Hess, have you ever seen this  24 document before? And could you describe it</p>
<p style="text-align: right;">Page 167</p> <p>1 child, or vice-versa, I don't have strategies  2 for that, if the parent says that, then  3 teacher can say, here are a couple of things  4 we are trying to do. It is a back and forth  5 process throughout that IEP that allows the  6 school team to ensure that they are engaging  7 the parent in the process.  8 Q. And everything that you just said, is  9 that written down anywhere? Is there a  10 procedure on this or how is it communicated to  11 special education teachers, staff and  12 liaisons?  13 A. So when we have special education  14 trainings with our SEL's, we will role-play  15 IEP meetings. We will demonstrate what we  16 expect them to do when engaging the parent in  17 the process and how the flow of the meeting  18 can go with regards to the documents. The  19 same thing goes when we go out to schools.  20 As part of the feedback, you would say, if you  21 participated in a meeting from my office, and  22 you were a participant in the IEP meeting, you  23 model by example by asking those questions,  24 and you provide feedback to the school team</p>	<p style="text-align: right;">Page 169</p> <p>1 for the record?  2 A. Give me a minute.  3 Q. Sure.  4 A. Yes. This is communication in a letter  5 format to Paul in regards to this case,  6 indicating that -- if I can just read from it,  7 that "On Friday, September 15, 2017, I  8 provided you with the revised protocols of the  9 School District of Philadelphia intended to  10 implement in the '17, '18 school year. As  11 stated in that letter, the first training for  12 special education staff is scheduled for  13 Thursday, September 28, 2017. Because the  14 protocol has been revised since September 15,  15 2017, I'm attaching updated protocols that  16 reflect the documents that will be used to  17 educate and train special education staff on  18 September 28, 2017 and throughout the '17,  19 '18, school year."  20 Q. So were you involved in the revision of  21 these documents? And if so, could you  22 describe that involvement?  23 A. Yes.  24 Q. And how did your involvement start?</p>

## NATALIE HESS

<p style="text-align: right;">Page 182</p> <p>1 Q. The result of this case.</p> <p>2 A. No, I was always going to do this stuff.</p> <p>3 I think having this case come about, like any</p> <p>4 legal case, brings to attention areas of</p> <p>5 concern, and it makes you look closer at the</p> <p>6 work you are doing and if you can improve in</p> <p>7 any way. I take it as an opportunity to say,</p> <p>8 what more can we do? I wish you would have</p> <p>9 come to me beforehand, but it is what it is.</p> <p>10 Q. Okay, so let's look at the quick</p> <p>11 reference guide. And this is --</p> <p>12 A. Which one, this one?</p> <p>13 Q. Yes. And when was this developed?</p> <p>14 A. It has been an ongoing development.</p> <p>15 Like I said before, when we had the quick</p> <p>16 reference guide before, there were parts of it</p> <p>17 that talked about bilingual counseling</p> <p>18 assistant and interpretation and translation</p> <p>19 services. This materialized from the work</p> <p>20 being done. The formal writing of this,</p> <p>21 probably along the same -- probably in the</p> <p>22 summertime, I think, around that time, but it</p> <p>23 has been ongoing. It is not like, one day,</p> <p>24 we woke up and wrote this. It didn't work</p>	<p style="text-align: right;">Page 184</p> <p>1 yield accurate information on what the student</p> <p>2 knows and can do academically, developmentally</p> <p>3 and functionally, unless it is clearly not</p> <p>4 feasible to so provide or administer."</p> <p>5 Q. And what is your understanding of when a</p> <p>6 student is required to have a bilingual</p> <p>7 evaluation?</p> <p>8 A. When it is not their native language.</p> <p>9 Q. And in all circumstances when it is not</p> <p>10 their native language?</p> <p>11 A. When it is not their native language,</p> <p>12 and evaluating them in their native language</p> <p>13 would yield the best results. But it can be</p> <p>14 done either through someone that is -- speaks</p> <p>15 that child's native language or it can be done</p> <p>16 using an interpretation service as well.</p> <p>17 Q. Is it your understanding that students</p> <p>18 need to be evaluated by a bilingual certified</p> <p>19 school psychologist?</p> <p>20 A. They have to be evaluated by a certified</p> <p>21 school psychologist.</p> <p>22 Q. Does that person need to be bilingual if</p> <p>23 the child does not understand English?</p> <p>24 A. No, you can use other forms of</p>
<p style="text-align: right;">Page 183</p> <p>1 like that. But it is ongoing.</p> <p>2 Q. So it references parents must be</p> <p>3 notified of their right and encouraged to</p> <p>4 meaningfully participate in the student's IEP</p> <p>5 process. That's 119771935, I believe. I</p> <p>6 should put my glasses on.</p> <p>7 And when you say notified of</p> <p>8 their right and encouraged to meaningfully</p> <p>9 participate, what does that mean?</p> <p>10 A. The right to have interpretation</p> <p>11 services, just as it is outlined on the parent</p> <p>12 rights.</p> <p>13 Q. And Bullet Number 2, what does that</p> <p>14 relate to in the translate and interpretation</p> <p>15 services section?</p> <p>16 A. To the evaluation of the student whose</p> <p>17 native language is not English.</p> <p>18 Q. And do children whose native language is</p> <p>19 not English need to be evaluated in a language</p> <p>20 they understand?</p> <p>21 A. They -- it says, "Students suspected of</p> <p>22 having a disability must be evaluated in the</p> <p>23 student's native language or other form of</p> <p>24 communication and in the form most likely to</p>	<p style="text-align: right;">Page 185</p> <p>1 communication to yield as long as you can</p> <p>2 yield accurate information. In other words,</p> <p>3 if there is a language that we don't have a</p> <p>4 certified school psychologist that speaks that</p> <p>5 native language, we will use an interpreter to</p> <p>6 -- in conjunction with the psychologist to</p> <p>7 administer the assessment.</p> <p>8 Q. And how many bilingual certified school</p> <p>9 psychologists does the District have</p> <p>10 currently?</p> <p>11 A. I don't know.</p> <p>12 Q. Do you know how many they had in prior</p> <p>13 years?</p> <p>14 A. Between 10 and 15, I believe. There</p> <p>15 has been retirees as of late, the last couple</p> <p>16 of years, but we are always advertising for</p> <p>17 more. I don't have that number off the top</p> <p>18 of my head.</p> <p>19 Q. Do you know approximately how many were</p> <p>20 in the school year 2015, 2016 versus 2017,</p> <p>21 2018? Do you know if there has been an</p> <p>22 increase in or a decrease in the number of</p> <p>23 bilingual certified school psychologists?</p> <p>24 A. There has been a decrease, just by</p>

# EXHIBIT G

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

T.R., et al., )  
Plaintiffs, )  
 )  
- vs - )  
 )  
THE SCHOOL DISTRICT OF )  
PHILADELPHIA, )  
Defendant. ) No. 15-04782-MSG  
- - - - - )

Oral deposition of NANCY VELEZ,  
held at the Law Offices of DRINKER, BIDDLE &  
REATH, LLP, One Logan Square, Suite 2000,  
Philadelphia, Pennsylvania, on February 16,  
2018, commencing at approximately 9:29 a.m.,  
before Susan Endt, Court Reporter and Notary  
Public.

Veritext Legal Solutions  
1801 Market Street  
Suite 1800  
Philadelphia, PA 19103

1 make sure that they are kept separately for  
2 child -- for our purposes. And, then, the  
3 school team is, then, able to go ahead with  
4 their evaluation. So that's what equitable  
5 participation is all about.

6 Q. Okay. And you said you would also  
7 handle -- well, you would process bilingual  
8 evaluations requested by the schools?

9 A. Correct.

10 Q. What did you mean by that?

11 A. Well, a school has a child who only  
12 speaks a language that's not English, they need  
13 to be evaluated. The school requests a  
14 bilingual evaluation. It comes to me. I have  
15 a list of all of the bilingual psychologists in  
16 the district, tagged with their languages. I  
17 set up a rotation so that it is evenly  
18 dispersed.

19 After I verify all of the information  
20 on the request form and I ensure that a  
21 permission to evaluate has been processed,  
22 signed, et cetera, then, I'm good to go ahead  
23 and assign the next psychologist on the -- on  
24 the rotation to go ahead and evaluate this

1 child.

2 And with that, there is a swapping  
3 that goes on. You don't get penalized because  
4 you don't speak another language, you now swap  
5 a case with the school psychologist where the  
6 child is attending.

7 Q. How did you -- how did you develop  
8 this system?

9 A. About five or six years ago, Maria  
10 and I put this process in place, so that we  
11 could do it district wide, versus school  
12 psychologists pretty much going out on their  
13 own and trying to find somebody that speaks the  
14 language that the child needs, sort of to  
15 structure it better.

16 And I started with her and, of  
17 course, everything was done under her  
18 supervision, which she wanted. And, slowly, we  
19 built a pretty good process. At one point,  
20 then, we -- I was removed from it because the  
21 psych lead -- the psych lead that was in our  
22 office that oversaw all of the psychologists,  
23 you know, felt that he wanted to try something  
24 different. And then he retired. And so when

# EXHIBIT H



1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
3

4       T.R., et al.,                                 )  
  Plaintiffs,    )  
5   )  
  - vs -         )  
6   )  
      THE SCHOOL DISTRICT OF                     )  
7       PHILADELPHIA,                             )  
  Defendant.    ) No. 15-04782-MSG  
8       - - - - -                                     )  
9

10                     . Oral deposition of MARIE CAPITOLO,  
11       held at the Law Offices of DRINKER, BIDDLE &  
12       REATH, LLP, One Logan Square, Suite 2000,  
13       Philadelphia, Pennsylvania, on February 21,  
14       2018, commencing at approximately 9:29 a.m.,  
15       before Susan Endt, Court Reporter and Notary  
16       Public.  
17  
18  
19  
20  
21

22                     Veritext Legal Solutions  
  1801 Market Street  
23   Suite 1800  
  Philadelphia, PA 19103  
24

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3 DRINKER, BIDDLE & REATH, LLP		3 WITNESS:	
BY: PAUL H. SAINT-ANTOINE, ESQUIRE		4 MARIE CAPITOLO	
4 One Logan Square, Suite 2000		5	
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paulhsaint-antoine@dbr.com		8 Examination by Ms. Obod	227
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<p style="text-align: right;">Page 38</p> <p>1 Q. Okay. Were you the only special ed 2 liaison at -- at Penn Treaty at this point? 3 A. Yes. There is only one. 4 Q. Were you responsible for arranging 5 for BCAs while you were at Penn Treaty? 6 A. The teachers were the IEP managers 7 and the case manager and they are the ones that 8 had the relationships with the parents. I did 9 not, as the SEL. And so if they needed -- they 10 would come to me and say we need an interpreter 11 for this meeting and we would preplan on who 12 was available if we needed to call out and have 13 an interpreter come in, but the teacher did 14 most of it. 15 Q. Okay. Were there particular BCAs 16 assigned to Penn Treaty? 17 A. We had two. So I don't want to go on 18 record and say they were BCAs. I don't know 19 when that title started. They were counselors 20 and they were bilingual -- 21 Q. Okay. 22 A. -- both of them. 23 Q. They were functionally the equivalent 24 of BCAs?</p>	<p style="text-align: right;">Page 40</p> <p>1 the director. I don't have any comparative 2 data from when I was a teacher. As a teacher, 3 I didn't know that district level. 4 Q. All right. 5 A. I know what we had at Penn Treaty. 6 Q. How many is it approximately now? 7 A. There's, I think -- well, there's a 8 bilateral counseling assistant in every school 9 that has a bilingual population. I think there 10 is 26 total or is it 26 languages that they 11 speak? I guess I actually don't know the 12 answer to that. 13 Q. Okay. 14 A. I can't remember if it was a lot 15 more, if there is 26 languages that we speak. 16 Q. Okay. Well, whatever, then -- as I 17 understand you, Ms. Capitolo. And I think the 18 number might be larger than 26. 19 A. I think you are right, too. 20 Q. But whatever the number is, you don't 21 have a recollection of how it compared relative 22 to earlier periods of time? 23 A. No. 24 Q. Okay. Do you know what the</p>
<p style="text-align: right;">Page 39</p> <p>1 A. Yes. I'm just not sure when that 2 title started. 3 Q. Okay. And were there always two at 4 the entire -- the period of time that you were 5 at Penn Treaty? 6 A. There were always two. Yes, 17 7 years, there were always two and the 8 secretarial staff was also bilingual. 9 Q. All of the secretaries were 10 bilingual? 11 A. No. 12 Q. Okay. Some? 13 A. The main secretary was always 14 bilingual. And I believe one of the two 15 counselors held a social worker title for part 16 of the time when the district hired social 17 workers but, then, she transferred into a 18 counseling position when that job title 19 transferred over. 20 Q. Do you know -- beyond Penn Treaty, do 21 you know how the number of BCAs has changed 22 over the time that you've been employed by the 23 school district? 24 A. I know what it is now because I am</p>	<p style="text-align: right;">Page 41</p> <p>1 qualifications are to be a BCA within the 2 Philadelphia School District? 3 A. I do not. 4 Q. You referenced in earlier testimony, 5 Ms. Capitolo, the parents' meaningful 6 participation; do you recall that? 7 A. Yes. 8 Q. Where does that requirement, to your 9 knowledge, come from? 10 A. That's part of IDEA. 11 Q. Which is a federal law? 12 A. Correct. 13 Q. How did you become aware of the 14 requirements of the IDEA? Was it through your 15 education or through your employment or -- or 16 both? 17 A. Both. 18 Q. What is your own understanding of 19 what meaningful parental participation entails? 20 A. So my understanding is that the 21 parent is aware that the child has a meeting 22 coming up, that they are able to comment on 23 their availability to participate in that 24 meeting. And when they come to the meeting,</p>

<p style="text-align: right;">Page 42</p> <p>1 they are able to ask any questions, make any 2 comments, give their parental input to the 3 team, provide possible revisions to the 4 document, provide information on their child's 5 current level of functioning, know that they 6 have the right to consent or not consent to 7 permissions to evaluate, to recommend 8 educational placements. 9 I'm always very concerned that they 10 understand all of the acronyms that we use, 11 they have a good understanding of what least 12 restrictive environment means, they should be 13 able to participate like any other IEP team 14 member. 15 Q. Do you have an understanding, 16 Ms. Capitolo, whether the law provides for 17 parents receipt of an IEP plan in advance of 18 the meeting? 19 A. So it's my understanding that the law 20 does not suggest we need to present the parents 21 with the IEP in advance of the meeting. Often 22 times, an IEP is created at that first meeting. 23 So some school districts don't 24 provide parents with a draft of the whole IEP.</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. Okay. Whatever is or is not legally 2 required, based on your experience, it's the 3 practice of the school district to provide a 4 draft sometime in advance of the meeting; is 5 that right? 6 A. For the most part, yes. We do 7 practice that. There are some occasions where 8 we need to hold an IEP meeting fast. It's not 9 just annual IEP meetings that we conduct. We 10 conduct IEP meetings in an emergency to do 11 amendments, after a restraint, and providing a 12 draft isn't always feasible. We need to get 13 the parent in and we need to have a meeting. 14 Q. So there are some exceptions, such as 15 an emergency situation, but as general 16 practice, it's the practice of the district to 17 provide a draft; is that fair? 18 A. Yes. 19 Q. Based on your experience with the 20 school district, do you have a sense of 21 approximately how often, for each IEP meeting, 22 the -- the draft is provided in advance? 23 A. How often for a particular IEP 24 meeting is the draft provided?</p>
<p style="text-align: right;">Page 43</p> <p>1 They have the first initial meeting, they 2 create an IEP. They write goals and objectives 3 right at that meeting. Then, they do 4 revisions. Then, they present parents with a 5 revised copy. 6 We, as the School District of 7 Philadelphia, do practice presenting parents 8 with drafts before the meeting. 9 Q. So if I understand correctly, it's 10 the practice of the school district to provide 11 parents with drafts in advance of the meeting, 12 but you're not aware of any legal requirement 13 of doing that; is that a fair characterization? 14 A. Now, unfortunately, that's true. I'm 15 not aware if it's a legal, under IDEA or 16 Chapter 14 regulations, requirement. 17 This isn't the only school district 18 that I have taught in, so I don't know if I'm 19 remembering from the different state if it was 20 their regulation that we did not have to 21 provide the draft, but tied to IDEA, I don't 22 really know if it's a legal requirement to 23 provide the draft to the parent in a certain 24 number of days before the meeting.</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. Bad question. 2 A. Okay. 3 Q. Let me ask another one. 4 For IEP meetings within the district, 5 approximately how often would a draft be 6 provided in advance? 7 A. I have no way of knowing that answer. 8 Q. Okay. 9 A. I don't. Like I said, emergency 10 situations aren't as uncommon as you may think 11 they are. We have IEP meetings that are not 12 annual IEPs, where the entire document is 13 created from scratch often. We often have IEP 14 meetings in the middle of the year, mid cycle. 15 I know when an annual IEP is created 16 and the team gave the parent 30 days' notice, 17 that a meeting is coming, it's going to be a 18 brand new IEP, a draft is created and the draft 19 is sent home for parents to preview, but I 20 couldn't give you a number on -- out of all the 21 IEP meetings happening, what percentage of 22 drafts are sent home. 23 Q. Okay. Before I get to that, 24 Ms. Capitolo, let me follow up with your next</p>

<p style="text-align: right;">Page 66</p> <p>1 documents in their entirety at the end, but not 2 translate all of the stages of drafts and she 3 agreed to that. 4 Q. As part of that mediation agreement, 5 do you recall a provision for her to receive 6 interpretation services with respect to the 7 documents before the -- 8 A. Yes. 9 Q. -- meeting? 10 A. Absolutely. 11 Q. And do you know if those have always 12 been provided? 13 A. Absolutely. I think she had eight 14 sessions with the bilingual counseling 15 assistant leading up to the evaluation report, 16 the IEP, there were some independent 17 evaluations conducted. 18 There were more meetings than 19 typical -- than a typical student because she 20 had some independent evaluations done, which, 21 then, we had to have a meeting to review those. 22 So, in total, leading up to the IEP meeting 23 that followed that mediation, she had about 24 eight sessions with the school's bilingual</p>	<p style="text-align: right;">Page 68</p> <p>1 A. Yes. 2 Q. And on what basis have you personally 3 concluded that that's not necessary for Ms. Lin 4 in particular? 5 A. For the documents in advance to be 6 translated? 7 Q. Yes. 8 A. The document -- the parent came to 9 the meetings and the interpretation and the 10 time that was allowed to the parent to 11 understand and fully participate in that 12 meeting was always provided to the parent. 13 She came with her notes, her notes 14 were a mix of English and simplified Chinese. 15 She brought her notes to the meeting. She 16 asked any questions she wanted to ask. The 17 meeting revolved around her, not the rest of 18 the team. So we were very diligent in not 19 talking around her. 20 I usually facilitated the meeting, in 21 that one person speaks to Mandy. Mandy, then, 22 gets to respond to every individual component 23 of the IEP and it is fully interpreted both 24 ways. And those meetings were very successful.</p>
<p style="text-align: right;">Page 67</p> <p>1 counseling assistant. 2 Q. And on what basis, Ms. Capitolo, have 3 you reached your own conclusion that 4 translation services -- let me back up because 5 I want to make sure there's not a distinction 6 you're making. 7 Are you making a distinction 8 between -- for Ms. Lin, in particular -- the 9 need for translation services in advance of 10 meetings? 11 A. Yes. 12 Q. Have you made a conclusion about 13 whether any translation services, including for 14 final documents, are necessary for Ms. Lin or 15 not? 16 A. I really haven't made a personal 17 conclusion about that. She requests the 18 documents in their final stage to be translated 19 and we translate them for her. 20 Q. Okay. So your conclusion, in terms 21 of the need for -- your own personal conclusion 22 in terms of the need for translation services 23 is focused on documents in advance of the IEP 24 meeting?</p>	<p style="text-align: right;">Page 69</p> <p>1 in that she provided a lot of input on her 2 child, suggested many revisions, very detailed, 3 in particular to goals and objectives and 4 things that most parents are not really too 5 knowledgeable about. They kind of leave it to 6 the professional experts in the area of writing 7 an IEP. She had very detailed notes on that -- 8 and a lot of experience with her child in 9 special ed coming out of early intervention. 10 So she was -- she was a great 11 advocate for her child. She was an awesome 12 member of the IEP team and she has been ever 13 since, even without translated documents in 14 advance. And the school team did everything 15 they could to make sure that she was well 16 prepared to come to the meeting, which she 17 always was. She was more prepared than 99 18 percent of my parents are. 19 Q. Okay. And we are talking about in 20 terms of her preparation and participation, the 21 period of time, I assume, after the mediation 22 when there was an agreement to provide advance 23 interpretation services; is that right? 24 A. I don't think I caught your question</p>



<p style="text-align: right;">Page 74</p> <p>1 the mediation, whether it was one or two --</p> <p>2 A. Right.</p> <p>3 Q. -- at that point, was Ms. Lin</p> <p>4 receiving drafts of the evaluation or IEP plan</p> <p>5 translated into simple Chinese?</p> <p>6 A. Yes.</p> <p>7 Q. Did you ever attend an IEP or</p> <p>8 evaluation meeting with Ms. Lin where she had</p> <p>9 neither received interpretation services in</p> <p>10 advance or received a draft translation in</p> <p>11 advance of the meeting?</p> <p>12 A. I don't know the answer to that. She</p> <p>13 was always offered interpretation services</p> <p>14 prior to any meeting that she had to attend.</p> <p>15 After the mediation, she chose to</p> <p>16 take those and some -- I know from the school</p> <p>17 team, that there were some instances where she</p> <p>18 said she didn't need it. So I don't know. I</p> <p>19 can't make a statement that every single</p> <p>20 meeting she took advantage of the BCA</p> <p>21 interpretation.</p> <p>22 Q. But it was available?</p> <p>23 A. It's always available to her, yes.</p> <p>24 Q. So, then, am I right in</p>	<p style="text-align: right;">Page 76</p> <p>1 those meetings and she meets regularly --</p> <p>2 weekly, monthly, minutes with every member of</p> <p>3 the IEP team and I don't know if she utilizes</p> <p>4 those services for those either.</p> <p>5 Q. She may have, but you don't know?</p> <p>6 A. I mean, there was an instance where</p> <p>7 the school called and said Mandy doesn't want</p> <p>8 this meeting interpreted. She wants to just</p> <p>9 conduct it in English, what should we do. Yes,</p> <p>10 I have had that phone call from the school.</p> <p>11 Q. When was that?</p> <p>12 A. That was after his first IEP, which</p> <p>13 really did not go into effect until after the</p> <p>14 whole first grade year. So that would have</p> <p>15 been September of 20 -- this past September</p> <p>16 2017.</p> <p>17 She got to meet with the school team,</p> <p>18 I'm going to say, monthly. It could be weekly.</p> <p>19 I can't remember without his IEP in front of</p> <p>20 me. And, then, the school team said we feel</p> <p>21 like we need it in writing somehow that she's</p> <p>22 declining our interpretation services. It's</p> <p>23 not an IEP meeting and there is a spot on the</p> <p>24 IEP to formally decline an interpreter, but</p>
<p style="text-align: right;">Page 75</p> <p>1 understanding, Ms. Capitolo, in terms of the</p> <p>2 meetings that you attended with Ms. Lin, either</p> <p>3 the IEP meetings or evaluation meetings, she</p> <p>4 either had, in advance, drafts of the documents</p> <p>5 or the district had offered interpretation</p> <p>6 services in advance?</p> <p>7 A. The meetings that I attended?</p> <p>8 Q. Yes.</p> <p>9 A. Those -- they were available to her,</p> <p>10 yes.</p> <p>11 And so I guess I'm not understanding</p> <p>12 the question. I can't say that every meeting I</p> <p>13 attended with her, she either had a draft</p> <p>14 translated for her or BCA support. She had,</p> <p>15 prior to the mediation, the drafts translated</p> <p>16 for her. That, I know for sure.</p> <p>17 And after the mediation, the</p> <p>18 availability of BCA support, if she utilized</p> <p>19 it, which I know she did for eight sessions</p> <p>20 prior to the evaluations and IEP that happened</p> <p>21 in February and May of last year. I know she</p> <p>22 did use it for that.</p> <p>23 I have met with her many times since</p> <p>24 then. I don't know if she used the BCA for</p>	<p style="text-align: right;">Page 77</p> <p>1 it's more of an informal collaboration meeting</p> <p>2 between parent and related service and they</p> <p>3 were confused that we don't have a way of</p> <p>4 formally showing that she doesn't want this</p> <p>5 service.</p> <p>6 Q. Do you remember what type of meeting</p> <p>7 it was?</p> <p>8 A. It was a collaboration meeting. It</p> <p>9 was minutes that were provided to her on the</p> <p>10 IEP to collaborate with either the special ed</p> <p>11 teacher, the regular ed teacher, the BCBA,</p> <p>12 which is the board-certified behavioral analyst</p> <p>13 in the building. He has a one-to-one</p> <p>14 assistant, it could have been with her. But</p> <p>15 the SEL made it a practice to attend the</p> <p>16 meetings to make sure that they were occurring</p> <p>17 because it's her job to keep the IEP in</p> <p>18 compliance and she's the one that called me and</p> <p>19 said how do you want me to document this.</p> <p>20 Q. Who is -- who called you?</p> <p>21 A. Christine Kenney.</p> <p>22 Q. But it wasn't an IEP meeting on that</p> <p>23 occasion, correct?</p> <p>24 A. I don't think it was, no. No. That</p>

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1 occasion in which the request wasn't put in --  
 2 wasn't immediately approved for translation  
 3 and, in that case, was sent back for further  
 4 discussion with the parent?  
 5 A. Yes, one time.  
 6 I always followed up with the school.  
 7 I didn't automatically approve the request. It  
 8 is just that one time the request was actually  
 9 overturned.  
 10 Q. You also reference sometimes schools  
 11 might have put in a request directly?  
 12 A. Yes.  
 13 Q. Would you necessarily become aware of  
 14 those requests?  
 15 A. Most of the time, the school would  
 16 cut me in on the e-mail, but a couple times  
 17 they didn't because I remember getting either  
 18 an e-mail or a phone call from the  
 19 interpretation office. We just got this  
 20 request, it doesn't have any director cut in on  
 21 there, no one in OSS even laid eyes on it. It  
 22 just came directly to us. There was a few  
 23 instances of that.  
 24 Q. In terms of the schools outside of

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1 your network, where there is a separate special  
 2 ed director, do you have personal knowledge of  
 3 how many requests for translation of special ed  
 4 documents?  
 5 A. Not at all.  
 6 Q. I take it you don't know in terms of  
 7 how many of those requests, whatever that  
 8 number is, were actually translated?  
 9 A. No, not at all.  
 10 Q. And I think this is clear from your  
 11 testimony, but just to close the loop,  
 12 Ms. Capitolo.  
 13 Of the documents that you either  
 14 received a request or put in a request directly  
 15 during the time that you were special ed  
 16 director, you're just not certain about how  
 17 many of those special ed documents were IEPs?  
 18 A. Yes, that's correct. I couldn't -- I  
 19 don't even want to guess.  
 20 Q. Okay. Is that true also for  
 21 evaluations?  
 22 A. Most times, an evaluation precedes an  
 23 IEP. So...  
 24 Q. Yeah.

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1 A. But I don't want to guess and say  
 2 that it definitely did in that case or -- there  
 3 would be more IEP requests and evaluations  
 4 because IEPs happen every year, evaluations  
 5 happen every three.  
 6 So I think it's fair to say that, but  
 7 unless I got my log from Nancy of what requests  
 8 I put in, I wouldn't be able to tell you how  
 9 many were IEPs.  
 10 Q. Okay. Going back to Capitolo Exhibit  
 11 2, take a look at the last sentence of the  
 12 second paragraph.  
 13 Do you see where it says: Written  
 14 translation is going to be very, very costly  
 15 and not very effective as many of the special  
 16 terms could hardly register with a parent who  
 17 is not familiar with them.  
 18 Do you see that?  
 19 A. Yes.  
 20 Q. And do you agree with that statement?  
 21 A. I don't agree or disagree with the  
 22 very, very costly because I don't care about  
 23 that, but I do agree that, with some parents --  
 24 with most parents, the interpretation is

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1 superior to the translation because it's live  
 2 and it's active and it allows for reciprocity  
 3 of conversation. Whereas, if we just give the  
 4 parent translated documents, they would be  
 5 limited with what they can do with it if they  
 6 weren't a special educator. It's terminology  
 7 dense.  
 8 That's my call to make though, in my  
 9 interactions with parents, not his but...  
 10 Q. As I understand it from your  
 11 testimony, it's the practice of providing at  
 12 least English versions of the draft IEPs in  
 13 advance of the meeting.  
 14 I understand you said that there were  
 15 some exceptional circumstances, but I also  
 16 understood it was the practice to provide  
 17 drafts to parents?  
 18 A. So the purpose of the draft is that  
 19 an IEP takes anywhere between four to five  
 20 hours to write. And we are talking about 40 --  
 21 sometimes there's 70, 80 pages to it. The  
 22 purpose of the draft, at least in this  
 23 district, is that we get that writing done  
 24 ahead of time so that it's not a

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 labor-intensive meeting.</p> <p>2 I've been to meetings, though, where</p> <p>3 the entire draft has changed at the meeting.</p> <p>4 It's just a proposal but, yes, this district</p> <p>5 does employ using draft IEPs, especially at</p> <p>6 annual IEP meetings because that's when the</p> <p>7 majority of the writing would be done, at an</p> <p>8 annual IEP meeting, because you're basically</p> <p>9 changing the whole document, not just tweaking</p> <p>10 it here and there. And there is no way any one</p> <p>11 person could sit at a live IEP meeting and</p> <p>12 write it from scratch.</p> <p>13 So drafts are done to take that labor</p> <p>14 off, but the intention is always that once the</p> <p>15 team comes together, any revisions that are</p> <p>16 needed, be made to that draft.</p> <p>17 Q. But am I also right that putting</p> <p>18 aside the exceptional circumstances, such as an</p> <p>19 emergency situation, the practice of the</p> <p>20 district is to send the draft to the parent in</p> <p>21 advance of the IEP meeting?</p> <p>22 A. Of an annual IEP?</p> <p>23 Q. Yes.</p> <p>24 A. We encourage school teams to send</p>	<p style="text-align: right;">Page 100</p> <p>1 that's in there.</p> <p>2 So whether it's in a different</p> <p>3 language or not, an IEP takes some</p> <p>4 interpretation to a parent. We need to put it</p> <p>5 into parent language so that we don't go in</p> <p>6 there and just start spewing acronyms all over</p> <p>7 the place and all of these educational words</p> <p>8 that they don't understand. So an IEP in and</p> <p>9 of itself takes a great deal of interpretation</p> <p>10 to a parent. Now --</p> <p>11 Q. And you're not saying though that to</p> <p>12 the extent that the special language or the IEP</p> <p>13 generally registers with the parent depends</p> <p>14 upon whether they speak English or whether they</p> <p>15 speak some other -- or read some other</p> <p>16 language?</p> <p>17 A. I don't think I understand your</p> <p>18 question.</p> <p>19 Q. Sure. Let me rephrase it.</p> <p>20 A. Okay.</p> <p>21 Q. As I understand it, you believe that</p> <p>22 there is some obstacles in terms of parents'</p> <p>23 understanding of the special terminology in an</p> <p>24 IEP; is that a fair statement?</p>
<p style="text-align: right;">Page 99</p> <p>1 home a draft with the invitation, so the parent</p> <p>2 has an idea of what we are coming in to talk</p> <p>3 about, but it's not mandated.</p> <p>4 There is nothing that I can think of</p> <p>5 that says you are out of special ed compliance</p> <p>6 if you do not send a draft IEP home within</p> <p>7 certain days of the IEP meeting. And it is</p> <p>8 also -- of the 400 legal cases I've been on,</p> <p>9 it's never been the discussion of one either,</p> <p>10 but it is primarily the practice of the school</p> <p>11 teams to send home a draft.</p> <p>12 Q. Can you think of any reason why the</p> <p>13 special terms that Mr. Wang is referring to</p> <p>14 here on -- would register more with an</p> <p>15 English-speaking parent who received an English</p> <p>16 version of the IEP, versus a</p> <p>17 non-English-speaking parent who received a</p> <p>18 translated version of those special terms?</p> <p>19 A. I have no idea what he's saying.</p> <p>20 I mean, what I can tell you about</p> <p>21 special terminology is that it takes just as</p> <p>22 much explanation to an English-speaking parent</p> <p>23 as a non-English-speaking parent, regarding an</p> <p>24 IEP, because of the educational terminology</p>	<p style="text-align: right;">Page 101</p> <p>1 A. Yes.</p> <p>2 Q. Assuming that the document is</p> <p>3 translated into the native language of the</p> <p>4 particular parent, you're not saying that the</p> <p>5 obstacles are any greater for</p> <p>6 non-English-speaking parents?</p> <p>7 A. I don't assume that the translation</p> <p>8 of the document is helping that parent any more</p> <p>9 than it is a non-English-speaking parent and,</p> <p>10 often times, it doesn't, especially in</p> <p>11 simplified Chinese, is where I have had the</p> <p>12 most trouble.</p> <p>13 There is no translation for a lot of</p> <p>14 the educational terminology that we use and it</p> <p>15 winds up going into the document in English</p> <p>16 anyway in quotations. And, then, we interpret</p> <p>17 what that word means to the parent and, then,</p> <p>18 that's interpreted -- our definition of it is,</p> <p>19 then, interpreted to the parent in Mandarin.</p> <p>20 I'm saying that a</p> <p>21 non-English-speaking parent and an</p> <p>22 English-speaking parent both need the same</p> <p>23 level of help in understanding what an IEP is,</p> <p>24 what it's meant to do, where their child is</p>



# EXHIBIT I

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

-----  
T.R., et al., :  
Plaintiffs, :  
 : Case No. 15-cv-4782  
VS. :  
 :  
SCHOOL DISTRICT OF :  
PHILADELPHIA :  
Defendant. :  
-----

Philadelphia, PA

January 30, 2018

-----  
Deposition of MANQING LIN, taken in  
the offices of Dilworth Paxson LLP, 1500 Market  
Street, Suite 3500E, commencing at 9:49 o'clock  
a.m., on the above date, before Stacy Joseph, RPR,  
CCR, Notary Public.  
-----

**ORIGINAL**

EAST COAST LEGAL SUPPORT, LLC  
28 LEVERING CIRCLE  
BALA CYNWYD, PA 19004  
610-664-3036

1     **that correct?**

2     A.           When I'm referring to the language  
3     services that was provided to me, I'm referring to  
4     the BCBA provider, the speech therapist, the  
5     physical therapist and OT teacher.

6                   THE INTERPRETER: I'm sorry.

7                   I never mentioned OT.

8     BY MS. OBOD:

9     **Q.           In the school year 2017-2018, this**  
10    **current school year, do you have communications**  
11    **with the OT for R.H. ?**

12    A.           Only one.

13    **Q.           Was it face-to-face or on the phone?**

14    A.           Face-to-face.

15    **Q.           Did you have an interpreter present at**  
16    **that meeting?**

17    A.           Yes, because there was a BCA present at  
18    that meeting.

19    **Q.           Do you have communications with the**  
20    **speech therapist related to R.H. 's education for**  
21    **the year 2017-2018?**

22    A.           Your question is referring to my son from  
23    first grade on or from kindergarten until now?

24    **Q.           Right now this question is about this**

1 school year, 2017 to 2018. 2017 started in  
2 September of 2017 up until the present.

3 A. Yes, I have face-to-face meeting with  
4 her.

5 Q. What is her name?

6 A. There's two teacher for the speech and  
7 special education teachers. Oh. Two speech  
8 therapists. One is Nicole, the other is Julie.

9 Q. Did you meet with each of them in the  
10 school year 2017 to 2018?

11 A. Correct. I have met with both teachers.

12 Q. Did you meet with them separately or  
13 together?

14 A. I met with them together.

15 Q. That was a face-to-face meeting you said?

16 A. Correct.

17 Q. Did that occur at McCall School?

18 A. Correct.

19 Q. Did you have a translator present for  
20 that meeting?

21 A. At that meeting, we had a language line  
22 service interpreter.

23 Q. Do you know what month that meeting  
24 occurred?

1 A. That meeting was held in November. Oh,  
2 every three months. It was held every three  
3 months. It was held in December. It held it last  
4 month at December.

5 Q. Did you have meetings with the speech  
6 therapist in the year prior to this year for R.H. ?  
7 So the year 2016 to 2017, did you ever meet with a  
8 speech therapist?

9 A. Yes.

10 Q. Were those meetings face-to-face?

11 A. Part of the meetings was on telephone,  
12 part of the meetings were held in person.

13 Q. Are you referring to -- when you say part  
14 of the meetings, are you saying separate meetings,  
15 because you had more than one meeting in that  
16 school year?

17 A. From the beginning of 2016 to 2017 school  
18 years, they start out with telephone conversations  
19 with me. But later on, they move into a  
20 face-to-face meeting at the school district, at the  
21 school.

22 Q. How many meetings in total do you think  
23 occurred in the school year starting 2016 to 2017  
24 with a speech therapist?

1 A. Usually it's once a month.

2 Q. In the face-to-face meetings with the  
3 speech therapist, was it Nicole and Julie who were  
4 present?

5 A. Julie did not join the speech therapist  
6 teachers until September of 2017. Prior to that,  
7 there was another special -- I'm sorry, speech  
8 therapist, but she has been retired.

9 Q. Did you have more than one face-to-face  
10 meeting with the speech therapist in the school  
11 year of 2016-2017?

12 A. I'm not a hundred percent sure, but I  
13 think at least there were more than once.

14 Q. In any of the face-to-face meetings you  
15 had with the speech therapist in the school year of  
16 2016 to '17, was the language line interpretation  
17 services used?

18 A. I believe at least there were some  
19 translation from each meeting.

20 Q. Do you recall if any of that translation  
21 or interpretation at any of those meetings was  
22 based on using the language line?

23 A. Are you only referring to those speech  
24 therapists?

1 Q. Do you know if Maggie Gao has any  
2 concerns relating to her ability to participate in  
3 the IEP process relating to [REDACTED] at the district?

4 A. I don't know.

5 Q. Did you tell Tina Chen that you are  
6 involved in a lawsuit where you're bringing a case  
7 against the school district for translation and  
8 interpretation services relating to special  
9 education?

10 A. I did mention to Tina Chen that I am  
11 corroborating with an attorney hoping to gain  
12 access to written form of interpretation for  
13 parents such you and I who have difficulty  
14 understanding the meaning of those IEP or the  
15 school district's provided documents.

16 Q. Does being in this lawsuit provide you  
17 with extra attention in your community?

18 A. Not necessarily.

19 Q. Is that the reason why you're in this  
20 lawsuit, so that you can get extra attention from  
21 your community?

22 A. No, I never thought of that.

23 Q. What do you want out of this case?

24 A. My main goal and purpose to attend this

1 lawsuit is so that I hope to have the IEP report,  
2 the draft and the final report in Chinese  
3 translation so that I can understand and agree with  
4 the program.

5 **Q. Did you ever disagree with the IEP team's**  
6 **identification of your child's status as being in**  
7 **need of special education services?**

8 A. I'm not sure what you meant by the plans  
9 and the IEP, the phrase that counsel had used.

10 **Q. Was R.H. properly identified as needing**  
11 **special education services?**

12 A. Yes, R.H. is a special needs child.

13 **Q. Do you think that the evaluation of R.H.**  
14 **since he has been at the district has been correct?**

15 A. Sometimes it's not accurate.

16 **Q. When it isn't accurate, are you able to**  
17 **get a reevaluation from the school upon request?**

18 A. Can you repeat the question?

19 **Q. What was not accurate about R.H.'s**  
20 **evaluation by the school?**

21 A. So from R.H. transition from preschool to  
22 kindergarten, during those phase, we received the  
23 translation in the Chinese was from Audrey, that  
24 report was only from the school district and it's



1 out the form.

2 BY MS. OBOD:

3 Q. Is the information on the form accurate?

4 A. Correct. At that moment, it was correct.

5 Q. R.H. goes to McCall, right?

6 A. Yes.

7 Q. That's your neighbor school, right?

8 A. Yes.

9 Q. Does R.H. speak English?

10 A. He speaks some.

11 Q. Do you consider R.H. to be limited  
12 English proficient?

13 A. At his school, his English teacher  
14 recommend he has an ESOL program and have gave him  
15 the status that he has lack English proficiencies.

16 Q. Is R.H. in ESOL classes at McCall?

17 A. At the moment, I do not know whether he  
18 still has ESOL class in McCall.

19 Q. Do you understand what educational  
20 services R.H. is receiving?

21 A. He has special education service.

22 Q. Do you know what special education  
23 services he receives?

24 A. I understand.

1 Q. You understand what services he's  
2 receiving?

3 A. Yes.

4 Q. When was the most recent IEP meeting that  
5 you attended?

6 A. December 5th.

7 Q. Did you ask for Marie Capitolo to be  
8 present at that meeting?

9 THE INTERPRETER: Mary?

10 MS. OBOD: Marie Capitolo.

11 THE WITNESS: Usually she would  
12 attend most of the IEP meetings.

13 BY MS. OBOD:

14 Q. Do you know what her role is at the  
15 school district?

16 A. She's a provider -- director at the  
17 school district.

18 Q. Do you volunteer at McCall? Do you  
19 volunteer at McCall?

20 A. Yes, I did volunteer.

21 Q. Did you volunteer a lot when R.H. was in  
22 kindergarten?

23 A. Yes.

24 Q. How often in a week, how many days a week

1 A. Yes.

2 Q. Prior to R.H. starting school in  
3 September, do you recall requesting mediation?

4 A. Yes.

5 Q. Why did you request mediation?

6 A. Because I have request for an IEE  
7 evaluation, but the school have reject it.

8 Q. Did you have counsel when you requested  
9 the mediation?

10 A. No. At those time, I didn't have a  
11 counsel.

12 Q. Was there anything in the two documents I  
13 just provided to you that were translated to simple  
14 Chinese that made you believe that you needed to  
15 get an IEE?

16 A. Yes.

17 Q. What?

18 A. Again, from the other evaluation from the  
19 Exhibit 6, that report, the psychological  
20 evaluation from the school district only have  
21 mention my son's strength and weakness, and it did  
22 not have any report about his speech skills, his  
23 behavior skills and all the other occupational  
24 skills that was supposed to be on the report.

1 Q. That was the document dated 5-13-2016,  
2 correct?

3 A. Yes. Correct. Because when I signed  
4 this document, I assume that they did evaluate all  
5 his other skills, speech delay and his behavior  
6 skill. However, I realize later on, no, they  
7 didn't have those evaluations.

8 Q. Was there anyone you talked to about what  
9 the needs would be for the other evaluations for  
10 R.H. at the time that you were making the decision  
11 to request an IEE from the school district?

12 MS. OBOD: Did she talk to anyone  
13 else about the need for the IEE at that  
14 time?

15 THE WITNESS: At the time, I felt  
16 that the report was not complete, so I  
17 talked to Anna and Bonita, and they  
18 recommend that I have an IEE evaluation.  
19 But at the time, I wasn't sure what an  
20 IEE was.

21 MS. OBOD: This is 16, and I'm going  
22 to have this marked 17 at the same time.

23 -----

24 (Whereupon, Lin-16 and Lin-17 were

1 marked consecutively for identification  
2 as of this date and are attached hereto.)

3 -----

4 MS. OBOD: Why don't we take a break  
5 right now? The interpreter is asking for  
6 a break.

7 -----

8 (Whereupon, a recess was taken at  
9 3:06 o'clock p.m.)

10 -----

11 (Whereupon, the deposition resumed  
12 at 3:17 o'clock p.m.)

13 -----

14 BY MS. OBOD:

15 Q. I'm handing you documents marked Lin-16  
16 and 17. My understanding is that 17 is a Chinese  
17 version of 16. Is this your signature on the  
18 bottom of 16 where it identifies parent/guardian?

19 A. Yes.

20 Q. Did this mediation agreement resolve the  
21 issue you raised with respect to requesting that  
22 the district fund an IEE for speech, OT, PT, ABA  
23 and FBA?

24 A. Yes.

1 Q. Does this document also state in  
2 paragraph 7 that the district will facilitate  
3 inclusion of the parent in the IEP process by  
4 providing a hard copy and emailing a copy of the  
5 IEP ten days in advance and providing competent  
6 language interpretation services to review the  
7 document in advance with parents?

8 A. Yes.

9 Q. Were you content with the services being  
10 provided to R.H. in the fall of 2016 at McCall?

11 A. Partially.

12 Q. Did you request an IEP meeting on  
13 December 15 of 2016?

14 A. Yes.

15 Q. Who did you make that request to?

16 A. I forgot who I spoke with, but it was  
17 with the IEP team.

18 Q. Do you recall who was on the IEP team at  
19 McCall?

20 A. You asked who was the IEP team, so I  
21 suppose they were the principal, the school  
22 director and the special need teachers and the  
23 one-on-one teachers and all those staff  
24 participated in the IEP.

1 Q. At this time, were you being provided  
2 with consultations with the special services staff  
3 who were supporting R.H. ?

4 A. There were many people in the room.

5 Q. Even outside of the IEP room, were you  
6 getting monthly meetings or regular meetings with  
7 the different service providers for R.H.?

8 A. Yes.

9 Q. This was the time that you were  
10 volunteering at school approximately one time a  
11 week; is that right?

12 A. Yes.

13 Q. Did you believe that you had a lot of  
14 knowledge about what the issues that R.H. was  
15 presenting were at school?

16 -----

17 (Whereupon, Lin-18 was marked for  
18 identification as of this date and is  
19 attached hereto.)

20 -----

21 THE WITNESS: I'm not fully  
22 understand what you're asking me.

23 BY MS. OBOD:

24 Q. Based on your going to school and

1 volunteering once a week and having the opportunity  
2 to meet with the different service providers for  
3 R.H., did you feel that you had knowledge of the  
4 issues that were relating to R.H. 's education so  
5 that you could give input at the IEP meeting?

6 A. Yes, I do have such opportunity to  
7 understand his condition.

8 Q. I'm going to hand you what's been marked  
9 Lin-18. Ms. Lin, I'm going to ask you to just give  
10 that to your lawyer.

11 Is this the IEE that you requested  
12 and were agreed to be provided with on the  
13 mediation agreement I showed you?

14 A. Yes.

15 Q. The doctor that provided it is Dr. Brand?

16 A. Where does it say Dr. Brand?

17 MS. GOEBEL: She has a different  
18 document than you do.

19 MS. OBOD: Oh. Sorry.

20 BY MS. OBOD:

21 Q. I was looking at a different document.  
22 Is 18 the IEE?

23 A. Yes, it is the language evaluation  
24 report.



1 objection. Lack of foundation with  
2 regard to something that constituted a  
3 denial of FAPE and also calling for a  
4 legal conclusion.

5 BY MS. OBOD:

6 Q. The question is were you aware that Marie  
7 Capitolo set up a special summer program in the  
8 summer of 2017 for R.H. so that he would have the  
9 services he needed, based on her statement that  
10 that would satisfy FAPE for R.H. in the summer?

11 A. I was not aware of the program was set up  
12 for my son. But from what I understood, the summer  
13 months have twelve weeks, but the program only  
14 allows four to five weeks of services, and it's  
15 geared toward children who have reading delay, that  
16 was what the program was intended for.

17 Q. Do you recall at the May 22nd IEP meeting  
18 that you requested that R.H. have a writing goal  
19 added to his IEP?

20 A. I do remember the incident I had  
21 requested. However, the IEP team had refused to  
22 provide such a goal. But my concern was that he  
23 has difficulty follow-up in the writing class.

24 Q. Did you understand that although the team

1 did not think that it was necessary that they  
2 actually added that writing goal to his IEP in May  
3 of 2017?

4 A. I understood that they told me it was not  
5 necessary; however, they also did added that goal  
6 onto his IEP service.

7 Q. Do you recall at the IEP meetings in  
8 March, May and June providing input from your  
9 experiences with R.H. at home to help the IEP team  
10 understand R.H. better so that they could put a  
11 plan in place better for R.H. ?

12 A. I suppose all those communication with  
13 the school had helped them understand my son's  
14 needs.

15 Q. You did provide input from experiences  
16 you had with R.H. , either at school or at the  
17 Settlement School or different places that you  
18 experienced or saw, witnessed how he behaved, you  
19 shared those with the school, correct?

20 A. Yes. My friend have helped me  
21 communicate this to school.

22 Q. Your friend was present with you at the  
23 IEP meetings?

24 A. Yes, for the May and June meeting.

1 Q. Did you ever agree that the statements in  
2 here that relate to you are accurate and correct?

3 A. Yes.

4 Q. Is that your name listed here as the last  
5 name prior to the word plaintiffs, Manquing Lin?

6 A. Correct.

7 Q. Did you ever disagree with any of the  
8 services being provided to R.H. at McCall?

9 A. I did disagree.

10 Q. Did you ever ask for a due process  
11 hearing because you disagreed with any of the  
12 services being provided to your son?

13 A. I only request for a mediation meeting,  
14 not other hearings.

15 Q. Did you ever disagree with any of the  
16 services being provided to your son after the  
17 mediation agreement was entered into?

18 A. I did express some of my disagreement;  
19 however, I never request for a hearing.

20 Q. When you expressed disagreements, were  
21 those issues addressed by the district to your  
22 satisfaction?

23 A. Some of the issue was being addressed,  
24 but some of it wasn't.

1 Q. Do you have any current disagreements  
2 with the services being provided to R.H. ?

3 A. At the moment, I can't recall any  
4 disagreement except that I am still waiting for  
5 those documents to be translated, but they still  
6 haven't been translated.

7 Q. Other than not getting documents  
8 translated, that's not a service being provided to  
9 R.H. ; that's a service to you, right?

10 A. Yes.

11 Q. Services to R.H. , are you disagreeing  
12 with any of the services being provided to R.H. ?

13 A. Yes, with the OT service to R.H. .  
14 Previously they provided twice a month for his OT  
15 sessions. However, they have reduced it to once a  
16 month. I was not very satisfied with that  
17 conclusion, but there's nothing I can do.

18 Q. You raised that to the school?

19 A. I did tell them I would like to see R.H.  
20 continue to receive twice a month for the OT  
21 services, but the school district disagree.

22 Q. Do you get an opportunity to speak with  
23 some of R.H. 's teachers when you pick him up at  
24 school at the end of the school day?

## EXHIBIT J

OFFICE FOR DISPUTE  
RESOLUTION

File No. 18017-16-17-LS

Page 1 of 2**Mediation Agreement**

All discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding as mandated by 300.506(b)(6)(i) of the Individuals with Disabilities Education Act.

We, the undersigned, understand that this mediation agreement is legally binding and enforceable in a state court of competent jurisdiction or in a district court of the United States.

We, the undersigned parties (Parent/Guardian, Local Education Agency (LEA) Representative), have participated in a mediation session on August 18, 2016 regarding R.H. and being satisfied that the provisions of the resolution of our dispute are fair and reasonable, hereby agree to abide by and fulfill the following:

- ① The district agrees to fund an IEE for speech, OT, PT, ABA & FBA.
- ② District will implement the early intervention IEP dated 6-1-2016 until such time that the IEE is completed and reviewed by the district.
- ③ Parent <sup>District</sup> agrees to an independent evaluation for speech, OT, PT, ABA & FBA by <sup>(To Be Completed)</sup> December 1, 2016.
- ④ District will review the IEE(s) by January 15, 2017 (or 30 days from when the IEE is presented if presented earlier) with generation of a comprehensive re-evaluation report.

Continued

Mediator

Theresa Church8/18/16

Parent/Guardian

Manuel8/18/16ICAA/Amo Portor8/18/16

PSD026809



LEA Representative

Rev. 11/15

6340 Flank Drive, Harrisburg, PA 17112-2764

717-901-2145 • Toll Free 800-222-3353 (PA only) • TTY Users: PA Relay 711

FAX 717-657-5983 • www.odr-pa.org

- 292  
8/18/16
- ⑤ An IEP meeting will occur within 30 days of the completion of the re-evaluation report.
- ⑥ The district in implementing the pendent 6-1-16 EI IEP, will allocate an ABA trained <sup>one-on-one</sup> ~~the~~ assistant as per the EIEP.
- ⑦ To facilitate full inclusion of the Parent(s) in the IEP Process:
- a. District will provide a hard copy and email copy of the IEP & any reports i.e., evaluation, and other relevant documents, 10-days in advance. The district will provide competent <sup>language</sup> interpretation services to review these documents in advance with Parent(s).
  - b. District will provide the final copy of the IEP and ~~the~~ evaluation reports in simplified Chinese.
- ⑧ District will provide math & literacy enrichment for R.H. (Student).



# EXHIBIT K

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

T.R. et al.,

Plaintiffs,

v.

The School District of Philadelphia,

Defendant.

Civil Action No. 15-04782-MSG

AFFIDAVIT OF MANQING LIN

Commonwealth of Pennsylvania)  
County of Philadelphia ) ss:

Manqing Lin, being duly sworn, deposes and states as follows:

1. I am a plaintiff in the action entitled, *T.R v. The School District of Philadelphia*, Civil Action No. 15-04782-MSG. I submit this affidavit based on my own personal knowledge.
2. This Affidavit was prepared and reviewed by me with the assistance of an interpreter and I fully understand its contents.
3. On May 4, 2018, counsel for Plaintiffs produced copies of certain handwritten and typed notes (collectively, the "Notes") which I maintained in my home and that related to the special education services provided to my son, R.H., by the School District of Philadelphia (the "District"). The Notes are located at Bates range TR000025618-TR000025677.
4. The documents attached hereto as Exhibit A are authentic copies of the Notes.
5. The Notes were taken in preparation for, during, or after meetings with the District to discuss R.H.'s special education services.

6. I provide this information concerning the dates and/or circumstances regarding when each of the Notes was created. I attest that this information is provided to the best of my recollection.

7. Bates pages TR000025618-TR000025647 are my notes taken in preparation for and/or during or after an IEP meeting on March 21, 2017 to discuss R.H.'s Reevaluation Report dated February 15, 2017.

8. To the best of my recollection, the notes in red were made prior to the March 21<sup>st</sup> IEP meeting during a series of meetings I had with an interpreter provided by the District to review the Evaluation Report. Some of these notes in red were copied directly from the Independent Evaluation Report ("IEE") completed by Dr. Brand which was provided to me in Chinese. While I don't recall all the dates of these meetings, I recall that two of the meetings occurred on March 9<sup>th</sup> and March 13<sup>th</sup>. Mr. Qi Tang, the Bilingual Counseling Assistant at McCall Elementary, provided interpretation services at both meetings and at other meetings the dates of which I cannot recall.

9. I believe that Ms. Naziha Belazzougui attended both meetings on March 9<sup>th</sup> and March 13<sup>th</sup>

10. Christine Kenney (now Mannino) attended the meeting on March 9<sup>th</sup>. She told me that sections of the Evaluation were copied from the IEE provided by Dr. Brand and translated into Chinese. She stated that the interpreter didn't need to review those sections of the Report with me because I could look at the translated IEE for that information. The translated IEE was provided to me pursuant to a Mediation Agreement.

11. Bates pages TR00025636, TR00025639, and TR00025641 are typed and in Chinese. These pages were inserted by me after cutting and pasting sections from the translated

IEE. These sections include information from R.H.'s evaluations regarding OT and Speech.

This was done by me prior to the IEP meeting on March 21<sup>st</sup>. I do not recall the exact date that I did this.

12. To the best of my recollection, most of the notes in black and yellow highlights on Bates pages TR000025618-TR000025647 were made during the IEP meeting on March 21<sup>st</sup>. I do not recall which of these notes were made during meetings with an interpreter from the District.

13. Some of these notes in black were made following the meeting with the interpreter – sometime between March 9<sup>th</sup> and March 21<sup>st</sup> -- with the help of my daughter and my friend, Anna Perng. I sent the Evaluation in English to Anna and she would tell me the important parts of the Evaluation. She does this with me by phone and in person. She tells me what is missing and what is most important to include. I can't recall when I made each of the notations on the Report or the number of times or dates that I spoke with or met with Anna Perng but it would have been in March of 2017.

14. Bates pages TR000025648-TR000025651 (above the line) dated March 23, 2018 are my notes taken during a meeting to discuss ESY. I had an interpreter at that meeting. The interpreter's name is Xuhong Wang and she is a District employee.

15. I believe that the notes appearing from the bottom of TR000025651 though TR000025657 were personal notes taken by me after the meeting discussing ESY either on the same day as the meeting (March 23<sup>rd</sup>) or one or two days after the meeting.

16. Bates page TR000025658 are notes I made in preparation for a meeting on February 14, 2018 which was a Report Card conference. I made these notes on February 13<sup>th</sup>, the night prior to the conference.

17. Bates pages TR00025659 and TR000025660 are notes I made while at the Report Card conference on February 14<sup>th</sup>. To the best of my recollection, we used language line at that meeting. Several teachers attended that conference.

18. With regard to Bates page TR000025661, the blue notes at the top were made during the February 14<sup>th</sup> meeting. The black notes were made by me prior to the next meeting regarding the report card on February 22<sup>nd</sup>. I do not recall the date.

19. Bates pages TR000025662-TR000025663 are my notes taken in preparation for and/or during or after a meeting on February 22, 2018 with R.H.'s autistic support teacher. In some cases, I copied from the IEP.

20. Bates pages TR000025664-TR000025667 are my notes taken after a meeting on December 5, 2017. I don't recall the date. Some of these notes were made with the help of my daughter who could read the IEP for me. She read the IEP to me. I took notes regarding challenges and progress over the past year.

21. Bates pages TR000025668-TR000025669 are my notes made at a meeting on March 21, 2017 which discussed R.H.'s Re-evaluation Report and the Independent Evaluation conducted by Dr. Melissa Brand. The interpreter at that meeting was Xuhong Wang, a District employee. I think Anna Perng was there but I'm not sure. The attorneys were there.

22. Bates pages TR000025670-TR000025671 are my notes taken before and during IEP meetings on May 22, 2017 and June 5, 2017 which I believe addressed R.H.'s IEP and Extended School Year. I don't recall when I made each note. I know some of the notes were taken 2-3 days before the May 22<sup>nd</sup> meeting. My daughter and Anna helped me before these meetings. I also used a translation program for some sentences. Some notes in black at the bottom of TR000025670 which refer to "Kinney" and "7/27-8/10" were made by Anna and



written during the meetings on May 22<sup>nd</sup> and June 5<sup>th</sup>. Anna attended both meetings. When the interpreter did not interpret in detail, Anna would explain the information to me in Mandarin.

23. Bates page TR000025672 are my notes taken before R.H.'s March 21, 2017 meeting which discussed R.H.'s Re-evaluation Report. The information in these notes came from an article I read in Chinese.

24. Bates pages TR000025673 -25676 are my notes taken in preparation for R.H.'s March 21, 2017 meeting. I made the notes three days before the March 21<sup>st</sup> meeting. This document was provided to me in English by Dr. Brand and I made notes on the document in Chinese to prepare for the meeting. My daughter helped me to make these notes and I used a translation app or software to translate some of the information.

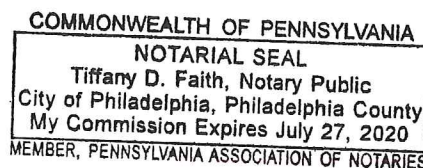
25. Bates page TR00025677 are typed notes I made after the IEP meeting on June 5<sup>th</sup>. This was after I received the final May 23, 2017 IEP in English. I don't recall the exact date. I copied all the IEP Goals directly from the IEP which was in English and noted the page number of each Goal. I then used a translation app to translate each goal into Chinese so that I could understand the information. I also used the page numbers from the English version to match up the goals in the translation provided to me in Chinese. I needed to align the page numbers because everyone speaks very quickly at IEP meetings and I wanted to be able to keep up to know what everyone was talking about at the meeting.

  
MANQING LIN

Sworn to before me this

28<sup>th</sup> day of August, 2018

  
NOTARY PUBLIC



# EXHIBIT L

Madeline Perez

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3                           \*   \*   \*

4  
5           T.R., et al.,                                 :   CIVIL ACTION  
                          Plaintiffs,                         :

6                           v.                                 :

7           SCHOOL DISTRICT OF                         :  
                          PHILADELPHIA,                         :   NO.

8                           Defendant.                         :   15-cv-4782

9  
10                           \*   \*   \*

11                           Monday, February 12, 2018

12                           \*   \*   \*

13  
14                           Oral Sworn Deposition of  
15           MADELINE PEREZ, taken pursuant to Notice,  
                          held at the Law Offices of Dilworth  
16           Paxson, 1500 Market Street, Suite 3500  
                          East, Philadelphia, Pennsylvania,  
17           beginning at 10:11 a.m., on the above  
                          date, before Brandy M. Christos,  
18           Registered Professional Reporter,  
                          Certified Court Reporter, and Notary  
                          Public, there being present.

19  
20  
21  
22                           \*   \*   \*

23                           GOLKOW LITIGATION SERVICES  
                          877.370.3377 ph | 917.591.5672  
                          deps@golkow.com



1 challenging. I don't understand the  
2 concept of ODD myself, but he is defiant  
3 to authority.

4 Q. Was that a school district  
5 psychologist?

6 A. No, this is -- no, this is a  
7 psychiatrist I take him to. I don't know  
8 if the school district has come up with  
9 that diagnosis. And if they have claimed  
10 that he has that, I'm sorry, I don't read  
11 English, so I don't know.

12 Q. Have you ever told the  
13 district, either at an IEP meeting or  
14 otherwise, that L.R. goes to a  
15 psychiatrist?

16 A. Yes, always.

17 Q. So the district is aware of  
18 that issue?

19 A. Yes.

20 Q. And how did you communicate  
21 that?

22 A. Through the interpreter who  
23 is present at the time.

24 Q. What do you understand to be

1 J.R. 's special education needs?

2 A. I think it's about his --  
3 he's a slow learner.

4 Q. How do you know that?

5 A. Because -- because even  
6 though he reads English, he comes across  
7 things that he says, mom, I don't  
8 understand this, and I cannot help him  
9 because I don't know English. That's why  
10 he goes to Philadelphia HUNE, because  
11 they can help him, they know English.

12 Q. Is that a concern that  
13 you've raised at an IEP meeting?

14 A. Yes, that he goes to  
15 Philadelphia HUNE.

16 Q. I'm sorry. I meant that you  
17 believe that J.R. 's a slow learner.

18 Have you raised that at an  
19 IEP meeting?

20 A. Yes. They have --

21 Yes. They have done  
22 evaluations and I've learned through the  
23 interpreter that they've assessed his  
24 reasoning and his retention and memory.

1 Q. And that was -- you learned  
2 that through an IEP meeting?

3 A. Yes. Correct.

4 Q. Did you have the chance to  
5 ask questions about that?

6 A. Yes.

7 Q. What kind of questions did  
8 you have?

9 A. I don't understand.

10 Q. Did you have the chance to  
11 ask questions about J.R. 's learning needs  
12 or what the school could do for him?

13 A. Yes. Yes, about learning  
14 disability or -- I'm sorry if I am  
15 pronouncing it wrong. How the school can  
16 help him. Right now they're taking him  
17 out of his regular classroom, put him  
18 aside to help him with his weak areas,  
19 which is writing, reading and math.

20 Q. And how do you know that  
21 they're doing that?

22 A. Because they tell me so and  
23 he also tells me that they pull him out  
24 of his classroom to another classroom.

1 Q. Do you think that special  
2 instruction is helping J.R. ?

3 A. I would say it helps. Any  
4 help is help.

5 Q. What do you understand to be  
6 D.R. 's special education needs?

7 A. I would say reading and  
8 math. She struggles with reading and  
9 math.

10 Q. And how do you know that?

11 A. Because math is numbers,  
12 it's not like a language. I mean one,  
13 one, plus one. And I have observed how  
14 she adds and subtracts and she's not  
15 doing it right. Usually they let her use  
16 a calculator for math so she can do her  
17 work and problem solving, math problem  
18 solving.

19 Q. Did someone at the school  
20 tell you that D.R. was having problems  
21 with math?

22 A. Yes, the special education  
23 helps her with reading, math and writing.

24 Q. You mentioned that she gets

1 to use a calculator. Is that an  
2 accommodation that was discussed at an  
3 IEP meeting?

4 A. Yes, in an IEP meeting they  
5 agreed that she could use a calculator.  
6 In fact, when they give her tests,  
7 sometimes they let her use a calculator  
8 in the same classroom. If it's very  
9 difficult for her to resolve the  
10 problems, they let her use a calculator.

11 Q. Is that an accommodation  
12 that you think is a good idea for  
13 **D.R.** ?

14 A. Yes. It helps her.

15 Q. I think you also mentioned  
16 that **D.R.** has a reading problem.

17 Did you learn that from the  
18 school?

19 A. Yes.

20 Q. Was that discussed at the  
21 IEP meeting?

22 A. Yes, it has been discussed  
23 at IEP meetings.

24 Q. Are there any type of

1 accommodations that the school is doing  
2 to help D.R. with her reading?

3 A. I don't know at school, but  
4 at home I play audios so she can listen  
5 to them.

6 Q. Did someone suggest to you  
7 that that would be helpful for her?

8 A. Yes. Special education  
9 teacher recommended that when she was  
10 only beginning here in the school.

11 Q. Has that been helpful?

12 A. Yes.

13 Q. Do you recall signing a  
14 settlement agreement for your son L.R. in  
15 February of last year?

16 A. What kind of settlement?

17 Q. An agreement about moving  
18 him out of the School District of  
19 Philadelphia to a private school.

20 A. Oh, yes. Devereux's.

21 Q. How did that agreement come  
22 about?

23 A. There was a meeting where  
24 Mimi Rose, who is an attorney, was

1 present at that meeting.

2 Q. Mimi Rose was your attorney;  
3 correct?

4 A. Yes.

5 Q. So what led to him moving  
6 schools?

7 A. His special needs. He had  
8 already been transferred to another  
9 school district school and he had not  
10 made the grade, so to speak. And the  
11 school district teachers were in  
12 agreement that he needed more  
13 reinforcement.

14 Q. Were you in agreement with  
15 that?

16 A. Yes. I wanted him in a  
17 specialized school. And he is much  
18 better now. He's improved a lot, both in  
19 his behavior and his academic level.

20 Q. And did you tell the school  
21 that you thought that he needed more  
22 supports?

23 A. Both the school and I were  
24 out of sorts. We both knew that

1 something needed to be done.

2 Q. So would you say that it was  
3 a decision that was come to between you  
4 and the school?

5 A. Yes.

6 Q. Did you feel that you played  
7 a part in that decision to move L.R. to  
8 the private school?

9 A. Yes. The school gave me a  
10 few options. I didn't choose right away,  
11 but the school gave me suggestions where  
12 L.R. could be moved. The first school  
13 that accepted him was Devereux's and I  
14 went to that school to see how the school  
15 performed and I liked the environment and  
16 that's how the school district learned  
17 that that was my choice for him.

18 Q. So you selected Devereux for  
19 L.R. ?

20 A. Yes.

21 Q. So you felt like you got to  
22 participate in a meaningful way in that  
23 decision?

24 A. Yes.



1 myself and the school district people.

2 Q. So with the interpreter you  
3 were able to participate in that meeting?

4 A. Yes.

5 Q. How did you choose the new  
6 school for D.R. ?

7 A. It was the closest one to  
8 the house.

9 Q. Did you go tour the school?

10 A. Yes.

11 Q. Was that your choice for her  
12 to go to that school?

13 A. She mentioned it and, yes,  
14 it was me who determined that that should  
15 be the one.

16 Q. D.R. mentioned it?

17 A. Yes, D.R. mentioned it at  
18 that meeting. Because she knows how to  
19 draw and that school has art so she  
20 wanted to be in a school where they would  
21 allow her to draw.

22 Q. So you were able to  
23 participate in the decision about what  
24 school D.R. would go to?

1 A. Yes.

2 Q. How is L.R. doing at  
3 Devereux?

4 A. Very well. Compared to his  
5 past with all these struggles and  
6 behavioral, I think Devereux's has been a  
7 good help. His behavior handler has been  
8 very good. He helps him to cope with his  
9 ups and down of behavior.

10 Q. How do you know how L.R. is  
11 doing? Does somebody at the school  
12 communicate with you?

13 A. The school tells the case  
14 manager, L.R. 's case manager, her name is  
15 Elizabeth, and Elizabeth tells me about  
16 it. When there's no classes, when it's  
17 only half a day, Elizabeth is the  
18 liaison.

19 Q. Does Elizabeth speak  
20 Spanish?

21 A. Yes. Correct.

22 Q. Are you able to contact  
23 Elizabeth if you have any questions about  
24 L.R. ?

1       communicated with the school by phone.

2               Q.       Elizabeth was at your house?

3               A.       Yes.

4               Q.       How often does Elizabeth  
5       come to your house?

6               A.       I would say once a month  
7       because she comes to the house and picks  
8       me up and we go to the psychiatrist  
9       because the psychiatrist speaks English.  
10      This month, L.R. started with a  
11      psychiatrist who speaks Spanish. So I'm  
12      not going to see her as often as I used  
13      to.

14              Q.       How does L.R. get to school?

15              A.       The district -- the school  
16      district gives him transportation.

17              Q.       Is that something that you  
18      requested?

19              A.       Yes, because the school is  
20      very far.

21              Q.       Is that something that you  
22      requested at an IEP meeting?

23              A.       Yes.

24              Q.       Is there anything else that

1 have been 20 or 25 minutes. I know it  
2 was supposed to start at 9:30 and she was  
3 already there when -- for starting time.

4 Q. The IEP meeting that you  
5 went to in person, was there an  
6 interpreter present then?

7 A. Yes, Elizabeth.

8 Q. At that meeting that was in  
9 person, were you able to ask any  
10 questions that you had?

11 A. Yes.

12 Q. Did you have the chance to  
13 share any concerns that you had about how  
14 L.R. was doing?

15 A. Yes.

16 Q. Do you remember any specific  
17 questions or concerns that you raised?

18 A. No. Just how L.R.  
19 socialized, because that has been one of  
20 the issues with him in school. I don't  
21 remember any specific questions.

22 Q. Did they go over what type  
23 of services he was going to receive at  
24 that meeting?

1           A.       Yes. It was a new school,  
2       so it was a first meeting.

3           Q.       Did the team talk about any  
4       goals for L.R. ?

5           MR. CHURCHILL: Objection.

6                    I don't know what the --  
7       "team," what are you referring to?

8           MS. GOEBEL: The IEP team.

9           MR. CHURCHILL: Was this an  
10       IEP team there? Have you  
11       established that? You just asked  
12       whether there was a meeting; you  
13       didn't ask whether there was an  
14       IEP meeting.

15           MS. GOEBEL: I got your  
16       objection. She can answer the  
17       question if she knows what IEP  
18       team means.

19           THE WITNESS: The special  
20       education teacher was present and  
21       there was somebody from the school  
22       district via telephone. I don't  
23       know who that person was, I don't  
24       remember, but I know somebody from

1 the school district was  
2 participating by telephone. And  
3 the special education teacher was  
4 there as well, Elizabeth and me.

5 BY MS. GOEBEL:

6 Q. And at that meeting did you  
7 talk about the issues that L.R. had with  
8 socializing in school?

9 A. Yes, I inquired how he was  
10 socializing with other kids.

11 Q. And did the other people at  
12 the meeting respond to your question?

13 A. The special education  
14 teacher responded that question and  
15 Elizabeth translated the answer into  
16 Spanish.

17 Q. And were you able, with the  
18 interpretation of Elizabeth, to  
19 understand how the school is dealing with  
20 L.R. and his socialization?

21 A. Yes. At that time it was  
22 too early to tell, but his socialization  
23 problems were obvious already.

24 Q. What are those problems?

1           A.       He doesn't know how to  
2       engage conversations with other kids,  
3       establish friendships, because he's very  
4       hyper, he doesn't know how to respect the  
5       space, boundaries between other kids,  
6       things like that.

7           Q.       Was there a plan for how to  
8       deal with those issues?

9           A.       Yes. The special education  
10      teacher explained how they were going to  
11      deal with -- work with L.R. .

12          Q.       At that meeting, were there  
13      any goals for L.R. discussed?

14          A.       Yes. One of them --

15                    Yes, they discussed how he  
16      had to conduct himself and no throw  
17      temper tantrums in a hotel (sic).

18                   THE INTERPRETER: The  
19      interpreter said, what do you mean?

20                   Yes, like to throw a temper  
21      tantrum, that's an expression.

22      BY MS. GOEBEL:

23          Q.       Through your monthly  
24      meetings with Elizabeth, do you get an

1 A. I don't remember.

2 Q. If I told you that it was in  
3 February of 2017, does that sound right?

4 A. Yes. That's when the  
5 attorney this morning showed me the two  
6 evaluations about that in Spanish.

7 Q. What can you remember about  
8 that last IEP meeting that you had for  
9 J.R. ?

10 A. The goal is for him to be  
11 able to graduate. One of them was for  
12 him to, as a goal, to learn how to count  
13 money, that's one of the ones I remember  
14 offhand.

15 Q. Did you understand what was  
16 going on at that meeting?

17 A. Yes. The teacher who speaks  
18 Spanish was there and there was a  
19 translator.

20 Q. There was both a Spanish  
21 teacher and an interpreter?

22 A. No, she was interpreting.

23 Q. And was that a school  
24 district employee?



1           A.       Yes, she's a teacher,  
2 Spanish teacher.

3           Q.       Did you bring anyone with  
4 you to that meeting?

5           A.       No, I just went -- just me.

6           Q.       Did you ask any questions at  
7 that meeting?

8           A.       I don't remember.

9           Q.       Do you remember that there  
10 was a question about switching J.R. to a  
11 different English class?

12          A.       No.

13          Q.       Did you discuss anything  
14 about smaller class sizes being better  
15 for J.R. ?

16          A.       Yes. I remember that, yes.

17          Q.       Were you part of that  
18 decision, to put J.R. in the smaller  
19 class?

20          A.       Yes, I was in agreement.

21          Q.       Did anyone ask you for any  
22 strategies about working with J.R. ?

23          A.       I don't remember.

24          Q.       Did anybody ask you what

1 works at home with J.R. ?

2 A. I don't remember.

3 Q. Are the things that you say  
4 at the meeting interpreted to the rest of  
5 the IEP meeting through the interpreter?

6 A. Yes. If I have a question,  
7 I ask the question, the teacher makes the  
8 question -- puts the question into  
9 English, they answer it, and she renders  
10 it back to me.

11 Q. Have you ever gotten any  
12 positive phone calls from the school  
13 about J.R. ?

14 A. I don't remember.

15 Q. Have you ever gotten a phone  
16 call from Mr. Koch, a teacher who speaks  
17 Spanish at Building 21?

18 A. Yes, a teacher. Yes. He  
19 has called me to inquire about J.R. 's  
20 development when there's an issue or  
21 problem. I remember a teacher calling  
22 me, yes, in Spanish.

23 Q. Has Mr. Koch called to give  
24 you positive feedback about how J.R. is

1           A.       Yes, because he will learn  
2 something. And that would help him to  
3 choose whatever profession he wants to  
4 pursue.

5           Q.       Is there anything else that  
6 you're looking for the school district to  
7 provide for J.R. that they're not  
8 currently providing?

9           A.       No. Everything is fine. I  
10 would like to have the documents in  
11 Spanish.

12          Q.       What about for L.R. , are  
13 there any services that he's not getting  
14 right now that you think he needs?

15          A.       No. He has all the  
16 services.

17          Q.       Do you recall that J.R. 's  
18 school, Building 21, moved locations?

19          A.       Yes.

20          Q.       And do you recall that you  
21 raised a concern about his  
22 transportation?

23          A.       Yes. Currently the district  
24 is providing transportation for him to

1 get to 21. While they were in transition  
2 to the new location, I worried because  
3 J.R. cannot really make connections,  
4 like, from one bus, take another route.  
5 He needs to learn that. And I talked to  
6 the teacher, the special education  
7 teacher, to let her know my concern about  
8 his transportation to school. And she  
9 said that, based on his IEP, he was  
10 entitled to get transportation. That's  
11 when I said I would like him to have  
12 transportation, because of his problem to  
13 memorize.

14 On one occasion J.R. was  
15 going out with staff from the school to  
16 get some training elsewhere and they  
17 helped him for two weeks and then he had  
18 to go to that location by himself and he  
19 would go with the other students, but he  
20 would forget what bus to take. That was  
21 one of the things I witnessed and I  
22 worried. That's why I talked to the  
23 special education teacher and she's the  
24 one who suggested the transportation.

1 Q. So you were able to raise  
2 your concern to the school?

3 A. Yes.

4 Q. And they responded in a way  
5 that you were satisfied with?

6 A. Yes.

7 Q. Was there ever any issue  
8 that you raised to the school or to the  
9 district and they didn't respond?

10 A. No, they have responded.

11 Q. J.R. went to a different  
12 school before Building 21, right?

13 A. Correct. Kensington CAPA.

14 Q. Why did he switch schools?

15 A. Because of bullying.

16 Q. Did you request the  
17 transfer?

18 A. Yes.

19 Q. How did you choose Building  
20 21?

21 A. The closest school was  
22 Building 21. It was more viable and it  
23 was a straight shot, only one street.  
24 That eliminated the risk of him getting

1 English like that.

2 Q. Do you ever get phone calls  
3 from D.R. 's school?

4 A. From the current school?

5 Q. Yes. Like if the school's  
6 closed for a snow day, for example.

7 A. Yes, they do call me.

8 Q. Are they in Spanish?

9 A. Yes. Mrs. Vegas calls, she  
10 speaks Spanish.

11 Q. Do you get like automated  
12 phone calls from the school?

13 A. Yes.

14 Q. Are those in Spanish also?

15 A. Yes. They call in English  
16 first, they hang up, and then the  
17 automated system kicks in.

18 Q. Do you get progress reports  
19 about D.R. ?

20 A. They've always given me the  
21 progress notes in English and in Spanish.  
22 For J.R. , D.R. , L.R. , all the ABC's,  
23 their progress reports are always in  
24 Spanish. And if they're in English, then

1       they make them available to me later  
2       through J.R. in Spanish.

3               Q.       Did you collect documents  
4       for your attorney for this lawsuit?

5               A.       Yes, what I have.

6               Q.       What did you do to gather  
7       the documents?

8               A.       I keep every document the  
9       school gives me.

10              Q.       And did you give all of  
11       those to your attorney?

12              A.       Yes.

13              Q.       Including the progress  
14       reports?

15              A.       I don't remember if I did  
16       that.

17              Q.       Are there any other school  
18       documents that you didn't give to your  
19       attorney?

20              A.       Just what the school gives  
21       me, that's what I give them. The IEPs,  
22       evaluations, everything.

23              Q.       Where do you keep those?

24              A.       My home, at home.

Madeline Perez

1 MR. CHURCHILL: Sure.

2 How much more do you have to  
3 do?

4 MS. GOEBEL: More.

5 MR. CHURCHILL: I understand  
6 more.

7 MS. GOEBEL: It's worth  
8 taking a lunch break.

9 MR. CHURCHILL: Okay.

10 \* \* \*

11 (Whereupon, a short break  
12 was taken.)

13 \* \* \*

14 BY MS. GOEBEL:

15 Q. Ms. Perez, did you provide  
16 input when your children were evaluated  
17 by the district?

18 A. You mean, the first time the  
19 district evaluated them?

20 Q. Yes.

21 A. Yes, I brought documents  
22 from Puerto Rico.

23 Q. What about when the School  
24 District of Philadelphia evaluated your



1 children, were you asked for input?

2 A. In every evaluation I've  
3 provided input.

4 Q. How does that happen? Do  
5 you fill out a form or is somebody like  
6 interviewing you?

7 A. They ask me questions.

8 Q. With an interpreter?

9 A. Yes.

10 Q. What kind of information did  
11 you give them for the evaluation?

12 A. The first time I went to the  
13 district and I gave them the Puerto Rican  
14 documents I had of the evaluations they  
15 had performed in Puerto Rico.

16 Q. When the School District of  
17 Philadelphia evaluated your children and  
18 they asked you for input, what kind of  
19 information did you give them?

20 A. It depends on the question  
21 they ask me.

22 Q. Did you give information  
23 like about what kind of medication the  
24 children were on?

1 A. Correct.

2 Q. Did you also give  
3 information about their behavior at home?

4 A. Yes.

5 Q. Did you give information  
6 about like what kind of doctors the  
7 children see?

8 A. Correct.

9 Q. For L.R. , what kind of  
10 behaviors at home did you share with the  
11 evaluator?

12 MR. CHURCHILL: Objection.

13 Can you specify a time  
14 frame? He's been in school since  
15 2012.

16 BY MS. GOEBEL:

17 Q. The most recent evaluation  
18 for L.R. , whenever that was, when you  
19 were asked for input, what kind of input  
20 did you give about L.R. 's behaviors at  
21 home?

22 A. I don't remember everything  
23 I said about L.R. .

24 Q. Do you remember anything

1 that you offered to the evaluator?

2 A. When the school district  
3 evaluates him, it's in private, I don't  
4 have to be present, I just give my  
5 authorization for the evaluation.

6 Q. I'm sorry. I'm asking about  
7 when the evaluator asks you for your  
8 input.

9 A. I don't understand.

10 Q. When the school district  
11 evaluates L.R. , is there a part of that  
12 evaluation where they ask you things  
13 about L.R. and he's not there?

14 A. Depending on what they say.  
15 What can I tell you? It depends on what  
16 they want to know. What specific  
17 question are you referring to on what  
18 person?

19 Q. So it depends on what the  
20 evaluator is asking you about your child?

21 A. Let's say that there's an  
22 evaluation about D.R. 's speech, she  
23 was evaluated about her speech. One of  
24 the questions that might arise is, Do you

1 think she's fluently speaking English?

2 And then I answer to that question.

3 Q. And you're able to  
4 understand the questions and give  
5 feedback?

6 A. Yes. If they ask me, I  
7 answer. Yes.

8 Q. Do you feel like you got to  
9 participate in the evaluation process?

10 A. I repeat, I am not present  
11 when the child is evaluated. After the  
12 evaluation, then they talk to me about  
13 the evaluation, and that's when they ask  
14 me questions.

15 Q. So you get like a summary of  
16 the evaluation? What do you mean?

17 A. They discuss the evaluation,  
18 how he came out of the evaluation.

19 Q. Who does that?

20 A. At school.

21 Q. Is that the psychologist?

22 A. Um-hum. And the special  
23 education teacher is always -- always --  
24 almost always present.

1 Q. And through that process  
2 you're able to understand what the issues  
3 are for L.R. ?

4 A. Yes.

5 Q. With that process, are you  
6 able to understand what the issues are  
7 for J.R. ?

8 A. Yes. And with D.R. , with  
9 everybody.

10 Q. If you disagree with that  
11 evaluation, are you able to share that  
12 concern?

13 A. Yes.

14 Q. Have you ever done that?

15 A. Yes, if I have a given  
16 question, I have asked that question.  
17 And if it's answered at the moment, I  
18 listen to it.

19 Q. Have you ever had a problem  
20 with an interpreter, like you felt that  
21 they weren't properly interpreting what  
22 you were saying?

23 A. If I don't understand  
24 something, I ask again.

1 MS. GOEBEL: My question was  
2 narrowed to -- I was just asking  
3 about L.R. .

4 MR. CHURCHILL: Well, it  
5 certainly wasn't clear from the  
6 question.

7 If it's modified that way,  
8 that is fine.

9 BY MR. CHURCHILL:

10 Q. Have you had an IEP for L.R.  
11 since February of 1917 (sic), last  
12 year -- or 2017, last year?

13 A. Yes, he gets re-evaluated --  
14 the IEP gets re-evaluated. There was one  
15 last week.

16 Q. And did you ask for  
17 translation of the IEP at that time?

18 A. Yes.

19 Q. Now, you've testified that  
20 you were satisfied with the services that  
21 are being provided for D.R. --  
22 currently being provided for D.R. and  
23 J.R. and L.R. ; is that correct?

24 A. Yes.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

T.R., et al.,

Plaintiffs,

THE SCHOOL DISTRICT OF PHILADELPHIA,

Defendant.

Case No. 15-cv-4782

**CERTIFICATE OF SERVICE**

Marjorie Obod, Esquire, hereby certify that on this date, I caused to be filed and made available for viewing and downloading from the CM/ECF System, a true and correct copy of the School District of Philadelphia's Motion for Summary Judgment and Supporting Documents thereto upon the following counsel of record:

Paul H. Saint-Antoine, Esquire  
Chanda A. Miller, Esquire  
Lucas B. Michelen, Esquire  
Carol Trevey, Esquire  
**Drinker Biddle & Reath LLP**  
One Logan Square, Suite 2000  
Philadelphia, PA 19103

Michael Churchill, Esquire  
Daniel Urevick-Ackelsberg, Esquire  
**Public Interest Law Center of Philadelphia**  
Benjamin Franklin Parkway, 2nd Floor  
Philadelphia, PA 19103

Maura McInerney, Esquire  
**Education Law Center**  
Walnut Street, 4th Floor  
Philadelphia, PA 19107  
*Attorneys for Plaintiffs*

Date: September 27, 2019

/s/ Marjorie M. Obod  
Marjorie M. Obod, Esquire